



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

Date of decision: 23rd JANUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 16751/2023**

R

..... Petitioner

Through: Dr. Amit Mishra, Advocate.

versus

**THE UNION OF INDIA THROUGH SECRETARY MINISTRY OF
HEALTH AND FAMILY WELFARE & ORS.** Respondents

Through: Ms. Aishwarya Bhati, ASG with Mr. Bhagvan Swarup Shukla, CGSC alongwith Mr. Sarvan Kumar, GP, Ms. B.L.N. Shivani and Ms. Ameyavikrama Thanvi, Advocates for UoI.
Ms. Mehak Nakra, ASC for GNCTD with Ms. Disha Chaudhry and Mr. Abhishek Khari, Advocates for R-2.
Dr. Harsh Pathak and Mr. Mohit Choubey, Advocates for R-3.
Dr. Amitesh Khare, AIIMS.

**CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

JUDGMENT

CM APPLs. 1262/2024, 2627/2024 & 3561/2024

1. The Petitioner had approached this Court by filing the present writ petition i.e., W.P.(C) 16751/2023 for a direction to the Respondents to permit medical termination of her ongoing pregnancy under Section 3(2)(b)(i) read with 3 (3) and Section 5 of the MTP Act read with Rule 3B



of the MTP Rules, 2003 in AIIMS Hospital, New Delhi immediately without disclosing her identity.

2. The Petitioner herein got married on 26.02.2023. However, unfortunately her husband passed away on 19.10.2023 due to some medical complications. The Petitioner came back her parents house. The Petitioner, thereafter, went for an ultrasound and found that she was pregnant for 20 weeks. Roughly two months, thereafter, in the month of December, the Petitioner decided not to continue with her ongoing pregnancy as the same will cause grave injury to her physical and mental health and due to material changes and circumstances in her marital life. Since the doctors of the AIIMS, New Delhi refused to terminate the pregnancy due to limitations under the MTP Rules, the Petitioner had approached this Court by filing the present writ petition.

3. Notice was issued in the writ petition on 22.11.2023. This Court on 22.11.2023 requested the AIIMS, New Delhi to constitute a medical board urgently to examine the condition of the Petitioner and give a report as to whether the Petitioner is in a condition to undergo the procedure for termination of her pregnancy and the matter was listed on 26.12.2023. On 26.12.2023, since the report from AIIMS, New Delhi was awaited, the matter was listed on 27.12.2023. On 27.12.2023, this Court, after considering the Medical Report and also the submissions of the learned Counsel for the Petitioner that the Petitioner is suffering from extreme trauma on account of the unfortunate demise of her husband, directed the Petitioner to undergo the Psychiatric evaluation at AIIMS, New Delhi on 28.12.2023 and requested the AIIMS, New Delhi to submit the report by 30.12.2023. On 30.12.2023, a report was received from the Department of



Psychiatry of the AIIMS, New Delhi wherein it was stated that the Petitioner has been found to be suffering from severe depression with suicidal ideation and in view of the risk to self and foetus, the Petitioner and her family were advised admission in AIIMS, New Delhi. Resultantly, the Petitioner was admitted in psychiatry ward in AIIMS, New Delhi. A further report was also called from the Department of Psychiatry of the AIIMS Hospital, New Delhi as to whether in her state of severe depression with suicidal ideation, it would be detrimental to her health if this pregnancy is permitted to be continued for its full term.

4. A Psychiatric Evaluation Report was received from the Medical Superintendent, AIIMS. Relevant portion of the said report reads as under:

“In this regard it is informed that the Petitioner Ms. R had visited the outpatient department (OPD) of Psychiatry AIIMS on 28.12.2023 and expressed depressed mood and suicidal foeticidal thoughts after which she was admitted with mother as the nominated representative in view of risk of harm to self and others (foetus). On mental status examination, she had depressed affect and ideas of worthlessness, suicidal thoughts secondary to refusal to MTP, foeticidal thoughts with impaired judgement and insight 1/5. She was provisionally diagnosed as depression with problems related to death of spouse and a differential diagnosis of adjustment disorder was made. During admission patient and her mother repeatedly demanded of MTP refusing any treatment for her health. Later, the petitioner Ms. R and her mother took leave against medical advice. She was suggested to undergo treatment for her depressive symptoms and remain under supervision by family members. At this time, it cannot be speculated definitively whether the continuation of pregnancy can be detrimental to the



petitioner's health from a psychiatric view point. However, she may be advised to undergo treatment for her mental condition tor avoiding detrimental condition to her health.”

5. In view of the aforesaid report and the Judgment passed by the Apex Court in X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another, **2022 SCC OnLine SC 1321**, this Court *vide* Judgment dated 04.01.2024 permitted the Petitioner to undergo the procedure for termination of her pregnancy at AIIMS, New Delhi even though the Petitioner has crossed her gestation period of 24 weeks.
6. An application being CM APPL. 1262/2024 was filed on behalf of the Petitioner for a direction to Respondent No.3/AIIMS, New Delhi to follow the guidelines dated 14.08.2017 issued by the Ministry of Health and Family Welfare, Government of India in late term medical termination of pregnancies and accordingly direct the Respondents to stop the heartbeat of the fetus which amounts to feticide. In said application, it is stated that on 05.01.2024, the Petitioner visited AIIMS, New Delhi for her medical termination of her pregnancy but the doctors had informed the Petitioner to seek clarification over the status of fetus (if it alive after MTP) from the Hon'ble High Court of Delhi. In the application, it is also stated that on 06.01.2024, the learned Counsel for the Petitioner received a letter from AIIMS Hospital through email asking for directions regarding appropriate management of new born after delivery from this Court. The AIIMS also sent a copy of the letter dated 06.01.2024 to this High Court. The said letter dated 06.01.2024 reads as under:



**ALL INDIA INSTITUTE OF MEDICAL SCIENCE
ANSARI NAGAR, NEW DELHI - 110029**

No.F.2-148/Medical Board/2023-Estt.(H.)

Dated: 06.01.2024

To

The Medical Superintendent
AIIMS Hospital, New Delhi – 110029.

Sub.: Medical examination of petitioner Ms. R. in compliance of order dated 04.01.2024 of Hon'ble High Court of Delhi vide W.P. (C.) 16751/2023 titled Ms. R. Versus The Union of India Through Secretary Ministry of Health and Family Welfare & Ors.

Sir,

With reference to the Hon'ble court order dated 04.01.2024 vide W.P. (C.) 16751/2023 titled Ms. R. Versus The Union of India Through Secretary Ministry of Health and Family Welfare & Ors., regarding subject noted above.

In this regard, it is informed that at present the period of gestation is 30 weeks plus 6 days, the fetus is viable and the fetus will be alive after delivery. The anticipated requirement for NICU ICU care will range from 30-45 days with reasonable risk of physical & mental handicap subsequently.

However, if pregnancy is carried on till term (37 week), the anticipated requirement of NICU will be minimal to nil. There will be very high likelihood of morbidity free survival.

Hence the medical board would like to request the Hon'ble High Court of Delhi for appropriate management of new born after delivery.

Thanking you,

Yours sincerely,

Archana Kwari

Archana Kwari

Dr. A
Dr. ARCHANA
Assistant Professor
Dept. of Obs & Gynaecology
AIIMS, New Delhi
Regd. No.



7. In view of the fact that the letter dated 06.01.2024 issued by the Medical Superintendent, AIIMS, New Delhi indicated that the child will be born alive after delivery and there is a reasonable risk of physical and mental handicap to the new born, this Court *vide* Order dated 08.01.2024 directed the AIIMS, New Delhi to conduct a psychological evaluation of the Petitioner and file a report. The case was listed on 09.01.2024 at 04:00 PM. The Medical Board was also requested to join the proceedings through video conferencing. On 09.01.2024, the proceedings were conducted in camera and Dr. Gagan Hans, Dr. Preethy Kathiresan, Dr. Smita Manchanda, Dr. Amitesh Khare, Dr. Archana Kumari, Dr. Anu Sachdeva and Dr. Barre Vijay Prasad from AIIMS participated in the proceedings. The doctors were of the opinion that if delivery is conducted at this juncture there is a reasonable risk of physical and mental handicap to the new born. The Petitioner was directed to go to AIIMS, New Delhi for further counselling on 10.01.2024, 11.01.2024 and 12.01.2024 and the matter was listed on 12.01.2024. On 12.01.2024, since the matter reached late in the evening, the matter was listed on 13.01.2024 (Saturday) at 10:30 AM. On 13.01.2024 also all doctors joined the proceedings and the matter was listed for Orders on 15.01.2024 at 04:30 PM.

8. On 15.01.2024 two applications i.e., CM APPL. 3561/2024 on behalf of the Respondent No.1/Union of India for recall of the Judgment dated 04.01.2024 and appropriate direction and CM APPL. 2027/2024 filed on behalf of the Respondent No.3/AIIMS for appropriate directions in terms of the reports dated 06.01.2024, 12.01.2024 and 13.01.2024 were filed. The matter was listed on 19.01.2024 for hearing. On 19.01.2024, the arguments



were heard.

9. Ms. Aishwarya Bhati, learned ASG appearing for Union of India, has drawn the attention of this Court to the report dated 13.01.2024 which states that as care providers, AIIMS is committed to provide best possible care to the mother and fetus, the mother's interest being paramount. The report also states that the outcome of severe depression with suicidal ideation cannot be predicted at present pre and post delivery. The report also states that the effects of the preterm delivery on the mother should also be considered and this being her first pregnancy, a preterm induction of labor has a high chance of failure and may lead to caesarean section which may have serious implications on her future pregnancies. The report also states that the outcome will be much better, if the baby is delivered at 34 weeks or beyond. The report also states that the provision of termination of pregnancies beyond 24 weeks is to be done for fetuses having significant abnormalities and feticide in this case is neither justified nor ethical as the fetus is grossly normal.

10. Ms. Bhati, learned ASG, has also drawn the attention of this Court to the Judgment dated 16.10.2023 passed by the Apex Court in **MA No.2157/2023 in Writ Petition (Civil) No.1137/2023** in the case of X vs. Union of India and Anr, wherein a Bench of Three Judges of the Apex Court did not permit the termination of pregnancy beyond 24 weeks since there was no substantial fetus abnormalities involved as diagnosed by the Medical Board.

11. Ms. Bhati, learned ASG, has assured the Court that the Union of India will give all assistance and pay all medical costs and other incidental charges of delivery and held the Petitioner to come out of depression. She



also assures the Court that if after the birth of the child, the Petitioner is inclined to give the child in adoption, the Union of India shall ensure that the process takes place at the earliest and in a smooth fashion.

12. Learned Counsel for Respondent No.3/AIIMS contended that when there is no abnormality in fetus, the feticide is neither justified nor ethical. He places reliance upon the Medical Reports dated 12.01.2024 and 13.01.2024 of the AIIMS Hospital. He submitted that the period of gestation is 30 weeks and the fetus is viable and the fetus will be alive after delivery. He submitted that the anticipated requirement for NICU ICU care will range from 30-45 days with reasonable risk of physical and mental handicap of the new born.

13. *Per contra*, learned Counsel for the Petitioner placed reliance upon the Judgment passed by the Apex Court in X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another, 2022 SCC OnLine SC 1321, to contend that it is ultimately the prerogative of each woman to evaluate her life and arrive at the best course of action, in view of the changes to her material circumstances. He submitted that the Petitioner is suffering from depression and same may end up in taking away her own life. He also placed reliance upon the guidelines dated 14.08.2017 issued by the Ministry of Health and Family Welfare, Government of India which suggests that in cases where pregnancy is beyond 20 weeks, the heartbeat of fetus can be stopped i.e., feticide can be permitted. He states that in the present case the Court must direct that the heart beat of the fetus be stopped keeping in mind the condition of the mother.

14. This Court had tried its best and has made its sincere efforts to persuade the Petitioner to go through the pregnancy keeping in mind the



reports received from AIIMS Hospital.

15. Termination of pregnancy is governed by Medical Termination of Pregnancy Act, 1971. Section 3(2)(a) of the MTP Act provides that a pregnancy may be terminated by a registered medical practitioner where the length of the pregnancy does not exceed twenty weeks. Section 3(2)(b) of the MTP Act provides that where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are of the opinion, formed in good faith, that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality then pregnancy can be terminated upto 24 weeks.

16. In exercise of the powers conferred by Section 6 of the Medical Termination of Pregnancy Act, 1971, the Medical Termination of Pregnancy Rules, 2003 was enacted. Rule 3(B) of the MTP Rules enlists the categories of women who can be considered eligible for termination of pregnancy under Section 3(2)(b) of the MTP Act, for a period of up to twenty-four weeks. Rule 3(B) of the MTP Rules reads as under:

"3B. Women eligible for termination of pregnancy up to twenty-four weeks. - The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of subsection (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely: -



- (a) survivors of sexual assault or rape or incest;*
- (b) minors;*
- (c) change of marital status during the ongoing pregnancy (widowhood and divorce);*
- (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];*
- (e) mentally ill women including mental retardation;*
- (f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and*
- (g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.]*

17. A perusal of the aforesaid Section 3(2)(b) of the MTP Act shows that termination of pregnancy can be done upto 24 weeks if the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health of the pregnant women.

18. The Apex Court in X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another, 2022 SCC OnLine SC 1321, while considering the vires of Rule 3(B)(c) of the MTP Rules extended the applicability of Rule 3(B)(c) to both single and married women and held that benefit be extended to women who have suffered material changes and circumstances in her marital life. In the facts of that case, an unmarried lady who had crossed the period of 20 weeks had



approached the Court for termination of her pregnancy on the ground that her partner has refused to marry her.

19. Courts, while exercising jurisdiction under Article 226 of the Constitution of India, have permitted termination of pregnancy even beyond 24 weeks in cases of abnormalities in the fetus. The Petitioner unfortunately has lost her husband in October, 2023 and was pregnant for 30 weeks when she approached this Court. At this juncture, it is relevant to refer to the detailed assessment and psychological assessment report of the Petitioner. The Psychological Assessment Report of the Petitioner indicates that the assessment was completed across one session lasted for two hours. During the assessment her attention could be aroused and sustained. Eye to eye contact was maintained rapport could be established with her and observations and tests findings show that the Petitioner is suffering from severe depression with anxiety features which associated with her stress life events and not suggestive of any psychotic features. The Psychological Assessment Report reads as under:

***"ALL INDIA INSTITUTE OF MEDICAL
SCIENCES, NEW DELHI-110029
DEPARTMENT OF PSYCHIATRY***

PSYCHOLOGICAL ASSESSMENT REPORT

<i>Name</i>	:	<i>R</i>
<i>Age</i>	:	<i>26 years</i>
<i>Gender</i>	:	<i>Female</i>
<i>Education</i>	:	<i>B.A</i>
<i>Occupation</i>	:	
<i>HS NO</i>	:	<i>C-</i>
<i>Informants</i>	:	<i>Self and Mother: Champa</i>



Dale of Evaluation : 09.01.2024

REASON FOR REFERRAL: *Dr. R was referred from Consultant Psychiatrist for the purpose of psychological evaluation.*

Chief complaints were reported by patients "munn udaas hota hai. kabi kabhi esa soch aatha hai ki jeena bekhar hota hat, kisi se baath karneka, kaam karne ka munn nahi hota hai". Yet time reported suicidal ideas but not frequently and decreased sleep and appetite for the past 3-4 months, according to her she developed all these issues after death of her husband.

PSYCHOLOGICAL TESTS:

- 1. Becks Depression Inventory -II (BDI-II)*
- 2. Draw A Person Test (DAPT)*
- 3. Rorschach*

Rationale for testing: *In order to know her severity depression BDI-II administered, DAPT and Rorschach tests were administered to understand intrapersonal conflict and psychopathology, if any.*

Behavioural observation

Assessment was completed across one session lasted for two hours, during the assessment her attention could be aroused and sustained. Eye to eye contact was maintained rapport could he established with her. comprehend the tests instructions and completed them.

TEST FINDINGS:

- 1. Becks Depression Inventory-II (BDI-II):*** *On BDI. total score is 42 which suggests that severe depression*



2. Draw A Person Test: *On DAPT he made a sketchy line like a box a small female figure which suggestive identification of self with the drawing and feeling of weakness no proper development of picture and appear like a toy shaped male, though she says the picture age approximately the subject age. The midline may be treated elaborately with button. light down the middle of the trunk. Somatic preoccupation, feelings of body inferiority. emotional immaturity, and mother dependent who stress the midline. **The reinforced body lines- of male drawing — coincide with patient's feeling of separation from the outside world, and more specifically with her fear of punished.***

3. Rorschach: *On Rorschach psychogram responses the responses tend to bulk in the left of the psychogram it means that the perception of the subject has been influenced largely by "inner determinants". Movement and use of shading to give vista or depth. These responses have in common the fact that the subject has enriched her perception of the blot with her own imaginal procedure, attributing to it something that is not there. Intelligence she has given responses on Rorschach 28 with over emphasis on D responses which indicatives of the average productivity (Intellectuality) of the responses. A low F% would indicate inadequate emphasis upon conforming to the demands of reality, a too highly personalized reaction. **These tendencies may be associated with anxiety. The number of popular responses seen by her three which is suggestive of ability to view the world in the same way as most other people. It is expected that most people will see about three of the popular responses. The subject is quite cable of seeing popular (p) responses and she is able to see human responses which suggestive of normal individual as like others.***

IMPRESSION



Based on clinical interview, observation and tests findings were suggests that the subject is found to be having severe depression with anxiety features which are appears to be associated with her stress life events and not suggestive of any psychotic features.

Recommendations

NOTE: kindly correlate findings with clinically

Evaluation done by

Dr. Barre Vijay Prasad

*Asstt., Prof of Clinical Psychology
Deptt., of Psychiatry
AIIMS - New Delhi."*

(emphasis supplied)

20. The report indicates that the Petitioner is a graduate and she has developed all these issues after the death of her husband. The aforesaid Psychological Assessment Report of the Petitioner indicates that the Petitioner is suggestive of normal individual as like others. The report also indicates that the Petitioner is suffering from depression which is associated with her stress life events and not suggestive of any psychotic features. The Psychiatrist who has evaluated the Petitioner has not given any report suggesting that the ongoing pregnancy of the Petitioner and delivery will cause a grave injury to her mental health which is necessary for giving permission for termination of pregnancy exceeding 20 weeks but not beyond 24 weeks under Section 3(2)(b) of the MTP Act.

21. The Medical Board is also of the opinion that since the fetus does not



show any abnormality, feticide in this case is neither justified nor ethical. The Medical Board consists of Gynaecologist, Radiology (Sonology) etc. It is pertinent to mention here that Dr. Barre Vijay Prasad who is a Psychologist and has evaluated the Petitioner, has also participated in the proceedings and he has also not opined that the ongoing pregnancy of the Petitioner and delivery will cause a grave injury to the Petitioner's mental health.

22. The contentions of the learned Counsel for the Petitioner that the AIIMS Hospital must be directed to go ahead with the feticide cannot be accepted. The guidelines dated 14.08.2017 issued by the Ministry of Health and Family Welfare, Government of India provides for termination of pregnancy beyond 20 weeks in case of minor children who are victims of rape and had approached the Court or where the fetus showed abnormalities. A perusal of the guidelines shows that the Medical Board which examines the patient has the responsibility to determine if the foetal abnormality is substantial enough to qualify as either incompatible with life or associated with significant morbidity or mortality in the child, if born and unless such abnormalities are not shown feticide cannot be permitted. In the present case, no such circumstances exist, and therefore, the said guidelines cannot be pressed for permitting feticide. The AIIMS, New Delhi was, therefore, well within its right to approach this Court for clarification over the status of fetus (if it alive after MTP) and for appropriate directions from the Hon'ble High Court of Delhi.

23. The Medical Reports indicates that a preterm induction of labor has a high chance of failure and may lead to caesarean section which may have serious implications on her future pregnancies. The report also indicates that



the child which is born after a preterm induction of labor can have physical and mental deficiencies which will have drastic effect on the future of the child and that the NICU ICU care in such case is about 30-45 days with reasonable risk of physical and mental handicap of the new born.

24. In view of the Reports dated 06.01.2024, 12.01.2024 and 13.01.2024 of the AIIMS Hospital, which have been brought to the notice of this Court subsequent to the Order dated 04.01.2024, the Court is inclined to recall the Judgment dated 04.01.2024 passed by this Court. The Judgment dated 04.01.2024 is hereby recalled.

25. The Petitioner, who is already having as on date 32 weeks period of gestation, if so advised, can go to AIIMS Hospital, New Delhi and present herself before the Medical Board and it is for the Medical Board to take a decision as to how to go ahead with the delivery at the appropriate time.

26. It is for the Petitioner to decide where the delivery is to be conducted i.e., whether to go AIIMS or any other Central Government Hospital or at any State Government Hospital. If the Petitioner is inclined to undergo her delivery at any Central Government Hospital, the Central Government shall bear all the medical expenses and all other incidental charges of the delivery. If the Petitioner is inclined to undergo her delivery at any State Government Hospital, the State Government shall bear all the medical expenses and all other incidental charges of the delivery

27. If the Petitioner is inclined to give the new born child in adoption then as suggested by Ms. Aishwarya Bhati, learned ASG, the Union of India shall ensure that the process of adoption takes place at the earliest and in a smooth fashion.

28. With these observations, the application being CM APPLs. 3561/2024



for recall of the Judgment dated 04.01.2024 is allowed. CM APPLs. 1262/2024 and 2627/2024 also stand disposed of.

JANUARY 23, 2024

S. Zakir

SUBRAMONIUM PRASAD, J