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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION (ST.) NO. 11655 OF 2024

and anr.

.... Petitioners

V/s.

The State of Maharashtra

.... Respondent

Mr. Sameer Khatib for the Petitioners.

Ms. P.P. Shinde, APP for the State.

CORAM: KAMAL KHATA AND  
SHYAM C. CHANDAK, JJ.

DATED : 04<sup>th</sup> JUNE, 2024.

P.C. :-

1) Present Petition is filed under Article 226 of the Constitution of India, seeking permission to terminate 26 weeks pregnancy of Petitioner No.2 ('X', for short) who is a minor, under the provisions of the Medical Termination of Pregnancy Act, 1971 ('MTP Act', for short), with consequential directions. Petitioner No.1 is mother of Petitioner No.2.

2) The Petition is filed on 31<sup>st</sup> May, 2024. Having regard to the nature of the Petition, on the same day the Co-ordinate Bench of this Court directed to produce minor 'X' before the Medical Board, at Sir J.J. Hospital on the next day i.e. 1<sup>st</sup> June, 2024, for her complete assessment in terms of the parameters stipulated in the MTP Act and submit its Report by the end of 1<sup>st</sup> June, 2024 or at least, by Sunday, 2<sup>nd</sup> June, 2024. However, the

Medical Board submitted its Report dated 2<sup>nd</sup> June, 2024 through the Medical Superintendent of the Hospital on 03<sup>rd</sup> June, 2024, at 2:45 p.m. The said Report is based on assessment of minor 'X' on various parameters to assist the adjudication of this Petition in the interest of justice.

3) In this backdrop, we took up the Petition for final hearing and disposal, with consent of the parties.

4) Heard Mr. Sameer Khatib, learned Advocate for the Petitioners and Ms. P.P. Shinde, learned APP for Respondent State. Perused the Petition and the Report submitted by the Medical Board.

5) Unarguably, 'X' a minor is victim of an offence of rape committed in the month of December, 2023. Consequently, she became pregnant. However, the fact of pregnancy come to fore very recently on 17<sup>th</sup> May, 2023 when 'X' suffered stomach pain compelling her medical examination. On getting information of the incident, the concerned Police Station registered the crime under Sections 376, 367(2)(n), 354 of the Indian Penal Code and Sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 against the accused.

6) As stated in the Petition and submitted by learned Advocate for the Petitioners, the pregnancy caused great amount of physical and mental torture to minor 'X' as she herself suffers from tuberculosis since last 14 months. The said ailment would incapacitate her to take care of her unborn child. The poor economic condition has added to that and thus aggravated

her said condition. As per the Ultra Sonography Report issued on 17<sup>th</sup> May, 2024 the 'Average Gestational Age' of the foetus was 25 weeks. Therefore, continuation of the pregnancy would involve great risk to the life of the minor 'X' as it is an outcome of the rape at very tender age when her body was not ready to accept the pregnancy.

7) Learned Advocate for the Petitioners submitted that, a woman's right to make reproductive choices is a dimension of 'personal liberty' within the meaning of Article 21 of the Constitution of India and the reproductive choices can be exercised to procreate as well as to abstain from procreating. A woman has a sacrosanct right to have her bodily integrity. The right to health has been construed to mean both physical and mental well-being. The provisions of the MTP Act allows for termination of pregnancy of 20 weeks if a doctor determines that, such pregnancy will cause mental anguish to the pregnant woman. Therefore, the Petition may be allowed.

8) Learned APP submitted that, the Medical Board examined minor 'X' and after considering all the parameters stipulated for consideration for a decision under the MTP Act including the aspect of emotional and mental health of minor 'X', the Medical Board fairly opined that, at present minor 'X' is physically and mentally fit to undergo the medical termination of pregnancy. It is evident from the report that, the minor is carrying a single live intrauterine foetus, aged at 27 weeks and 1

day. The Medical Board's Report covers the required facets for just adjudication of this Petition.

9) In view of the above, we have carefully perused the Report submitted by the Medical Board which comprised of following six Medical Professions :-

1) Dr. Ashok R Anand, Professor and Head of Unit, Dept. of Obstetrics and Gynecology, Grant Government Medical College, and Sir J.J. Group of Hospitals, Mumbai

2) Dr. Bela Verma, Professor and Head, Dept. of Paediatrics, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai

3) Dr. Maithili Umate, Associate Professor, Dept. of Psychiatry, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai

4) Dr. Avinash Gutte, Professor and Head, Dept. of Radiology, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai

5) Dr. Nitin Suryawanshi, Professor and Head of Unit, Dept. of Medicine, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

6) Dr. Usha Badole, Professor and Head, Dept. of Anaesthesia, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

10) The observations of Dr. Sandeep Pophale (Associate Professor under ARA Unit), Dept. of Obstetrics and Gynaecology are that (history), the minor 'X' is 15 years old, unmarried, Primigravida with 6 months of gestation, unregistered and unimmunised. USG Obstetrics done on 01<sup>st</sup> June, 2024 at s/o Single Live intrauterine gestation of mean gestational age

28 weeks and 0 day with breech presentation, fundoanterior placenta with adequate AFI and EFW of 1154 grams. Menstrual History : BD : ? wks BS : 27 weeks + 1 day (25 weeks)

**Impression** : 1. Provisional Diagnosis : 15 yr old unmarried Primigravida with BD : ? BS : 27 weeks + 1 day. 2. The pregnancy has advanced to 26-28 wks of gestation and bears the same risk and complications for the mother if the pregnancy is continued till term or terminated now. 3. However, if the pregnancy is terminated now, the fetus has a probability of being born alive and will require intensive neonatal care. The fetus may be affected by the complication due to it's preterm status.

11) The observations of Dr. Yogesh Thube (Associate Professor, Dept. of Radiology) are as under :-

12) Opinion of Dr. Bela Verma, (Professor and Head, Dept. of Pediatrics) is that, minor 'X' is pregnant as above, in a k/c/o pulmonary TB, survivor of sexual assault. As per USG dated 01<sup>st</sup> June, 2024, EDD of 24<sup>th</sup> August, 2024 with no evidence of congenital anomalies. The fetus will be a live viable preterm requiring NICU care. The biological mother and family relatives will be required to take care of preterm neonate till newborn is in ICU. MTP can be permitted on social grounds after explaining due risks to the expectant mother and relatives.

13) In the opinion of Dr. Maithili Umate, (Associate Professor), Dept. of Psychiatry, it is observed that, "the Patient has no behavioural issues and no psychiatric complaints at present, sleep and appetite are within normal limits. The patient had H/O Behavioural issues and was on

treatment, Tab Escitalopram and Tab Clonazepam, full details not available.

14) Opinion of Dr. Nitin Suryavanshi (Professor and HOU, Dept. of Medicine) is as under :-

*“Advice : Fitness for MTP given from medicine side with due risk. No contraindication for MTP from medicine point of view.”*

15) Opinion of Dr. Usha Badole (Professor and Head, Dept. of Anesthesia) is that, “Advice : Patient is fit with due risk from anesthesia side.”

16) In view of the aforestated observations and findings, the opinion of Medical Board Committee is as under :-

*“After thorough investigation and examination of the patient, the committee has found that at present the mother is 15*

*year old, unmarried primigravida with BD ? BS 27 weeks + 1 day (25 weeks) of gestational age with no congenital anomaly in the fetus. As the patient has filed a complaint under section IPC 376 and sought High court Order for the opinion of the Medical Termination of Pregnancy, the committee is of the opinion that as mother is underage and a case of POCSO, carrying unwanted pregnancy to term will cause mental stress to the teenage mother. Hence, the mother can undergo Medical Termination of Pregnancy at any tertiary institute of her desire if the court permits. At present the mother is physically and mentally fit to undergo medical termination of pregnancy. However, the final opinion regarding fitness will be decided depending upon the clinical condition at the time of procedure.”*

17) We have given our anxious consideration to the submissions of the learned Advocate for the Petitioners as also, learned APP. The findings recorded in the Medical Board’s Report are essentially that, ‘X’ is a minor. Being a mother at this underage and it being a case of POCSO, carrying unwanted pregnancy to term will cause mental stress to a teenage mother. The pregnancy has advanced to 26-28 weeks of gestation and bears the same risk and complications for the mother (a minor) if the pregnancy is continued till term or terminated now.

18) In the backdrop, it is significant to consider the provisions of Section 3 (2) (b) (i) of the MTP Act which contains that, the pregnancy may be terminated by a registered medical practitioner where continuation



of the pregnancy would involve risk to the life of the pregnant woman or of grave injury to the woman's physical or mental health. *Explanation – 2* to Section 3(2) provides for a statutory presumption of grave injury to mental health of pregnant woman if the pregnancy has been caused by rape. Section 3 (4) (b) of the MTP Act stipulates that, no pregnancy shall be terminated except with the consent of the pregnant woman. In this regard we noted that, the minor 'X' herself is a Petitioner No.2 herein. As noted in the Medical Board's Report, minor 'X' says that its difficult for her to continue the pregnancy and manage herself.

19) In view thereof, in our considered view the independent entitlement of minor 'X' to make a choice about her body and to exercise it in the form of option for medical termination of her pregnancy, deserves to be respected and thus lends itself to acceptance.

20) In a very recent judgment in the case of *A (Mother of X) vs. State of Maharashtra and Anr*, (2024 SCC OnLine SC 835), the Hon'ble Supreme Court held as under :-

*25. ....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 or abortion. Secondly, disallowing terminations 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 vs. State (NCT of Delhi) 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 fetus is diagnosed with substantial abnormalities, the medical board opines against the 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 April 2024 fell into this error by denying a termination on the ground that the gestational age of the fetus is above twenty four weeks and there are no congenital abnormalities in the fetus.*

*27. 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.”*

32. *As noted above, the order of this court allowing ‘X’ to terminate her pregnancy is recalled. This decision is made in light of the decisional and bodily autonomy of the pregnant person and her parents. The MTP Act does not allow any interference with the personal choice of a pregnant person in terms of proceeding with the termination. The Act or indeed the jurisprudence around abortion developed by the courts leave no scope for interference by the family or the partner of a pregnant person in matters of reproductive choice.*

33. *As stated above, the role of the RMPs and the medical board must be in a manner which allows the pregnant person to freely exercise their choice. In the present case, the guardians of ‘X’, namely her parents, have also consented for taking the pregnancy to term. This is permissible as ‘X’ is a minor and the consent of the guardian is prescribed under Section 3(4)(a) of the MTP Act.*

34. *In Suchita Srivastava v. Chandigarh Admn., a three-judge Bench of this Court has held that the right to make reproductive choices is a facet of Article 21 of the Constitution. Further, the consent of the pregnant person in matters of reproductive choices and abortion is paramount. The purport of this Court’s decision in Suchita Srivastava (supra) was to protect the right to abortion on a firm footing as an intrinsic element of the fundamental rights to privacy, dignity and bodily integrity as well as to reaffirm that matters of sexual and reproductive choices belong to the individual alone. In rejecting the State’s jurisdiction as the parens patriae of the pregnant person, this Court held that no entity, even if it is the State, can speak on behalf of a pregnant*

*person and usurp her consent. The choice to continue pregnancy to term, regardless of the court having allowed termination of the pregnancy, belongs to the individual alone.*

*[Emphasis Supplied]*

21) Applying the aforesaid principles to the issues at hand, we have persuaded to permit medical termination of minor 'X' pregnancy. Consequently, we issue the following directions :-

(a) The Petitioners shall be entitled to call upon Sir J.J. Hospital, Mumbai to carry out the procedures stipulated for termination of pregnancy of minor 'X' in accordance with the Report dated 2nd June, 2024 submitted by the Medical Board on 03rd June, 2024 taking assistance of the medical method required to be applied in accordance with the medical protocol.

(b) The minor 'X' having been found to be exposed to the risk of grave psychological injury should the termination not be effected, and having been found physically fit for termination of pregnancy, is hereby given permission for undergoing the stipulated procedures in accordance with the applicable protocols for effecting such termination as prayed for in this Petition.

(c) Consequently, we permit the minor 'X' to undergo the termination procedure at Sir J.J. Hospital, Mumbai pursuant to this Order at the earliest. The minor 'X' shall be entitled to present

herself to Sir J.J. Hospital for undergoing the procedures for termination of the pregnancy. Considering the grave danger to the minor 'X' mental health posed by the continuation of pregnancy, as diagnosed by the Medical Board, we are sure Sir J.J. Hospital and its Medical Board would take care to ensure sensitive treatment and handling of the minor 'X' in connection with all procedures, whether medical or administrative, keeping her emotional and mental health at the forefront.

22) The Writ Petition stands disposed of accordingly. No order as to costs.

23) All concerned will act on production of an authenticated copy of this Order.

**(SHYAM C. CHANDAK, J.)**

**(KAMAL KHATA, J.)**

**PREETI  
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