



[2024:RJ-JP:45172]



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 16384/2024

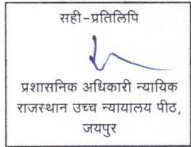
Victim Minor through his natural guardian

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary, Medical And Health Secretariat, Jaipur (Raj.)
2. Station House Officer, Police Station Udyog Nagar, District Kota (Raj.)
3. Investigation Officer, Police Station Udayog Nagar, District Kota (Raj.)
4. Superintendent, J.K. Lon Hospital, Associated With Medical College, Kota (Raj.)
5. Director, Social Welfare Department, Govt. Of Rajasthan, Secretariat, Jaipur (Raj.)
6. Superintendent, Government Balika Grah Bal Adhikarita Vibhag, Kota (Raj.)
7. The Child Welfare Committee, Kota.

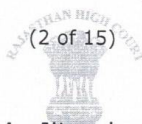
----Respondents



For Petitioner(s) : Ms. Sangeeta Kumari Sharma
For Respondent(s) : Mr. Vigyan Shah, AAG with
Mr. Yash Joshi & Mr. Pulkit Bhardwaj,
AGC
Mr. Neeraj Batra, GC
Ms. Suman Shekhawat, Dy.G.C. with
Mr. Virendra Pratap Singh
Mr. Rajendra Singh Rathore
Mr. Braj Narain Sharma, CWC
Chairperson, Kota



[2024:RJ-JP:45172]

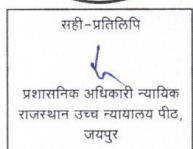


[CW-16384/2024]

Mr. Jitendra Singh, SHO Udhog
Nagar, Kota

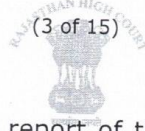
HON'BLE MR. JUSTICE AVNEESH JHINGAN**Order****25/10/2024**

1. This petition is filed seeking directions to terminate the pregnancy of the victim.
2. The victim at present is in Rajkiya Balika Grah, Nanta Kota.
3. The brief facts are that the Child Welfare Committee, Kota City, Kota (for short 'CWC') lodged FIR No.296/2024 dated 15.05.2024 at Police Station Udyog Nagar (Kota City), Kota under Sections 363, 366-A, 370 IPC and Section 81/84 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'JJ Act'). The medical examination of the victim was done as she is pregnant and wanted to terminate the pregnancy. The victim was examined in J.K. Lon Mother and Child Hospital (for short 'the hospital') on 30.09.2024 and was found to be 24 weeks (+/- 2 weeks) pregnant.
4. On 19.10.2024, while issuing notice of motion, the directions were issued to hospital for constituting a Medical Board for examining the victim. It was further ordered that the Chief Judicial Magistrate (for short 'CJM') shall record the statements of the victim in camera proceedings .





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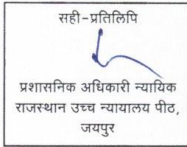
[CW-16384/2024]

5. The photocopy of the report of the Board dated 21.10.2024 was produced before the Court along with statement recorded by the CJM. As per the report, the pregnancy was in high risk category and for termination, the victim has to be inducted labor and in case of fail induction, surgery would be required. It was reported that the teenage pregnancy is a high risk pregnancy. The pregnancy was of twenty six weeks five days and taking into account that Hemoglobin of the victim was 10.4 gm and Platelets count was ninety thousand only, the risk in termination of pregnancy has multiplied.

6. On 23.10.2024, the counsel for the State on instructions from the Investigating Officer apprised the Court that there is issue with regard to determination of age of the victim. It was submitted that in medical report, the age of the victim was more than nineteen years and less than twenty years.



7. The CWC was deemed necessary and was impleaded.



8. On 23.10.2024, the Medical Board was directed to give a clear comparative opinion with regard to the risk involved in termination of pregnancy and the delivery. Further to specify if the symptoms making termination to be dangerous could be immediately treated.

9. Today, report dated 24.10.2024 of the Medical Board has been produced, the same is taken on record and is reproduced below:-



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वरिष्ठ आचार्य एवं विभागाध्यक्ष प्रसूति एवं स्त्री रोग विभाग राजकीय आयुर्विज्ञान
महाविद्यालय कोटा

क्रमांक : एफ.22()स्त्रीरोग/2024/573

दिनांक: 24.10.2024

अपीक्षक
जे के लोन मातृ एवं शिशु चिकित्सालय
कोटा

विषय : एरा बी सिविल रिट पीटिसन नं. 16384/2024 Victim versus State of Rajasthan and Others of Honourable High Court Bench Jaipur के सम्बन्ध में गठित मेडिकल बोर्ड की रिपोर्ट।
संदर्भ : आपका पत्रांक सागा0/2024/2303 दिनांक 17.10.2024 एवं 1569 दिनांक 23.10.2024
प्रसंग : 16384/2024 Victim versus State of Rajasthan and Others of Honourable High Court Bench Jaipur Order Date 23.10.2024

महोदया जी,

उपरोक्त विषय एवं संदर्भ में माननीय उच्च न्यायालय के उपरोक्त द्रमगिक आदेश दिनांक 23.10.2024 के विन्दु संख्या 5 की पालना में मेडिकल बोर्ड ने विज्ञापन का पुनः परीक्षण किया जिसके उपरान्त पूर्व में दी गई रिपोर्ट एफ.22()स्त्रीरोग/2024/562 दिनांक 21.10.2024 की निरन्तरता में निम्नानुसार है :-

1- Applicable Guidelines issued by the Government for such matters-
The Gestational age of the fetus in this case is more than 24 weeks hence medical termination of pregnancy cannot be performed as per MTP Act amendment 2021. In case of permission of order of MTP by Honorable court such termination can be performed with all the explained risk of anticipated and unanticipated complications related to termination of such high risk teenage pregnancy.

2- Comparative risk between termination of pregnancy and delivery

Continuation of pregnancy i.e. delivery

Termination of pregnancy at the gestational age (27 weeks 3 days + 1 week as on 24.10.2024)

1. For mother:

A. Physical-Risk will be less because 1) woman may go into spontaneous labor at term (कठोरता परव पीडा या लू लन) and may not require induction at all 2) If induction (Vaginal route से दवाई डाल कर), done, chances of failed induction are less and chances of operative delivery (cesarean section) will be less

1. For mother:

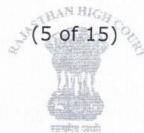
A. Physical- Risk is high because termination of pregnancy will be done by induction of labor (Vaginal route से दवाई डाल कर). The success of which depends to a great extent on 1) favourability of cervix (estimated by Bishop's score) and 2) gestational age at which induction is done (reference from Donald's Practical Obstetric Problem, 8th edition page no 580). In previous [less than 37 weeks] cervix is usually unfavourable and therefore more



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राजस्थान उच्च न्यायालय पीठ,
जयपुर

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chances of failed induction leading to increased risk of operative delivery (both operative vaginal delivery and cesarean section). The other risks associated with induction are uterine hyperstimulation, uterine rupture, infection and postpartum hemorrhage] Reference: IAN DONALD'S PRACTICAL OBSTETRIC PROBLEMS 8TH EDITION CHAPTER NO 25 INDUCED LABOR]

R. Psychological- At present victim is stressed and stigmatized. As per IQ assessment she is having average intelligence and as per psychological assessment on Rorschach Ink Blot Test victim has features of trauma (psychological in nature) and reality testing is intact. On the basis of interview with victim and father and Mental status examination, victim reported 1) decreased interest in pleasurable activities, 2.) low mood, 3.) decreased sleep, and 4.) flashbacks of events. Also victim and her father reported that if the pregnancy is continued this will put the family and victim in bad limelight in society and victim will face difficulty in marriage also; they might be outcaste from their society. At present she is of sound mind to take the decision favourable to her and suffering with psychological trauma and distress. So, as per her present mental state continuing pregnancy is not favourable to her.

B. Psychological- At present victim is stressed and stigmatized. As per IQ assessment she is having average intelligence and as per psychological assessment on Rorschach Ink Blot Test victim has features of trauma (psychological in nature) and reality testing is intact. On the basis of interview with victim and father and Mental status examination, victim reported 1) decreased interest in pleasurable activities, 2.) low mood, 3.) decreased sleep, and 4.) flashbacks of events. Also victim and her father reported that if the pregnancy is continued this will put the family and victim in bad limelight in society and victim will face difficulty in marriage also; they might be outcaste from their society. At present she is of sound mind to take the decision favourable to her and suffering with psychological trauma and distress. So, as per her present mental state termination of premature pregnancy is favourable to her.

2. For fetus- The overall viability of fetus will improve. Complications like IVH(bleeding in brain), necrotizing enterocolitis, respiratory distress syndrome, brain damage, hypothermia, hypoglycemia will reduce significantly. The chances of post survival neurological deficits will be negatively affected. [MMS PROTOCOL 10TH EDITION]

2. For fetus- The baby born will be extreme premature and very low birth weight. The chances of complications including IVH(bleeding in brain), necrotizing enterocolitis, respiratory distress syndrome, brain damage, hypothermia, hypoglycemia will be very high. If baby survives the intensive care period the chances of post survival neurological deficits and brain damage will be significantly higher. [70%] MMS PROTOCOL 10TH EDITION]

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CONCLUSIVE OPINION- On the basis of above Medical Board members are of opinion that terminating pregnancy at this stage will be of higher risk for both victim and the fetus and continuing pregnancy till term will have possibility of lesser risk for victim and fetus. However considering psychological assessment of victim and present social living/status of the family, continuation of pregnancy is stressful and not favourable to the victim. On combined physical risk and psychological aspect, premature termination of pregnancy will be favourable to the victim and her family



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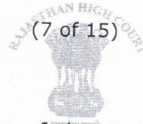
डॉ० अनुराग मिश्र	डॉ० धर्मराज मिश्रा	डॉ० मिनाक्षी शारदा	डॉ० संजय कुलकर्णी
आचार्य एवं किनागाध्यक्ष	वरिष्ठ आचार्य एवं किनागाध्यक्ष	वरिष्ठ आचार्य एवं किनागाध्यक्ष	वरिष्ठ आचार्य एवं किनागाध्यक्ष
शिशु औषध विभाग	रेडियोलॉजि-गोसीस विभाग	गैडरिनीन विभाग	निश्चेतना विभाग
सदस्य	सदस्य	सदस्य	सदस्य
मेडिकल बोर्ड	मेडिकल बोर्ड	मेडिकल बोर्ड	मेडिकल बोर्ड

अधीक्षक एम०बी०एस० चिकित्सालय

डॉ० विनोद दंडिया	डॉ० अशोक मिश्रा	डॉ० ममता शर्मा
आचार्य	वरिष्ठ आचार्य एवं किनागाध्यक्ष	वरिष्ठ आचार्य एवं किनागाध्यक्ष
मनोचिकित्सा विभाग	फार्मसीक मेडिसीन विभाग	प्रसूति एवं स्त्री रोग विभाग
सदस्य मेडिकल बोर्ड	सदस्य मेडिकल बोर्ड	अध्यक्ष मेडिकल बोर्ड



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10. The relevant provisions of the Act are reproduced below:-

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "guardian" means a person having the care of the person of a minor or a [mentally ill person];

XX XX XX

(c) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority;

XX XX XX

3. When pregnancies may be terminated by registered medical practitioners.—

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,—

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

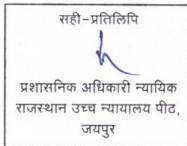
(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that—

(i) 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

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation I.—Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II.—Where any pregnancy occurs as a result of failure of any device or method used by any





married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, 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.

4. Place where pregnancy may be terminated. No termination of pregnancy shall be made in accordance with this Act at any place other than—

(a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee:

Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.

5. Sections 3 and 4 when not to apply.—

(1) The provisions of Section 4, and so much of the provisions of sub-section (2) of Section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

[(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that

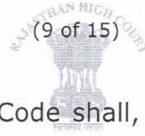


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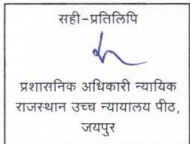
Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in Section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of Section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.—For the purposes of this section, the expression “owner” in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2.—For the purposes of this section, so much of the provisions of clause (d) of Section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.”

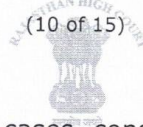


11. Section 3(2) of the Act subject to conditions stipulated in Section 4 provides that pregnancy may be terminated by a registered medical practitioner, if the pregnancy does not exceed 12 weeks or where it exceeds 12 weeks but not 20 weeks the termination would be subject to atleast two registered medical practitioners opining in good faith that the continuance of pregnancy would involve a risk to the life of pregnant woman would cause grave injury to her physical and mental health, or if the opinion is that if the child is born, there is substantial risk that the child would suffer from physical and mental abnormalities.

12. Section 3(4) (a) of the Act provides that where the woman has not attained age of 18 years or is mentally ill, the termination of pregnancy will be carried out only with the consent in writing



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of her guardians. In other cases, consent of the pregnant woman is must.

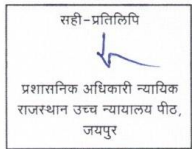
13. Section 4 lays down place where pregnancy can be terminated.

14. Section 5 of the Act provides an exception to Section 3 and Section 4, with regard to period of pregnancy and opinion of the two registered medical practitioners formed in good faith in cases where termination is necessary to save the life of pregnant woman.

15. In the report dated 21.10.2024, the conclusion was that termination of the pregnancy would be dangerous for the victim and the foetus. The relevant portion is reproduced below:-

"मरीज की सी0बी0सी0 की जांच मे हिमोग्लोबिन 10.4 ग्राम है, प्लेटलेट केवल 90 हजार ही है, जिस वजह से मरीज को गर्भपात के दौरान होने वाले खतरे कई गुना बड जाते है, क्योकि गर्भपात से पहले ब्लड प्रोडक्ट (प्लेटलेट) चढानी पडेगी व प्लेटलेट की कमी से गर्भपात के दौरान एवं पश्चात अत्यधिक रक्त स्त्राव हो सकता है।

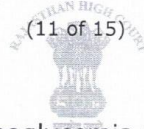
उपरोक्त सभी कॉम्प्लीकेशन को देखते हुए वर्तमान स्थिति मे प्रेग्नेन्सी को टर्मिनेट करना बालिका एवं गर्भस्थ शिशु दोनो के लिये अत्यधिक खतरे वाला होगा।"



16. In report dated 24.10.2024 in the column for risk for the mother, termination of pregnancy was categorized as high risk. The reason being that it has to be done by induction of labor and in the pregnancy less than thirty seven weeks usually Cervix is unfavorable. With regard to foetus, it is stated that the baby born would be extremely pre-mature and very low birth weight. There are chances of complication including IVH (bleeding in brain), Necrotizing Enterocolitis, Respiratory Distress Syndrome, Brain



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Damage, Hypothermia, Hypoglycemia will be very high and even if the baby survives in the intensive care, period post surgical neurological deficiencies and brain damages would be significantly higher.

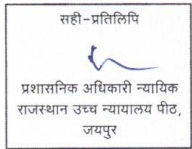
17. In the psychological analysis, the heavy reliance is placed upon the fact that the victim and her father apprehend bad limelight in the society and facing difficulty in marriage and they may be outcasted.

18. In conclusion, the medical board has mentioned that termination of pregnancy at this stage will be of high risk for both victim and the foetus as compared to continuing pregnancy. But on the basis of psychological assessment of victim and social living/status of the family, it is stated that continuation of pregnancy shall be stressful and on combining, physical and psychological impact, the termination of pregnancy has found favour.

19. It would not be out of place to mention that inspite of the clear directions by this Court that as to whether the reasons in the report dated 21.10.2024 for opining the termination to be dangerous can be treated immediately has not been dealt with in report dated 24.10.2024. The time is of essence in this case and another chance cannot be afforded for submitting further report.

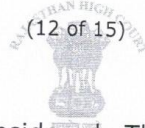
20. The statement made by the father of the victim and victim has to be given weightage. The apprehension of the victim and the father are no doubt has a basis.

21. It is a fact that an F.I.R. with regard to the incident resulting into physical exploitation of the victim has been lodged. However, to come to the conclusion for termination of pregnancy various





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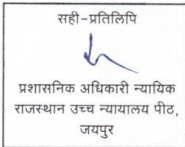


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dimensions have to be considered. The most relevant being the health of the mother and foetus and the chances of the foetus surviving.

22. The social, economic circumstances and psychological impacts are to be taken into consideration. The combined reading of reports dated 21.10.2024 and 24.10.2024, the physical and the medical side for termination of the pregnancy has been reported to be dangerous for the mother and the foetus. As per report of 24.10.2024, there are chances of post survival, neurological deficits and brain damages of foetus in case of termination of pregnancy. The psychological aspect on the basis of pressure of the society in itself shall not be enough to put two lives in danger.

23. The Supreme Court in case of XXXX vs. Union of India reported in 2023 SCC OnLine SC 1338 held as under:-



"24. As noticed above, the length of the pregnancy has crossed twenty-four weeks. It is now approximately twenty-six weeks and five days. A medical termination of the pregnancy cannot be permitted for the following reasons:

a. Having crossed the statutory limit of twenty-four weeks, the requirements in either of Section 3(2B) or Section 5 must be met;

b. There are no "substantial foetal abnormalities" diagnosed by a Medical Board in this case, in terms of Section 3(2B). This Court called for a second medical report from AIIMS to ensure that the facts of the case were accurately



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placed before it and no foetal abnormality was detected; and

c. Neither of the two reports submitted by the Medical Boards indicates that a termination is immediately necessary to save the life of the Petitioner, in terms of Section 5."

24. The termination of the pregnancy was declined by the Supreme Court in case of X vs. State of Punjab; CWP No.48 of 2024 decided on 11.03.2024. Though there was factual difference that it was not a case of rape victim.

25. The pre-requisites of Section 3(2b) or Section 5 has not been met in the present case. The apprehension of the victim and her father based on the circumstances to prevail after the delivery can to an extent be met by issuing following directions:-



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जयपुर

(i) Considering the apprehension of the father of the victim in case of pregnancy is taken to full term, the State Government shall ensure the safety of the victim till delivery and after delivery till there is assessment by the higher police officials that there is no threat perception.

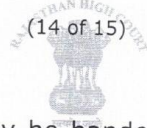
(ii) The victim shall continue to stay in Balika Grah until and unless there is impediment in doing so and in such circumstances, alternative arrangement shall be made by the State.

(iii) The Superintendent of the hospital shall ensure all medical facilities till delivery and thereafter free of cost to ensure that the delivery takes place in safe environment.

(iv) The Police Authority, State Authorities and the hospital authorities shall ensure that privacy at all stages of the identity of the victim is maintained.



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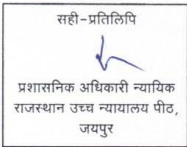
[CW-16384/2024]

(v) The child on birth may be handed over to the Child Welfare Committee, District Kota and necessary formalities of documentation shall be completed by the victim or her guardian for handing over the custody to CWC.

(vi) The petitioner would give no objection for the child being given in adoption by the State Agencies to the willing parties in accordance with law. The CWC shall take care of all the needs and facilities of the child.

(vii) The Superintendent of the hospital shall retain at least two samples for purpose of DNA analysis and handover the sample to the Investigating Agency, as and when required.

(viii) The petitioner is a rape victim as pleaded and alleged in the FIR, the Authorities concerned shall proceed expeditiously in accordance with law for awarding interim compensation to the victim to ensure that monetary needs of the victim are met to an extent. The Rajasthan State Legal Services Authorities is also directed to pay the amount of compensation.

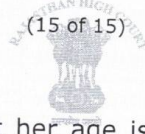


26. The directions being given herein above are not exhaustive and shall not prejudice any entitlement of the petitioner or the child as per the policies and guidelines of the government for assistance and rehabilitation.

27. Before concluding, it would be necessary to note that Mr. Vigyan Shah, AAG and Ms. Suman Shekhawat, Dy.GC on going through the record brought by the Investigating Officer, apprise the Court about a serious issue with regard to determining the age of victim. The medical of the victim was done on 21.05.2024. As per the Molar test, the age of the victim was determined more than twelve years. On the basis of Xray of Wrist Elbow in Pelvis,



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the opinion was given that her age is above nineteen years and below twenty years. The CWC on 12.06.2024 wrote a letter to Superintendent of the hospital that the age determined in the medical report, prima facie appears to be wrong and the victim should be re-examined. The contention is that neither the medical report after re-examination sought by CWC nor the date of birth certificate or matriculation certificate is available on record and do not find mention in the order passed by CWC dated 26.06.2024 determining the date of birth of victim as 26.06.2008.

28. From what has been brought to the notice of the Court, prima facie appears that provisions of Section 94 of J.J. Act have been given a go by.

29. In the interest of justice and to ensure that the case of the victim is dealt in accordance with law, let the Secretary, Social Justice and Family Welfare if so advised make a probe into the matter.

30. In view of the above discussion, the permission for termination of pregnancy is declined. The writ petition is disposed of.



सही प्रतिलिपि
28/11/24
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राजस्थान उच्च न्यायालय पीठ,
जयपुर

(AVNEESH JHINGAN),J

Simple Kumawat/Riya/274-S

Whether Reportable: Yes