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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 16th August, 2024

+ **W.P.(C) 11206/2024**
MRS. C

.....Petitioner

Through: Dr. Amit Mishra, Mr. Rahul Sharma,
Mr. Shiven Mishra and Mr. Ankit
Srivastava, Advocates.

versus

THE PRINCIPAL SECRETARY HEALTH AND FAMILY
WELFARE DEPARTMENT, GOVT OF NCT OF DELHI & ORS.

.....Respondents

Through: Ms. Mehak Nakra, ASC (Civil) for R-
1.
Ms. Arunima Dwivedi, CGSC for
with Ms. Pinky Pawar, G.P. with Mr.
Aakash Pathak, Advocate for UOI.
Mr. Satya Ranjan Swain, Panel
Counsel, Mr. Kautilya Birat and Mr.
Ankush Kapoor, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner, a disserted married woman of 27 years, now single-handedly raising her 7-year-old daughter, has approached this Court seeking the medical termination of her ongoing pregnancy of 22 weeks under Sections 3(2)(b) and 3(3) of the Medical Termination of Pregnancy¹ Act

¹ "MTP"



read with Rule 3B (c) of the MTP (Amendment) Rules, 2021. The facts of the case are briefly outlined below:

1.1. The Petitioner got married in 2016. From this union a baby girl was born in 2017, however, subsequently the husband of the Petitioner abandoned her and the minor child. As such, the whereabouts of the Petitioner's husband are not known to her.

1.2. The Petitioner has been raising her daughter on her own with financial hardships and difficulties.

1.3. On 8th August 2024, the Petitioner felt nausea and went to the doctor for consultation at the Delhi Government Dispensary where she was advised to get an ultrasound scan. On the same day, she underwent an ultrasound scan at the Public Path Lab & Diagnostic Centre in Delhi. The scan revealed that she was 21 weeks and 4 days pregnant.

1.4. The Petitioner claims that she did not realise the ongoing pregnancy till such a belated stage due to certain health concerns – particularly an irregular menstrual cycle. The said pregnancy is an unwanted one as it arises from a live-in-relationship and the Petitioner is concerned about the social stigma and ostracization she would have to face. Further, she comes from a poor background and has serious financial constraints due to which she cannot raise and nurture a second child.

1.5. Once she became aware of the pregnancy, she went to various doctors and clinics seeking medical termination of her pregnancy, however, all doctors refused to do so, on the ground of limitation under the MTP Act for pregnancies above 20 weeks.

2. On the basis of the above facts, counsel for the Petitioner places reliance on the judgement of the Supreme Court in *X v. The Principal*



*Secretary, Health & Family Welfare Department, Govt. of NCT of Delhi*², and argues that there has been a change in marital status of the Petitioner and as such, she falls within the category of women specified under Rule 3B (c) of the MTP (Amendment) Rules, 2021. Further it is urged that continuing the ongoing pregnancy is causing grave injury to the physical and mental health and well-being of the Petitioner as the pregnancy arises from a live-in-relationship, which has caused her to face social stigma. Moreover, she is already working multiple jobs to support herself and her first child, and therefore, the ongoing pregnancy is causing mental strain on her as she does not have the financial stability to care for a second child. In light of the above, considering the insecure situation of the Petitioner, she ought to be allowed to terminate her ongoing pregnancy. Reliance in this regard is also placed upon the judgement of the Supreme Court in *XYZ v. State of Gujarat*³, wherein the Court permitted the termination of above 24 weeks pregnancy on the basis of decisional autonomy & recognition of the mental and physical trauma of the Petitioner.

3. On 13th August, 2024, this Court, taking note of the Petitioner's situation, directed a medical board to be constituted by Respondent No. 3 – All India Institute of Medical Sciences⁴, for examination as per the provisions of the MTP Act and Rules. The said medical report has now been received and duly considered by the Court.

Analysis

4. The Petitioner's plight demonstrates a compelling case of an unwanted pregnancy arising under uniquely challenging circumstances that

² 2022 SCC OnLine SC 1321

³ 2023 SCC OnLine Sc 1573



impose severe distress and hardship. As a single mother abandoned by her husband, whose current whereabouts remain unknown, the Petitioner faces formidable financial and societal challenges. Struggling to support her first child on a limited income, she has made a considered decision to seek the termination of her pregnancy at a gestational age of 22 weeks, invoking the provisions of the Medical Termination of Pregnancy (MTP) Act, as amended in 2021.

5. Under Section 3(2)(b) of the MTP Act, a pregnancy may be terminated when the length of the pregnancy exceeds 20 weeks but does not exceed 24 weeks if: (a) the woman falls within the prescribed category of women under the MTP Rules, and (b) two registered medical practitioners opine that the continuation of the pregnancy would pose a risk to the life of the pregnant woman or cause grave injury to her physical or mental health.

6. Before examining the second criterion of the aforementioned provision, it is essential to determine if the Petitioner qualifies under the prescribed ‘category of women’ as per the MTP Rules. Rule 3B of the MTP (Amendment) Rules, 2021, specifies that a woman who experiences a change in marital status during an ongoing pregnancy is eligible to seek termination after 20 weeks of gestation. In this case, the Petitioner, though legally married, has been abandoned by her husband. Additionally, she conceived this pregnancy from a live-in relationship, but her partner has since become untraceable, and they no longer cohabit. The Petitioner’s counsel has confirmed that the couple has separated and the partner cannot be contacted.

7. The Petitioner was unaware of her pregnancy until this advanced

⁴ “AIIMS”



stage, primarily due to an irregular menstrual cycle, as a result of which the Petitioner found herself in a precarious situation. The pregnancy, which resulted from a transient live-in relationship, is complicating her circumstances further amid prevailing social stigmas.

8. The Supreme Court in the case of *X v. The Principal Secretary, Health & Family Welfare Department, Govt. of NCT of Delhi*⁵, has categorically held that the interpretation of the MTP Act and Rules must be attuned to the evolving societal norms and further the principles of social justice. The Court's analysis of Rule 3B of the MTP (Amendment) Rules, 2021, emphasized that this provision acknowledges the profound impact of changes in a woman's marital status on her life circumstances, which can materially alter during an ongoing pregnancy. Such change in circumstances during an ongoing pregnancy has been held to be inclusive of a scenario where the woman has been abandoned by her partner as well as cases where a woman separates from her partner. The relevant extracts of the abovementioned judgment are as follows:

“95. Rule 3-B(c) is based on the broad recognition of the fact that a change in the marital status of a woman often leads to a change in her material circumstances. A change in material circumstance during the ongoing pregnancy may arise when a married woman divorces her husband or when he dies, as recognised by the examples provided in parenthesis in Rule 3-B(c). The fact that widowhood and divorce are mentioned in brackets at the tail end of Rule 3-B(c) does not hinder our interpretation of the rule because they are illustrative.

96. A change in material circumstance may also result when a woman is abandoned by her family or her partner. When a woman separates from or divorces her partner, it may be that she is in a different (and possibly less advantageous) position financially. She may no longer have the financial resources to raise a child. This is of special concern to women

⁵ (2023) 9 SCC 433



who have opted to be a homemaker thereby forgoing an income of their own. Moreover, a woman in this situation may not be prepared to raise a child as a single parent or by coparenting with her former partner. Similar consequences may follow when a woman's partner dies.

97. Women may undergo a sea change in their lives for reasons other than a separation with their partner [Rule 3-B(c)], detection of foetal “abnormalities” [Rule 3-B(f)], or a disaster or emergency [Rule 3-B(g)]. They may find themselves in the same position (socially, mentally, financially, or even physically) as the other categories of women enumerated in Rule 3-B but for other reasons. For instance, it is not unheard of for a woman to realise that she is pregnant only after the passage of twenty weeks. [Siddhi Vishwanath Shelar v. State of Maharashtra, 2020 SCC OnLine Bom 11672] Other examples are if a woman loses her job and is no longer financially secure, or if domestic violence is perpetrated against her, [Sidra Mehboob Shaikh v. State of Maharashtra, 2021 SCC OnLine Bom 1839] or if she suddenly has dependants to support. Moreover, a woman may suddenly be diagnosed with an acute or chronic or life-threatening disease, which impacts her decision on whether to carry the pregnancy to term. If Rule 3-B(c) was to be interpreted such that its benefits extended only to married women, it would perpetuate the stereotype and socially held notion that only married women indulge in sexual intercourse, and that consequently, the benefits in law ought to extend only to them. **This artificial distinction between married and single women is not constitutionally sustainable. The benefits in law extend equally to both single and married women.**

98. A recognition of the fact that there may be a change in a woman's material circumstance animates Rule 3-B(c), Rule 3-B(g) and Rule 3-B(f). However, Rule 3-B does not enumerate all the potential changes that a woman's material circumstances may undergo. It merely specifies some of the potential changes to a woman's material circumstances, in clauses (c), (f) and (g). **From the object and purpose of the MTP Act, its overall scheme, and the categories of women specified in Rule 3-B, it is evident that it was not the intention of the legislature to restrict the benefit of Section 3(2)(b) and Rule 3-B only to women who may be confronted with a material alteration in the circumstances of their lives in the limited situations enumerated in Rule 3-B. Rather, the benefit granted by Rule 3-B must be understood as extending to all women who undergo a change of material circumstances.**

[Emphasis added]

9. The essence of Rule 3-B(c), read along with Rules 3-B(f) and 3-B(g),



is to accommodate any substantial change in a woman's material circumstances. The rule does not limit these changes to specific scenarios but broadly covers any situation that may arise, which align with the objectives of the MTP Act. Thus, it is clear that the legislative intent was to provide a broad spectrum of support to women facing any material changes in their circumstances, not just those explicitly mentioned in the rules. The changes in Petitioner's circumstances — such as the abandonment by a spouse and a live-in partner — has significantly altered her capacity to support and nurture a child. The Petitioner, having been deserted by her husband and left unsupported by her live-in partner, now faces considerable financial constraints that undermine her ability to raise another child. Given these circumstances, the law rightly categorizes her among those women who are entitled to seek a medical termination of pregnancy even beyond the 20-week threshold, up to 24 weeks. This intent of the MTP Act and Rules, as interpreted by the Supreme Court, accommodates the profound impact of such life changes on a woman's ability to sustain a pregnancy, thereby upholding her reproductive rights under altered personal conditions.

10. Now, in terms of the second aspect of the Section 3(2)(b), two registered medical practitioners must be of the opinion that the continuation of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health. In this regard, Section 3(3) states that in determining whether the continuation of pregnancy would involve a risk to the woman's physical and mental health, her actual or reasonably foreseeable environment may be taken into account.

11. In the instant case, the medical report furnished by the AIIMS medical board notes that the pregnancy is currently at 22 weeks and no congenital



anomalies have been detected in the foetus. However, the report does not address whether the continuation of the pregnancy poses a risk to the Petitioner's physical or mental health. The report merely states that the MTP Act only allows for termination to be conducted beyond 20 weeks only under certain special circumstances, which are not applicable in the case of the Petitioner. The refusal by medical practitioners, does not take into consideration the expanded provisions under Rule 3B(c), which allows for such terminations up to 24 weeks in specific cases like that of the Petitioner. There is no indication of any determination of the Petitioner's actual or foreseeable environment or the impact of her particular situation on her mental health.

12. On this aspect, the Supreme Court in the aforementioned case has held that the expression “mental health” as mentioned in the MTP Act, has a wide connotation and the phrase ought to be given a purposive reading. The relevant portion of the judgment are as follows:

*“68. The expression “mental health” has a wide connotation and means much more than the absence of a mental impairment or a mental illness. The World Health Organisation defines “mental health” as a state of “mental well-being that enables people to cope with the stresses of life, realise their abilities, learn well and work well, and contribute to their community”. [World Health Organisation, “Promoting Mental Health: Concepts, Emerging Evidence, Practice (Summary Report)” (2004).] The determination of the status of one's mental health is located in one's self and experiences within one's environment and social context. Our understanding of the term “mental health” cannot be confined to medical terms or medical language, but should be understood in common parlance. **The MTP Act itself recognises the need to look at the surrounding environment of the woman when interpreting injury to her health. Section 3(3) states that while interpreting “grave injury to her physical or mental health”, account may be taken of the pregnant woman's actual or reasonably foreseeable environment. The consideration of a woman's “actual or***



reasonably foreseeable environment” becomes pertinent, especially when determining the risk of injury to the mental health of a woman.

69. There have been numerous decisions of the High Courts where a purposive interpretation is given to the phrase mental health as used in the MTP Act. In Medical Termination of Pregnancy of Woman Prisoner in Byculla District Prison, In re [Medical Termination of Pregnancy of Woman Prisoner in Byculla District Prison, In re, 2016 SCC OnLine Bom 8426] the High Court of Bombay correctly held that compelling a woman to continue any unwanted pregnancy violates a woman's bodily integrity, aggravates her mental trauma and has a deleterious effect on the mental health of the woman because of the immediate social, financial and other consequences flowing from the pregnancy.”

[Emphasis added]

13. Furthermore, this Court must also take note of a recent decision of the Supreme Court in *A (Mother of X) v. State of Maharashtra*⁶, wherein it was observed that when a woman approaches the High Court in writ jurisdiction, seeking the medical termination of pregnancy, the report of the Medical Board necessarily has to determine the aspect of the ‘risk to the mental and physical health of the woman’ while rendering their opinion on the termination. The relevant portions of the judgement are as under:

“25. From a perusal of the MTP Act, its Statement of Objects and Reasons as well as the recommendation of the Shah Committee which examined the issue of liberalising abortion laws in India, [Report of the Committee to Study the Question of Legalisation of Abortion, Ministry of Health and Family Planning, Government of India, dated December 1966.] two clear postulates emerge as to the legislative intent of the MTP Act. Firstly, the health of the woman is paramount. This includes the risk avoided from the woman not availing unsafe and illegal methods of abortion. Secondly, disallowing termination does not stop abortions, it only stops safe and accessible abortions. The opinion of the RMP and the Medical Board must balance the legislative mandate of the MTP Act and the fundamental right of the pregnant person seeking a termination of the pregnancy. However, as noticed above and by this Court in X v. State

⁶ (2024) 6 SCC 327



(NCT of Delhi) [X v. State (NCT of Delhi), (2023) 9 SCC 433] the fear of prosecution among RMPs acts as a barrier for pregnant people in accessing safe abortion. Further, since the MTP Act only allows abortion beyond twenty-four weeks if the foetus is diagnosed with substantial abnormalities, the Medical Board opines against termination of pregnancy merely by stating that the threshold under Section 3(2-B) of the MTP Act is not satisfied. The clarificatory report dated 3-4-2024 fell into this error by denying termination on the ground that the gestational age of the foetus is above twenty-four weeks and there are no congenital abnormalities in the foetus.

*26. The report failed to form an opinion on the impact of the pregnancy on the physical and mental health of the pregnant person. **If a pregnant person meets the condition under Section 3(2-B) of the MTP Act then there would be no need for any permission by the courts. Therefore, whenever a pregnant person approaches the High Court or this Court, it is imperative for the Medical Board to opine on the physical and mental health of the pregnant person.***

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*28. The powers vested under the Constitution in the High Court and this Court allow them to enforce fundamental rights guaranteed under Part III of the Constitution. **When a person approaches the court for permission to terminate a pregnancy, the courts apply their mind to the case and make a decision to protect the physical and mental health of the pregnant person. In doing so the court relies on the opinion of the Medical Board constituted under the MTP Act for their medical expertise. The court would thereafter apply their judicial mind to the opinion of the Medical Board. Therefore, the Medical Board cannot merely state that the grounds under Section 3(2-B) of the MTP Act are not met. The exercise of the jurisdiction of the courts would be affected if they did not have the advantage of the medical opinion of the board as to the risk involved to the physical and mental health of the pregnant person. Therefore, a Medical Board must examine the pregnant person and opine on the aspect of the risk to their physical and mental health.***

[Emphasis added]

14. In light of the above, the medical opinion rendered by the AIIMS medical board cannot be considered to be a comprehensive or complete assessment of the Petitioner's health in terms of her foreseeable environment. The Petitioner has made it clear that she is already struggling to financially take care of her first child, even working multiple jobs to



sustain her child and herself. As such, the reasonably foreseeable environment of the Petitioner should have been factored in by the medical board in their opinion of the physical and mental health of the Petitioner.

15. The MTP Act is a welfare legislation, aimed at providing reproductive autonomy to women which is inextricably linked to bodily autonomy and the right to live a dignified life enshrined under Article 21 of the Constitution⁷. The decisional autonomy or the right of a person to make self-determined choices is also recognised as an integral part of the right of privacy. In this regard, Paragraphs 110 and 112 of the aforementioned judgement of *X v. The Principal Secretary, Health & Family Welfare Department, Govt. of NCT of Delhi*⁸, become important:

“110. Decisional autonomy is an integral part of the right to privacy. Decisional autonomy is the ability to make decisions in respect of intimate relations (para 248 of Puttaswamy [K.S. Puttaswamy (Privacy-9 J.) v. Union of India, (2017) 10 SCC 1]). In Puttaswamy [K.S. Puttaswamy (Privacy-9 J.) v. Union of India, (2017) 10 SCC 1] this Court held that personal aspects of life such as family, marriage, procreation, and sexual orientation are all intrinsic to the dignity of the individual (para 298). The right to privacy safeguards and respects the decisional autonomy of the individual to exercise intimate personal choices and control over the vital aspects of their body and life.

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112. The right to decisional autonomy also means that women may choose the course of their lives. Besides physical consequences, unwanted pregnancies which women are forced to carry to term may have cascading effects for the rest of her life by interrupting her education, her career, or affecting her mental well-being.”

[Emphasis added]

16. The Petitioner’s plea is also rooted in her fundamental rights under

⁷ Suchita Srivastava v. Chandigarh Admn. (2009) 9 SCC 1

⁸ (2023) 9 SCC 433



Article 21 of the Indian Constitution, which guarantees personal liberty. This liberty encompasses the right to make reproductive choices, including the termination of pregnancy under conditions that pose a risk to the woman's mental health and well-being. The Supreme Court of India has affirmed these rights, emphasizing the importance of considering the woman's current health, her life's conditions, and her future well-being while making such decisions. Therefore, it is clear that a pregnant woman's bodily autonomy and right of self-determination is an intrinsic part of her fundamental rights enshrined under Article 21 of the Constitution.

17. In light of the above judicial precedents and the particular facts of the present case, the Court is of the opinion that the continuation of the ongoing pregnancy of the Petitioner poses a risk to her mental well-being considering the reasonably foreseeable environment for both the Petitioner and the unborn child.

18. For the forgoing reasons, the instant writ petition is allowed. The Petitioner is permitted to undergo medical termination of pregnancy at a medical facility of her choice. The counsel for the Petitioner has confirmed that the Petitioner who has joined the proceedings *via* video conferencing mechanism understands the possible complications of the procedure for termination at this stage. She has nonetheless decided to undergo the procedure at her own risk and consequences.

19. It is clarified that the doctors who have contributed their opinions as part of the Medical Board shall have immunity in the event of any litigation arising out of this petition.

20. With the above directions, the present petition is disposed of, along with pending application(s), if any.



21. A copy of this order shall be supplied to the counsel for the parties *via* email by the Court Master.

SANJEEV NARULA, J

AUGUST 16, 2024
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