

19th May, 2023
(S.L.J. No.1)
(SKB)

**High Court at Calcutta
In the Circuit Bench at Jalpaiguri**

W.P.A. 1140 of 2023

Sabita Pradhan
Versus
State of West Bengal and others

Mr. Sayan Chattopadhyay,
Ms. Ayesha Iman,
Mr. Pratap Khetri
... for the petitioner.

Mr. Hirak Barman
... for the State.

1. The Court had dictated an elaborate order on the submissions made by learned counsel appearing for the petitioner who happens to be the widowed mother of a minor girl who was the victim of rape. The petitioner's daughter was 17 years of age and was 30+ weeks pregnant at the time of filing of the writ petition. The petitioner seeks urgent medical termination of her daughter's pregnancy.
2. The Medical Report of the Board of the North Bengal Medical College and Hospital, Siliguri, pursuant to a direction of a Co-ordinate Bench is filed in Court in a sealed cover. The contents of the Medical Report are now available to the Court.
3. The concerns of the parties relate to whether the medical termination of the petitioner's daughter's

pregnancy can be allowed within the parameters of laws and in the facts of the case including that the minor girl is 30+ weeks pregnant.

4. Counsel appearing for the petitioner had relied extensively on The Medical Termination of Pregnancy Act, 1971 and the Court proceeded to pass the order on that basis.
5. After dictating the order in Court, it later transpired that there has been a subsequent amendment to the Medical Termination of Pregnancy Act, 1971. The governing Act was amended vide a Notification dated 25th March, 2021. The provisions under the Amendment Act of 2021 as well as the Medical Termination of Pregnancy (Amendment) Rules, 2021 are a substantial addition to the provisions of the 1971 Act. Counsel did not refer to the 2021 Act or the Rules at all at the time of hearing of the matter or when the order was being dictated in the Court. This kind of slip or lack of preparation is shocking, to say the least.
6. Section 3(2) of the 1971 Act was substituted by the Amendment of 2021 where the upper-limit of 20 weeks for termination of pregnancy was extended to 24 weeks for the category of women as may be prescribed by the Rules made under the Act [Section 3(2)(b)]. The requirement of an opinion of not less

than 2 Registered Medical Practitioners, in good faith, where the continuance of the pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health and the Explanations related to the same as well as to the risk if the child were born, remained the same as pre-amendment. Rule 3A(a)(i) of the Medical Termination of Pregnancy (Amendment) Rules, 2021 empowers the Medical Board to allow or deny termination of pregnancy beyond 24 weeks of gestation period under section 3(2B) of the 1971 Act only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and where the fetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped.

7. Moreover, Rule 3B provides for a list of women eligible for termination of pregnancy up to 24 weeks and includes survivors of sexual assault or rape or incest [Rule 3B(a)]. Although Rule 3B limits the period of 24 weeks even for survivors of rape as in the present case, Rule 3A(a)(i) as stated above allows the termination of pregnancy even after 24 weeks if the Medical Board comes to the opinion (also stated above) after due consideration of the relevant factors.

8. In the present facts, the minor girl is admittedly a rape victim as required under Rule 3B(a). Further, the consensus of the Medical Board is that the pregnancy can be terminated as per the existing MTP Law. Although the risks of termination at an advanced stage of pregnancy have been mentioned, the Report indicates that the pregnancy of the petitioner's daughter can be terminated. The psychotropic mental state of the petitioner's daughter and her anxious verbal output in relation to the sexual abuse are relevant pointers for immediate medical intervention.
9. The petitioner as the mother of the minor girl who is to undergo the procedure for termination of pregnancy, shall give her consent in writing as the guardian of the minor girl, to the termination of pregnancy. This is the requirement under the Act. The letter of consent should also state that the concerned hospital or the medical practitioners who undertake the termination of pregnancy shall not be held responsible for any risk to her minor girl's health or life. The consent of the minor girl shall also be taken by the concerned hospital before the pregnancy is terminated.
10. W.P.A.1140 of 2023 is disposed of in terms of the above. It is needless to say, the petitioner shall take

expeditious steps to act in accordance with this order to prevent any further risk to her daughter's physical or mental health and well being.

11. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Moushumi Bhattacharya, J.)