

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

WPA 2909 of 2023

'X' (since minor through her mother Ansura Khatoon)

vs

State of West Bengal and others

For the petitioner	:	Ms. Sutapa Sanyal, Adv. Mr. Amit Chowdhury, Adv.
For the State	:	Mr. Pantu Deb Roy, Adv. Mr. Pannalal Bandopadhyaya, Adv.
For the respondent no. 2	:	Mr. Sabyasachi Banerjee, Adv. Mr. Arindam Chandra, Adv. Mr. Atish Ghosh, Adv. Ms. Sumana Biswas, Adv. Ms. Antara Dey, Adv.
Last Heard on	:	07.02.2023.
Delivered on	:	07.02.2023.

Moushumi Bhattacharya, J.

1. The petitioner is an un-named minor who has approached the Court for urgent orders permitting the medical termination of her pregnancy. The petitioner met with an accident on 18.12.2022 and her mother was

subsequently made aware of the fact that the petitioner was pregnant pursuant to which an FIR was lodged at the Watganj Police Station under the POCSO Act, 2012. The petitioner was shifted to the CCU of the respondent no. 2 Medica Hospitals on 24.12.2022 and has been in a critical state thereafter. The petitioner suffered a cardiac arrest on 27.12.2022 and was on the ventilator till 2.2.2023. The petitioner is presently on Advanced Cardiac Life Support Protocol.

2. The petitioner seeks immediate termination of her pregnancy.

3. Medica Hospitals, represented by learned counsel, reiterates that the petitioner's present physical condition was brought about by the road accident. Counsel submits that the petitioner's life will be at risk if there is further delay in the termination of her pregnancy. Counsel places a letter written by the petitioner's mother to the Hospital on 31st January, 2023 requesting the Hospital to terminate the pregnancy. Counsel also refers to a specific statement made in the writ petition that the petitioner's mother takes full risk of any medical intervention in relation to the pregnancy and will exonerate the respondent of any liability in respect of the outcome of such medical intervention.

4. Learned counsel appearing for the State places a Notification dated 17th July, 2020 of the State Family Welfare Bureau under section 4(b) of the relevant Act and the Rules for nomination of the members of a Committee in the matter of supervising implementation of the Act and the Rules.

5. The petitioner is presently a little above 16 years of age. A Report of the Hospital dated 3rd February, 2023 shows that the petitioner was in the second trimester of her pregnancy and was, more specifically, 22 weeks 5 days pregnant as on that date. Hence, the petitioner is 23 weeks and 2 days pregnant as of today.

6. The first question is whether The Medical Termination of Pregnancy Act, 1971 and the Rules framed thereunder allows termination of pregnancy at 23 weeks and 2 days. Section 3(1) of the Act provides for situations where a pregnancy may be terminated by a registered medical practitioner notwithstanding anything contained in the Indian Penal Code 1860 or under any other law for the time being in force. Sub-section (2)(b) of section 3 permits termination of a pregnancy by a registered medical practitioner where the length of the pregnancy exceeds 20 weeks but does not exceed 24 weeks in case of such category of women as may be prescribed by the Rules under the Act if not less than two medical practitioners are of the opinion, formed in good faith, that the continuation of the pregnancy would involve a risk to the life of the pregnant woman or result in grave injury to her physical or mental health or that there would be a substantial risk of physical or mental abnormality to the child, if born.

7. Rule 3B of the Medical Termination of Pregnancy (Amendment) Rules, 2021 sets out the categories of women under section 3(2)(b) who may have their pregnancies terminated beyond 20 weeks but before 24 weeks. The categories mentioned include minors and survivors of sexual assault or rape (Rule 3-B (a) and (b)). This was taken into consideration by a three-Judge

Bench of the Supreme Court in *X vs. Principal Secretary, Health and Family Welfare Department, Govt. Of NCT of Delhi*; 2022 SCC OnLine SC 1321.

8. In the present case, since the petitioner is a minor, the facts would be governed under section 3(4)(a) of the Act which stipulates inter alia that no pregnancy of a woman who has not attained the age of 18 years shall be terminated except with the consent in writing of her guardian.

9. The petitioner's mother has already given her consent to the termination of the petitioner's pregnancy by a letter written to the Hospital on 31.1.2023 which is on record. The letter contains a request to the Hospital to terminate the pregnancy within a week of the letter.

10. The statutory requirement which has to be complied with under section 3(2)(b) is that of two registered medical practitioners recording an opinion that the continuation of the pregnancy would involve a risk to the life of the petitioner or grave injury to her physical / mental health or would amount to a substantial risk to the child's normal physical and mental functioning if the pregnancy is not terminated. Documents have been placed before the Court which show the precarious physical condition of the petitioner. The Report dated 3.2.2023 names 5 doctors of the respondent no. 2 Hospital. Explanation 2 to section 3(2)(b) makes for a presumption of grave urgency with reference to the requirement of the opinion of the medical practitioners where the pregnancy has been caused by rape. The writ petition and the FIR state that the petitioner is a victim of rape which caused the pregnancy.

11. Explanation 2 read with the material shown to the Court on the present condition of the petitioner, where every passing hour is critical for the petitioner's life, begs the question whether further time should be lost before the pregnancy is terminated. In any event, section 5(1) of the Act provides for an exit route from the requirements in section 3(2) where a registered medical practitioner is of the opinion that the termination of the pregnancy is immediately necessary to save the life of the pregnant woman; in essence, an urgency provision. The petitioner will also reach the statutory cap of 24 weeks under section 3(2)(b) of the Act in 5 days from today.

12. The urgency of the medical intervention by way of termination of the pregnancy of the petitioner has sufficiently been impressed upon the court and this court is of the view that there is an immediate need to allow the termination of the pregnancy as prayed for by all the parties.

13. The respondent no.2 Hospital shall hence carry out the medical termination of pregnancy of the petitioner as expeditiously as possible. The stand taken by the petitioner in protecting the respondent no.2 from possible liability, in the event of any unfortunate medical emergency or otherwise, is noted.

14. W.P.A. 2909 of 2023 is accordingly allowed and disposed of by directing the respondent no.2 to terminate the pregnancy of the petitioner in the respondent no.2 Hospital in keeping with the statutory mandate under sections 3(2)(b) and 5(1) of the Act and the Rules, as amended by the Medical Termination of Pregnancy Amendment Rules, 2021. The medical intervention shall be done by registered medical practitioners and the

respondent no.2 shall take effective and expedient steps to preserve the life, health and physical well-being of the petitioner, represented through her mother, Ansura Khatoon. It is expected that the medical termination of pregnancy shall be carried out with all mandatory procedures and certifications in place including Reports and opinion in compliance with the Act and the Rules.

15. The writ petition is disposed of on the request of counsel appearing for the petitioner. The Reports of the respondent no.2 shall be filed with the police authorities both before and after the procedure of medical termination of pregnancy. Copies of the Reports shall be made available to the petitioner's mother.

16. All the parties are directed to act on the Server copy of this order downloaded from the official website of the Calcutta High Court.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)