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

+ **W.P. (CRL) 3239/2023**

MINOR L THR GUARDIAN J

..... Petitioner

Through: Mr. Anwesh Madhukar
(DHCLSC) with Ms. Prachi
Nirwan, Mr. Devesh
Khanagwal, Advocates
alongwith victim Minor L in
person

versus

STATE & ANR.

..... Respondents

Through: Mr. Yasir Rauf Ansari, ASC
(Criminal) for the State with
Mr. Alok Sharma, Mr. Vasu
Aggarwal, Advocates and SI
Preeti, P.S. Seemapuri, Delhi

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

04.11.2023

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1. The case has been taken up for hearing today through video conferencing at 4:30 PM since it was an urgent matter and was therefore listed for hearing today.
2. *Vide* order dated 03.11.2023, this Court had directed the Medical Board constituted at Guru Teg Bahadur Hospital, Delhi, to examine the victim child today at 10:00 AM to assess as to whether the medical termination of pregnancy will carry a risk to the life of

victim at the stage of gestational period of pregnancy of the victim, alongwith the following directions:

“...18. In such circumstances, considering the gravity of the situation as the victim is 16 years of age and the period of pregnancy is more than 25 weeks, this Court deems it appropriate to direct as under:

- i. The minor victim herein will be produced before the Superintendent, Guru Teg Bahadur Hospital, Delhi tomorrow i.e. 04.11.2023 at 10:00 AM by the investigating officer (IO) concerned;
- ii. The Superintendent, Guru Teg Bahadur Hospital, Delhi is directed to ensure that the victim is examined immediately by the Medical Board constituted at the hospital, *vide* notification dated 03.04.2023 issued by Government of NCT of Delhi, tomorrow itself i.e. 04.11.2023;
- iii. **In case the Medical Board opines that the victim herein is physically and mentally fit to undergo medical termination of pregnancy:**
 - a. the Superintendent, Guru Teg Bahadur Hospital, Delhi shall ensure that all **necessary arrangements** are made for the purpose of medical termination of her pregnancy which shall be conducted at the earliest and preferably **within 24 hours of obtaining opinion of Medical Board**;
 - b. The Superintendent, Guru Teg Bahadur Hospital, Delhi 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 rules and all other rules, regulations and guidelines prescribed for the purpose;
 - c. 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;
 - d. The doctors concerned shall also **preserve the tissue** of the foetus as the same may be necessary for **DNA** identification and other purposes, in reference to the criminal case which is registered against the accused by the petitioner/victim;
 - e. The State shall bear all the **expenses** necessary for the termination of the pregnancy of the petitioner, her medicines, food etc.;
 - f. **If the child is born alive, despite the attempts at medical termination of the pregnancy, the**

Superintendent, Guru Teg Bahadur Hospital, Delhi, shall ensure that everything, which is reasonably possible and feasible in the circumstances is offered to such child, and the Child Welfare Committee concerned shall do the needful in accordance with law;

- g. The Superintendent, Guru Teg Bahadur Hospital, Delhi shall also file a **compliance report before this Court within 24 hours** of conducting medical termination of pregnancy of the minor victim.
- iv. **However, it is made clear that in case the Medical Board is of the opinion that the victim herein is either physically or mentally unfit to undergo medical termination of pregnancy, the Superintendent, Guru Teg Bahadur Hospital, Delhi shall file the medical report before this Court forthwith with the necessary observations, tomorrow itself i.e. 04.11.2023 by 3:00 PM for further directions.**

19. The Registry is directed that the matter shall be put up for compliance/directions as soon as the compliance report is filed by the Superintendent, Guru Teg Bahadur Hospital, Delhi...”

3. When the victim was produced before this Court yesterday alongwith her guardian and the investigating officer as well as her counsel, she had expressed her desire for medical termination of pregnancy. She had also expressed her desire for her medical termination of pregnancy when she was produced before the CAW cell on 31.10.2023.

4. However, the report of the Medical Board, which has been produced before this Court today, reveals that the victim was not willing to undergo medical termination of pregnancy, therefore, as per last order passed yesterday, the matter was again taken up today through video conferencing.

5. The victim is before this Court and this Court has interacted

with her. During interaction with the victim, she had stated that she was under fear of losing her life in the process of medical termination of pregnancy, as the doctors had explained to her the danger to her life in case of medical termination of pregnancy. However, today before this Court, she states that she wants the pregnancy to be medically terminated. Her guardian Smt. Jimi Gaur, w/o Mr. Mangta Singh who is her paternal aunt (*buā*), in absence of the parents of victim who have unfortunately passed away, states that she is in favour of termination of pregnancy of the victim.

6. In such circumstances, this Court once again deems it appropriate to send back the victim for her appearance and production before the Medical Superintendent and the Medical Board at Guru Teg Bahadur Hospital, Delhi. The Medical Board will again explain to her the pros and cons of medical termination of pregnancy. This Court notes that the medical report sent to this Court does not mention that they had told the victim that she will lose her life, therefore, it seems that there is some miscommunication. The Medical Board had rather opined that medical termination of pregnancy is possible and the victim is mentally fit to take a decision. Let the Medical Board seek her opinion once again and in case she again states that she does not want medical termination of pregnancy and wants to continue with it, she be produced before this Court on 06.11.2023 at 3:00 PM. In case she and her guardian are willing for medical termination of pregnancy and the Medical Board finds it a fit case for the same, medical termination of pregnancy of the victim be conducted on the

same day following the same directions as contained in para 18 of order dated 03.11.2023 so that precious time is not lost by again seeking an order of this Court.

7. This Court also directs that the Medical Board will explain the pros and cons of the medical termination of pregnancy, as well as pros and cons of continuing with the pregnancy if any, to the victim and her guardian in Hindi which is her mother tongue so that there is no miscommunication. The communication so made and the consent whether in affirmative or negative of the victim and her guardian be also obtained in her mother tongue in Hindi on the medical examination report and be sent to this Court.

8. The victim be produced before the Medical Board at Guru Teg Bahadur Hospital, Delhi on 06.11.2023 at 11:00 AM.

9. This Court has deemed it appropriate to pass the above direction, considering the tender age of the victim and that she is in physical and mental discomfort while she sits in the Court and has interacted with the Court for the above purpose.

10. **This Court further orders that henceforth**, in cases of medical termination of pregnancy in rape cases, the pros and cons of the medical termination of pregnancy will be explained in Hindi wherever the victim and her guardian in case of a minor victim understands Hindi, or English where they understand the said language. Explanation of the above in the language spoken and understood by the victim and her guardian are of utmost importance. Every endeavour be made by the investigating officer and the Medical Board that the abovesaid is explained in the language

spoken and understood by the victim and her guardian. Medical termination of pregnancy involves mental and physical repercussion which may last for a life time and therefore, the procedure to be followed cannot be a routine or business like exercise. The most vital strength in such cases can often come from the doctors who examine such victim and explain to them the pros and cons.

11. This Court expects and hopes that the above directions will not only be followed in the letter but also the spirit behind these directions which necessarily include empathy, sensitivity and support that such victims requires in abundance.

12. A copy of this order be forwarded to (i) Commissioner of Police, Delhi, (ii) Secretary, Ministry of Health & Family Welfare, Government of NCT of Delhi, (iii) Secretary, Ministry of Health & Family Welfare of India, for ensuring circulation of aforesaid directions and necessary compliance.

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

14. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 4, 2023/ns