

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,  
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 9<sup>th</sup> OF MAY, 2024

WRIT APPEAL No. 1078 of 2024

**BETWEEN:-**

VICTIM X THROUGH HER NATURAL GUARDIAN

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██  
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BHOPAL (MADHYA PRADESH)

.....APPELLANT

(BY MR. HRITVIK DIXIT AND MS. PRIYANKA TIWARI - ADVOCATES)

**AND**

1. THE SUPERINTENDENT OF POLICE DEPARTMENT, BHOPAL (MADHYA PRADESH)
2. STATION HOUSE OFFICER, POLICE STATION ARERA HILLS, BHOPAL (MADHYA PRADESH)
3. CHIEF MEDICAL AND HEALTH OFFICER, GOVERNMENT JAI PRAKASH HOSPITAL, 1250, TULSI NAGAR, BHOPAL (MADHYA PRADESH)
4. DEAN GANDHI MEDICAL COLLEGE AND HAMIDIA HOSPITAL, ROYAL MARKET, SULTANIA ROAD, BHOPAL (MADHYA PRADESH)
5. CHIEF MEDICAL AND HEALTH OFFICER, PUBLIC HEALTH AND FAMILY WELFARE DEPARTMENT, BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(BY MR. HARPREET SINGH RUPRAH - ADDITIONAL ADVOCATE GENERAL)

*This appeal coming on for admission this day, Hon'ble Shri Justice Vishal Mishra passed the following:*

**ORDER**

We have received a sealed envelope from the Dean and Chief Executive Officer, Gandhi Medical College, Bhopal. It was opened in the court which contains the report of doctors.

2. This appeal has been filed assailing the order dated 06.05.2024 passed by the learned Single Judge in W.P. No.11788 of 2024 refusing the prayer of the petitioner for termination of her pregnancy.

3. It is the case of the petitioner that she is a minor aged around 17 years. She was sexually assaulted and raped by accused, against which, an FIR has been registered and criminal prosecution has been taken up. When the factum of developing pregnancy came to the knowledge of the family members, she got scared. When her mother noticed the physical changes in her and it was disclosed that she had developed the pregnancy due to the sexual assault. She made an application to the Gandhi Medical College and Hamidia Hospital, Royal Market, Sultania Road, Bhopal seeking termination of her pregnancy. Her application was not accepted by the authorities owing to the fact that on medical examination of the petitioner it was found that she has developed more than 24 weeks' pregnancy. The report on record indicates that she is carrying a pregnancy of between 26 to 28 weeks. Hence, she approached this Court by filing the instant writ petition. The writ court considering the said aspect of the matter and placing reliance upon the report submitted by the Medical Board and the fact that the period of Gestation (POG) is 28 weeks and 3 days as on 01.05.2024 and since the Medical Board has denied the termination of pregnancy, the writ petition was dismissed. Assailing the same, this writ appeal

has been filed.

4. It is argued by the learned counsel for the appellant that the petitioner being a rape victim, is having every right to get the termination of her pregnancy. This Court on 07.05.2024 took note of the said aspect of the matter and directed the State counsel to call for a report from the Medical Board. The matter was posted for hearing on 08.05.2024. The report of the Medical Board was produced before the Court on 08.05.2024. After examining the report and considering the provisions of the Medical Termination of Pregnancy Act, 1971, the Court, in order to find out the possibility of termination directed the petitioner to undergo the medical examination and the Medical Board was directed to submit a fresh report by 09.05.2024. In pursuance to the directions given by this Court on 08.05.2024, the petitioner was again examined by the team of doctors and a report has been submitted dated 08.05.2024, which reads as follows:-

*"The gestational age of the fetus is more than 24 weeks hence medical termination can not be performed as per MTP Act amendment 2021. In case of permission of MTP by honorable court such termination can be performed with all the explained risk of anticipated and unanticipated complications in relation to termination of Rh negative teenage pregnancy (high risk), provided risk of termination is same at this gestation and full term pregnancy."*

5. From a perusal of the report so submitted, it appears that the examination has been conducted by the Medical Board including Professors, Associate Professors, Surgeon, Pediatrician and even a Radiologist. It is seen that the doctors have not pointed out any risk of not getting the pregnancy terminated. However, as there is a bar under the Medical Termination of Pregnancy Amendment Act, 2021. For terminating pregnancies exceeding 24 weeks, it is observed that termination can be performed with all the explained

risk of the anticipated and unanticipated complications in relation to termination of Rh negative teenage pregnancy (high risk), provided risk of termination is same at this gestation and full term pregnancy. The report clearly indicates that the pregnancy can be terminated subject to certain risks. The risk factors will always be explained to the petitioner.

6. The Hon'ble Supreme Court in a series of judgments had an occasion to consider the aspect of termination of pregnancies exceeding 24 weeks and recently the Hon'ble Supreme Court in the case of X vs. Principal Secretary, Health and Family Welfare Department reported in AIR 2022 SC 4917 has considered the aforesaid aspect of the matter including the choice of the woman to get the pregnancy terminated and other socio-economic factors including the physical health condition of the woman has permitted for terminating the pregnancy. The aforesaid judgment was again followed by the Hon'ble Supreme Court in the case of XYZ vs. State of Gujarat and others, reported in 2023 SCC OnLine SC 1658, wherein, the Hon'ble Supreme Court taking note of several aspects of the matter has permitted for termination of pregnancy.

7. In the present case, the petitioner is a rape victim. She was a minor at the relevant time. She was also suffering from some physical disability as has been pointed out in the petition. Permitting for carrying out the pregnancy of a woman who is not in a position to manage herself will be creating great problems to her in future life. Even the other family aspects are also required to be considered.

8. Under these circumstances and following the judgments passed by the Hon'ble Supreme Court in the aforesaid cases, this Court feels it appropriate to permit the termination of pregnancy of the petitioner subject to the following conditions:-

(i) The procedure of termination of pregnancy will be carried out in the presence of the expert team of doctors. The expert doctors will explain to the family members as well as the petitioner the risk of getting the termination of her pregnancy and also other factors.

(ii) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention and other medical facilities including that of a presence of a Pediatrician as well as a Radiologist and other required doctors will be made available to her.

(iii) The post operative care up to the extent required, will be extended to the petitioner. It will be the duty of the State Government to take care of the child, if born alive.

(iv) The doctors will also ensure that a sample from the fetus is protected for DNA examination and as and when required will be handed over to the prosecution for using in the criminal case itself.

9. At this stage, appellant's counsel submits that the petitioner is available to appear before the doctors today itself. Hence, the petitioner may appear before the doctors today itself and a specialized team of doctors to take a decision when to terminate the pregnancy today or by earliest tomorrow. All necessary care and caution be taken by the doctors while carrying out the procedure for termination of pregnancy.

10. With the aforesaid observations, this appeal is allowed and disposed off.

11. The report received to be resealed and kept back in the sealed envelope.

(RAVI MALIMATH)  
CHIEF JUSTICE

(VISHAL MISHRA)  
JUDGE

psm

