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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 373/2023

MS. X THR. HER NATURAL GURADIAN /FATHER [REDACTED]
[REDACTED] AND ANR. Petitioners

Through: None.

versus

STATE AND ORS. Respondents

Through: Mr. Rahul Tyagi, ASC for the State
with Mr. Jatin, Mr. Aashish C., Advs.
with WSI Manisha, PS Punjabi Bagh.
Ms. Rebecca John, learned senior
counsel - Amicus Curiae.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
07.03.2023

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1. The victim along with her father had filed a writ petition with the following prayers;

a) Issue writ of mandamus or writ /order/ direction in the nature of mandamus to handover the custody of petitioner no. 1 to petitioner no. 2,

b) Issue writ of mandamus or writ/order/direction in the nature of mandamus to direct CBI in order to conduct investigation/inquiry in favour of petitioners and against the respondents,

c) Issue writ of mandamus or writ/order/direction in the nature of mandamus to lodge an FIR against erring respondents in favour of petitioners and against the respondents,

d) Issue writ of mandamus or writ/order/direction in the nature of mandamus to initiate disciplinary actions against all respondents except respondent no. 8 and 9 with immediate effect in favour of petitioners and against the respondents,

e) Issue writ of mandamus or writ/order/direction in the nature of mandamus to protect lives and properties of petitioners and his family members in favour of petitioners and against the respondents,

f) Issue writ of mandamus or writ/order/direction in the nature of mandamus to respondent no. 4 to arrest respondent no. 9 in favour of petitioners and against the respondents,”

2. While petition was pending, it was brought to the notice of the Court that the victim is pregnant and is carrying 21 weeks of pregnancy. Pursuant to this, vide order dated 23.02.2023 the Court directed that the victim be medically examined at the Lady Hardinge Hospital. Medical Superintendent, Lady Hardinge Hospital was directed to constitute an appropriate Board and conduct the medical examination of the victim. The medical Board was directed to give a specific finding as to the health of the victim and also to give a detailed report regarding the pregnancy and MTP. Pursuant to the directions, Lady Hardinge Hospital & SMT. Sucheta Kriplani Hospital New Delhi (deptt. Of Obst. & Gynae) gave a detailed report dated 24.02.2023 under the signature of Dr. Reena, Dir. Professor & HOD, OBST. & GYNAE DEPTT. The medical report is as under:

“DETAILED MEDICAL EXAMINATION REPORT

MS. X d/o [REDACTED] 16 year, unmarried female, [REDACTED]
[REDACTED]

[REDACTED] MLC No. 13529 registered at Acharya Bhikshu Hospital (Dated 9/10/22) and MLC No. 464 (Dated 24/11/22) Registered at Deen Dayal Upadhyay Hospital. ANC Registration done at DDU Hospital. Brought to LHMC & SSKH for Medical Examination as requested by Delhi High Court dated 23/2/23

The specific findings related to the health of the victim and detailed report regarding her pregnancy are as follows:

Primigravida at 22 wks+i d (By dates)/21 wks+ 4d (By 8-week scan) with alleged history of sexual assault presented for her medical examination at the Medical Board at LHMC.

LMP - 22/9/22. POG: 22 wks + 1 d. EOD: 29/6/2023

Chief complaints: 5 months amenorrhea

She is carrying well with her pregnancy. Perceiving fetal movements. No complaint of pain abdomen, leaking or bleeding per vaginum. No tetanus immunisation received. No history of fever difficulty in breathing. No urinary and bowel complaints

Trimester History: 1st trimester - pregnancy was confirmed by Urine pregnancy test on 24/11/22 at DDU Hospital where the second MLC was made. USG was done which confirmed pregnancy of 8 weeks+ 5 days

Obstetric History unmarried: Primigravida

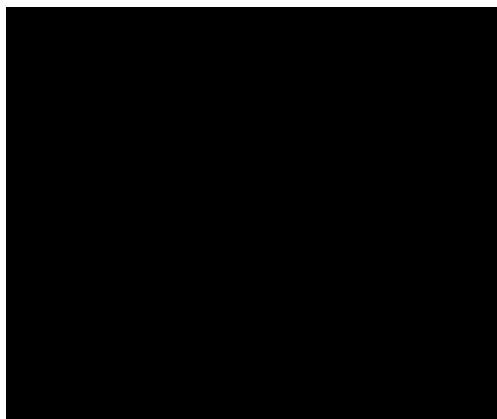
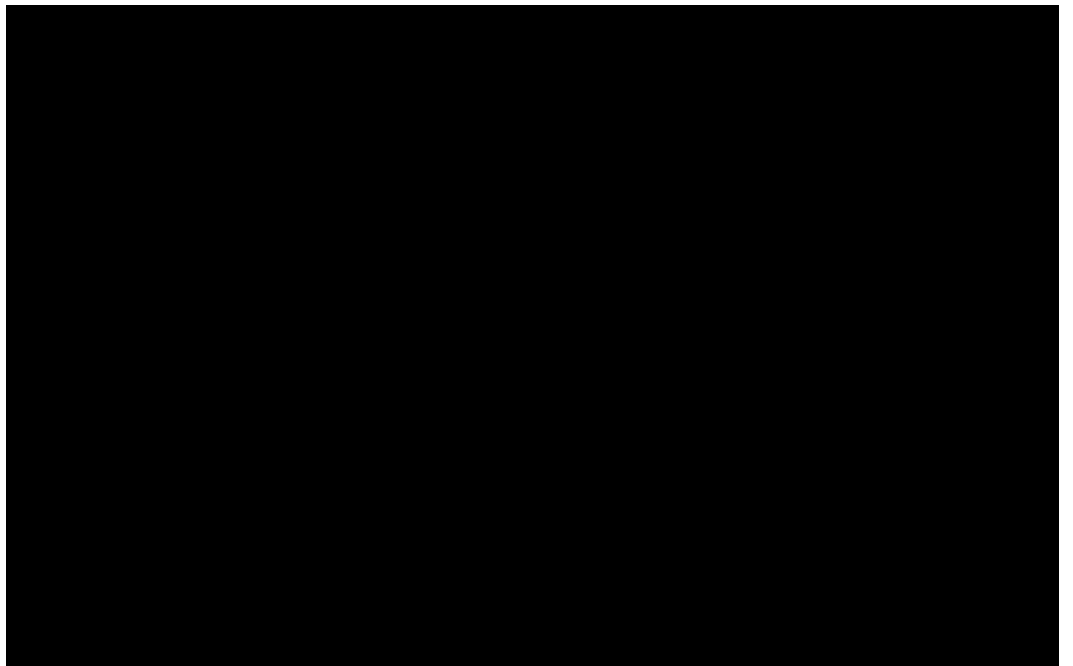
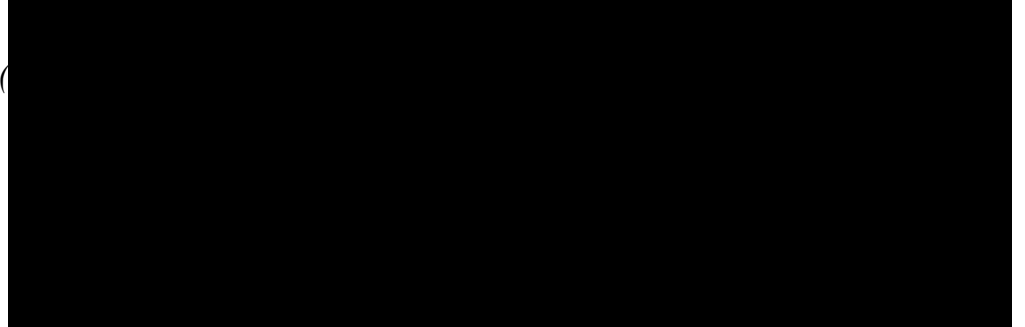
Menstrual History: Regular, 1-month cycle, 3 days duration, average flow

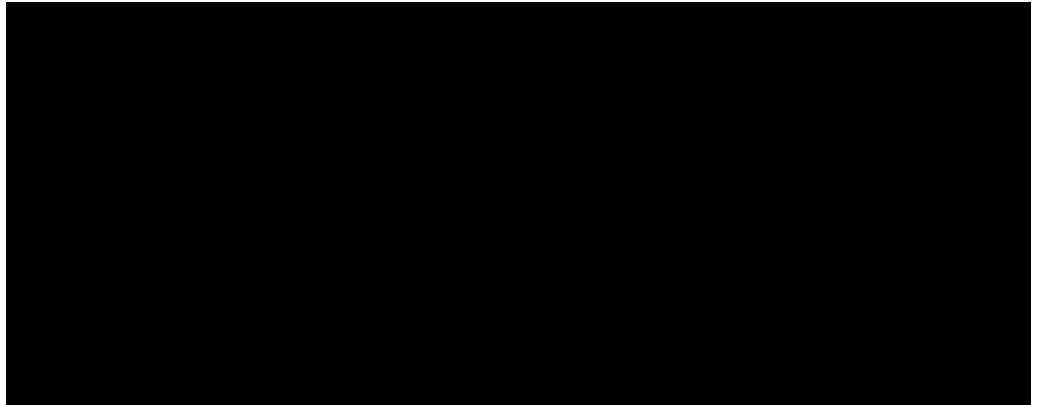
Past History: No chronic medical/surgical illness, no b/o surgery

Family History: Not significant

EXAMINATION:

General Physical Examination:





AT LHMC on 24/2/23

Hb - 9.9 gm/dl

TLC- 9900 cu/mm

Platelet count 1.73 lakh

MCV - 91.2 fL

MCH - 31.2 PG

MCHC - 34.3 g/dL

RBS - 100 mg%

Ultrasound: SLIUF, Variable, BPD - 22 wks+ 1d, HC - 21 wks+2d, AC 22 wks, FL 21 wks+2d, Liquor adequate, Placenta - posterior, upper segment, EFW - 443 +- 65 gm, No gross congenital anomaly identified on scan.”

3. It was specifically opined by Dr. Reena, HOD, (Director Professor (OBs & Gyane), LHMC, New Delhi;
 - (i) As per MTP Act Amendment, 2021 medical termination of pregnancy is possible at 22 weeks of gestation
 - (ii) She is fit for continue her pregnancy or undergo medical

termination of pregnancy.

4. Keeping the view of the sensitivity of the matter, Ms. Rebecca John, learned senior counsel was requested to be an - Amicus Curiae in the case and the victim was directed to be produced personally in the Court for chamber hearing on 03.03.2023. On 03.03.2023, a detailed chamber hearing was conducted. During the chamber hearing, the interaction was done by the Court, Ms. Rebecca John, learned senior counsel - Amicus Curiae and the victim as well as the interaction was done with Sh. [REDACTED] the father of the victim. During the interaction, learned Standing counsel, learned counsel for the petitioner and Ms. Pammi Chauhan, Legal Service Advocate, CWC and Dr. Pankaj Gupta, Member, CWC were also joined. The opportunity was granted to have a private interaction between the victim and the father of the victim. However, at this stage, it has come to the notice of the Court that inadvertently, in the order dated 03.03.2023, the name of the victim has appeared that be deleted immediately and she be identified as mark "X" and this order be deleted from the website the modified order be placed on the record on the website. On 03.03.2023 the following orders was passed:

"1. The Court and Ms. Rebecca John, learned senior counsel - Amicus Curiae have interacted in Chamber with Ms. X, petitioner No.1 and Mr. [REDACTED] the father of the petitioner No.1. During interaction, Sh.Rakesh Kumar, learned counsel for the petitioners and Sh. Rahul Tyagi, learned Additional Standing Counsel for the State have also joined.

2. After interaction [REDACTED] and Ms. X were given time to talk to each

3. After interaction, Sh. [REDACTED] father of the petitioner No.1 and Ms. X, petitioner No.1 state that they are ready for MTP without any fear, force and coercion. Sh. [REDACTED] has also stated before the Court that he gives his unconditional consent for the MTP of her daughter Ms. X in the best interests of her child.

4. Ms. Pammi Chauhan, Legal Service Advocate, CWC and Dr. Pankaj Gupta, Member, CWC are present.

5. Dr. Pankaj Gupta is directed to get the MTP conducted at the Lady Hardinge Hospital and is also directed to provide the best medical facility to Ms. X for her MTP. He is further directed to conduct the MTP expeditiously and also to provide the best medical aftercare to Ms. X.

6. During the procedure, the parents of Ms. X shall also be permitted to remain present and the same shall be informed to the father of Ms. X.

7. The Investigating Officer is also directed to assist Dr. Pankaj Gupta for carrying out the MTP and is also directed to collect all necessary forensic evidence/sample and preserved it for the purpose of the investigation.

8. List for consideration on 05th April, 2023.
Copy of the order be given Dasti.”

5. However, yesterday, a special mentioning was made by Sh. Rahul Tyagi, learned standing counsel to the effect that Sh. [REDACTED] father of the victim is not coming forward to sign the consent form. Ms. Rebecca John, learned senior counsel - Amicus Curiae was also called and a notice was issued to the father of the victim for appearing today at 10.30 a.m. However, as per the service report, the house was found locked and the notice was pasted on the main gate at the house of the petitioner No.2. It has also been mentioned in the report of the

SHO, PS Punjabi Bagh that notice was also sent to petitioner No.2 i.e. the father of the victim through whatsapp. No response has been received so far. Ms. Rebecca John, learned senior counsel - Amicus Curiae has pointed that there is only 2-3 days left for completing the 24 weeks of pregnancy and therefore, it would be become very difficult for the termination of the pregnancy and it will not be in the interest the child and the victim.

6. Dr. Pankaj Gupta, member from the CAW Cell is present and states that the victim is ready for MTP. He also states that even the victim tried to contact her father, but he is not accessible.
7. Ms. Rebecca John, learned senior counsel - Amicus Curiae has invited the attention of the Court to Section 3(4) of the Medical Termination Act, 2021 which provides as under:

(a) No pregnancy of a woman, who has not attained the age of eighteen ears, or, who, having attained the age of eighteen years, is a [mentally ill person], shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

8. Ms. Rebecca John, learned senior counsel - Amicus Curiae submits that in pursuance to this, Rule 9 of the Medical Termination of pregnancy rules Act, 2003 provides for a form of consent which is to be signed by the guardian of the pregnant women. Learned senior counsel submits that the father of the victim had duly given her

consent before this Court and therefore, the formality of the signing form C can be dispensed with. Learned senior counsel submits that the consent of the father may be taken into account by the concerned medical authorities. In alternative, learned senior counsel invited the attention of this Court to the Section 30 of the Juvenile Justice (Care and Protection of Children), Act, 2015 which provides functions and responsibilities of committee. Section 30 provides that the committee may conduct an inquiry for declaring fit persons for the care of children in need of care protection. Learned senior counsel submits that the victim is presently a child in need of care and protection. It has further been submitted that Section 2(31) of the Juvenile Justice Care and Protection of Children (Act, 2015) provides that the Board may appoint a guardian who is in the charge of the child. Section 2(31) of the Juvenile Justice Care and Protection of Children (Act, 2015) provides as under:

section 2(31) - “guardian” in relation to a child, means his natural guardian or any other person having, in the opinion of the Committee or, as the case may be, the Board, the actual charge of the child, and recognised by the Committee or, as the case may be, the Board as a guardian in the course of proceedings;

9. The attention has also been drawn to Section 2 (28) of the Juvenile Justice Care and Protection of Children (Act , 2014) which defines fit person which reads as under;

section 2(28) - “fit person” means any person, prepared to

own the responsibility of a child, for a specific purpose, and such person is identified after inquiry made in this behalf and recognised as fit for the said purpose, by the Committee or, as the case may be, the Board, to receive and take care of the child;

10. Learned Senior counsel submits that since the victim is in the custody of the Nirmal Chhaya Complex, Jail Road, Hari Nagar, New Delhi- 110064 since 17.10.2022, the Superintendent Chhaya Complex, Jail Road, Hari Nagar, New Delhi- 110064 is actually the guardian of the victim. The attention has been drawn to the orders passed by the Child Welfare Committee dated 25.01.2023, whereby the Child Welfare committee after interacting with the father of the child as well as 'bua' of the child exercising the power conferred 30 (4) read with Section 2 (31) of Juvenile Justice Care and Protection of Children (Act , 2015) appointed the Superintendent of CHG, Nirmal Chhaya Complex, Jail Road, Hari Nagar, New Delhi- 110064 as the guardian of the child during the course of proceeding and further legal proceedings to protect the interest of the child including any matter arising from the proceedings.

11. It is pertinent to mention here that this order was passed in relation to the MTP of the child. This Court has considered the submissions made by Ms. Rebecca John, learned senior counsel - Amicus Curiae, Sh. Rahul Tyagi, learned standing counsel and is of the considered opinion that at this age the victim cannot be burdened with the agony of bearing the child merely because her father who had given consent for the MTP of victim before this Court is not coming forward to sign

the required consent form which is only a formality. It is also pertinent to mention that Child Welfare Committee has duly appointed the Superintendent, Nirmal Chhaya Complex, Jail Road, Hari Nagar, New Delhi- 110064- Ms. Geeta Rana as the guardian after conducting the statutory inquiry in accordance with the provisions of the juvenile Justice Care and Protection of Children (Act, 2015). At this stage of the tender age allowing the minor victim to give birth and raise a child knowing that she herself is in her adolescent age and is thus mentally and physically unprepared would be totally inappropriate and improper. This would only be leading her to trauma for the entire life and miseries in all manners be it emotional, physical and mental, given the social, financial and other factors that are associated with raising a child.

12. This Court being a constitutional Court is under a duty bound to see the best interest of the victim. This Court considers that in view of the consent given by the victim, the same cannot be frustrated only on the account of irresponsible act of her father who after giving the consent not coming forward to fulfill the formalities. The reasons for this act of the father can later be seen and inquired into by the investigation officer during the investigation of the case. However, at this point of time, in view of the urgency of the matter when it has been informed to the Court that there is only 2-3 days left for completing 24 weeks, it would be in the interest of justice to let Ms. Geeta Rana, the Superintendent, Nirmal Chhaya Complex, Jail Road, Hari Nagar, New Delhi- 110064- sign the consent form as the guardian of the victim in

view of the fact that she has been appointed as a guardian and further the consent had been given by the father of the victim. Needless to say, that, while conducting the procedure, the following directions are passed:

1. Victim shall be made available at 2 p.m. today i.e.07.03.2023 before the competent authority of Lady Hardinge Medical College for the purpose of medical termination of her pregnancy.
2. The Medical Superintendent, Lady Hardinge Medical College and the Medical Board will ensure that the termination of pregnancy of the minor victim/petitioner is undertaken by competent doctors in accordance with the provisions of the MTP act, its rule or all other rules, regulations and guidelines prescribed for the purpose.
3. A complete record of the procedure which will be performed on the petitioner for termination of her pregnancy shall be maintained by the Medical Board.
4. The doctors concerned of the Medical Board shall also preserve the tissue of the fetus as the same may be necessary for DNA identification and all other purposes in reference to the criminal case which is registered in respect to the sexual assault upon the victim.
5. The State shall also bear all expenses necessary for the termination of pregnancy of the petitioner, her medicines, food etc.
6. The State shall also bear all expenses for further care during recovery.

13. However, the Court considers that the duty of this Court does not end here. In furtherance to that in the present scenario, when the father of the victim has not come forward even to sign the consent form, this Court is under a duty to ensure the well being of the victim after the procedure is over. Mr. Aashish C., learned standing counsel from Delhi High Court Legal Services Committee has been called and is directed to place a proper plan for rehabilitation of the minor victim in consultation with the Delhi High Court Legal Services Authority and Child Welfare Committee. The Delhi High Court Legal Service Committee shall be the Nodal Agency to co-ordinate with all the other agencies and present a plan before this Court for the rehabilitation and well being of the child.

14. List on the date already fixed i.e. 05.04.2023.

15. Copy of this order be given *dasti* under the signature of the Court Master.

DINESH KUMAR SHARMA, J

MARCH 7, 2023/Pallavi