

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8584 OF 2023

"X" ... Petitioner

Age 17 years 11 months.

Through the Guardian & Mother

"Y"

Age 35 years, Occupation: Housewife

R/o Chanai, Tq. Ambajogai, Dist. Beed

VERSUS

1. The State of Maharashtra,
Through-Secretary,
Health Department, Mantralaya,
Mumbai 32
2. The Dean, ... Respondents
Swami Ramanand Teerth Rural
Government Medical College, Ambajogai,
Tq.Ambajogai, Dist. Beed.
3. The Officer Incharge
Police Station, Ambajogai (City)
District Beed.

Mr. S. J. Salunke, Advocate for the petitioner

Mr. S. B. Yawalkar, AGP for respondents-State

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRAGADE, JJ.

RESERVED ON : 20th July, 2023

PRONOUNCED ON : 26th July, 2023

JUDGMENT (Per- Y. G. Khobragade, J.)

1. Rule. Rule made returnable forthwith. With the consent of Mr. S. J. Salunke, the learned counsel appearing for the petitioner and Mr. S. B. Yawalkar, the learned AGP for respondents heard finally at the state of admission.

2. In the present petition, the petitioner- a pregnant minor girl, aged 17 years and 11 months and 21 days who allegedly is a victim of rape, filed present petition through her guardian and put forth prayer clauses (B), (C), (D) and (E) as under:

(A) Be pleased to issue writ of mandamus or any other writ or directions or order in the like nature and respondent no.2, the Dean of Swami Ramanand Teerth Rural government Medical College, Ambajogai, Dist. Beed may kindly be directed to form a Board comprising not less than two registered Medical Practitioners and submit an opinion qua the Medical Termination of Pregnancy of the petitioner.

(C) Be pleased to direct respondent no.2 to medically terminate the pregnancy of the petitioner.

(D) Respondent no.2 & 3 may kindly be directed to collect the tissue and blood samples of the fetus for conducting DNA and other tests that would be part of evidence during prosecution of the accused in terms of the FIR No.250/2023 registered with Police Station, Ambajogai (City), District Beed dated 01.07.2023.

(E) Respondent No.3 may kindly be directed to ensure that the aforesaid tissue and blood samples of fetus be forwarded to the concerned Forensic Laboratory for DNA tests and other relevant medical tests and such samples and reports shall be preserved for the purpose of Trial."

3. On 18.07.2023, while referring the pregnant girl for medical examination, we have observed in paragraph Nos. 4, 5 and 6 as under:

4. *There is no dispute that the concerned girl would become 18 years of age on 29th July, 2023. She and the accused had consensual physical relations since December, 2022. According to her statement, she used to go to the hostel room of the accused. She herself carried out a pregnancy test at home in March/April, 2023 and after realizing that she is pregnant, she did not let her parents know about it. On 1st July, 2023, her mother lodged an FIR alleging that somebody has taken away her daughter. The medical examination of the girl dated 12th July, 2023 does not indicate any anomalous foetus. This petition has been filed by the victim girl through her mother(identity not disclosed) seeking termination of the pregnancy.*

5. *The report of the Radiologist dated 13.07.2023 indicates that the gestational age of the foetus is 24 weeks and 3 days. Presently, the girl is admitted in Savitribai Phule Observation Home at Ambajogai. We, therefore, direct Respondent No.2 to carry out a medical examination of the said girl at 10.00 a.m. tomorrow, 19th July, 2023, through the Medical Board which is specifically constituted for the said*

purpose. Mother of the pregnant girl would accompany her for the medical examination.

6. *We desire that the Board should express it's opinion in clear terms to the Court, as to whether the child with a beating heart is likely to be born, if a medical termination of pregnancy is permitted by the Court."*

4. It is a matter of record that, on 01.07.2023, the biological mother of the petitioner victim lodged an FIR alleging that her minor daughter was abducted by unknown person, on which basis FIR was registered with the concerned Police station vide Crime No. 0250/2023 under section 363 of the Indian Penal Code. The investigation began pursuant to the FIR and the Investigating Officer brought the petitioner/victim and accused at the Police Station Ambajogai from Aurangabad. Then the victim was referred for medical examination. On medical examination, the victim was diagnosed to be pregnant. Therefore, she was referred for Radiology/Sonography test.

5. As per Radiology Report dated 13.07.2023, Gestational age of the foetus was found to be 24 weeks and 3 days with adequate liquor. No IUGR. No obvious anomaly was detected in the scan with normal Doppler wave forms. The petitioner victim is admitted in Savitribai Phule Observation Home at Ambajogai.

6. On 18th July, 2023 this Court passed an order and directed the medical examination of the victim girl by the Medical Board to be

conducted on 19.07.2023. Accordingly, the Medical Board of Swami Ramanand Teerth Rural Government Medical College, Ambajogai Dist. Beed (in short hereinafter referred as G.M.C.) medically examined the victim girl and submitted its report dated 19.07.2023 which is taken on record and marked 'X' for identification. The relevant portion of the medical report reads as under:

"4. Available reports and investigations:

Sr. No.	Report	Opinion on the findings
1.	Krishna Sonography Center, Obstetrics USG report- Date: 12/07/2023 Dr. Sumit U. Gulbhile, MBBS, DMRE Reg. No.2014/05/1933	SLIUP of gestational age 24 weeks 2 days with normal Doppler parameters with adequate liquor.
2.	Krishna Sonography Center, Obstetrics USG report- Date: 13/07/2023 Dr. Sumit U. Gulbhile, MBBS, DMRE Reg. No.2014/05/1933	SLIUP of gestational age 24 weeks 3 days. No obvious anomaly.

5. Additional Investigations (if done):

Sr. No.	Investigations done	Key findings
1	CBC	WNL
2	Blood Group	
3	HIV HbsAg VDRL	NON REACTIVE
4	LFT, KFT, BSL	WNL
5	No complaints at Present, general condition – Fair, Afebrile, Pulse rate – 80 per min, Blood pressure – 110/70 Millimeters of Mercury, no edema/icterus P/A – Fundal Height – 24-26 weeks, FHS – 146 BPM, Regular, Uterus – relaxed, PV – OS closed Uneffaced	

6. Opinion by Medical Board for termination of pregnancy:
a) ~~Allowed~~
b) Denied

Justification for the decision:

- 1) As per recent MTP amendment act, under rule and regulation for rape case termination is allowed upto 24 weeks of gestation.
- 2) As there is no any fetal congenital anomaly in anomaly scan.
- 3) Medical board can give decision of termination beyond 24 weeks of pregnancy only for fetal abnormalities cases; hence medical board denies termination of pregnancy.

However, on humanitarian and social grounds, honorable high court can take decision of termination of this pregnancy.

Kindly note that child born will show signs of life but not capable of its independent survival.

A) Medical board has explained the risk involved in the procedure to the patient and her relatives.

B) She may have risk of various complications if she undergoes termination of pregnancy like -

- 1) Hemorrhage
- 2) Failure of abortion
- 3) Need of surgical method (Hysterotomy)
- 4) Incomplete Abortion
- 5) Sepsis
- 6) Maternal death
- 7) Need of the blood transfusion
- 8) Pulmonary Oedema/embolism

7. Physical FITNESS OF THE WOMAN FOR THE TERMINATION OF PREGNANCY:

- a) Yes
- b) ~~No~~

7. Mr. Salunke, the learned Advocate appearing for the petitioner vehemently submits that, the petitioner/victim is a child within the meaning of section 2(d) of the Protection of Children from Sexual Offences Act, 2012 and penetrative sexual assault resulted into

pregnancy which is now above 24 weeks. Therefore, considering the provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971, it is of significance in the present case, where the pregnancy is caused due to rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant petitioner. Denying a woman the right to say no to medical termination of pregnancy and fasten her with responsibility of motherhood would amount to denying her human right to live with dignity as the petitioner has a right in relation to her body which includes saying “Yes” or “No” for being a mother. So also, the victim would suffer social stigma and trauma.

8. The learned Advocate for the petitioner further canvassed that the petitioner is a victim of rape and penetrative sexual assault. Under such circumstance, pregnancy can be terminated to avoid burden of giving birth and raising the child especially in a situation where the petitioner herself passing through the age of adolescent. He further canvassed that the petitioner appeared the 12th Std. examination, Science Stream. She wanted to become a Doctor. However, the sexual offence resulted in developing the pregnancy. The petitioner wanted to complete her education. Therefore, prayed for termination of pregnancy to avoid social, financial as well as jeopardy to her future educational life.

9. In support of his submissions, the learned counsel for the petitioner placed reliance on the following case law:

- (1) XYZ Vs State of Maharashtra & others, 2021 SCC OnLine Bom.3353:(2021) 6 AIR Bom R 655
- (2) ABC Vs. State of Maharashtra & others, 2021 SCC OnLine Bom 419: (2021) 2 AIR Bom R (Cri) 415)
- (3) X Vs. State of Maharashtra & anr., 2022 SCC OnLine Bom 253: (2022) 3 Mah LJ 67: (2022) 2 AIR Bom R 572
- (4) Minor R. Through Mother H Vs. State (NCT of Delhi) and another, 2023 SCC OnLine Del 383.

10. Needless to say that, the Investigation Officer recorded the statement of the petitioner/victim during the course of investigation, which reveals about a love affair between the petitioner-victim and the Accused while both of them were attending tuition classes of Science stream. Both of them were having conversation through Whats App., however, said fact noticed by the petitioner's brother and tuition class of the petitioner was discontinued. But subsequently again both of them came into contact. It further appears that both of them developed physical relations on many occasions from December, 2022. In the month of February, 2023, the petitioner victim herself brought a pregnancy kit from a Medical Store and performed a self pregnancy test with the said kit and confirmed that she became pregnant. Thereafter the petitioner disclosed said fact to her boy friend Accused.

The petitioner never disclosed this fact of her pregnancy to her mother. In June, 2023, the petitioner and the accused left their house with an intention to perform marriage, but she fell few days short of attaining 18 years of age. Therefore, the accused made arrangement for her stay at Aurangabad and hence, both of them could not perform marriage.

11. In **ABC Vs. State of Maharashtra & others, 2021 SCC OnLine Bom 419: (2021) 2 AIR Bom R (Cri) 415** cited supra, the coordinate bench of this Court granted permission to terminate more than 20 weeks pregnancy of a minor victim of sexual assault, aged about 17 years on ground that on examination, the Medical Board opined that the minor was pregnant, due to alleged sexual assault and rape, and was found suffering a slight intellectual disability.

12. In the case of **X Vs. State of Maharashtra & Anr., (2022) 2 AIR Bom R 572**, permission to terminate pregnancy of 25/26 weeks was granted by the coordinate bench of this Court to the rape victim and held that the pregnancy caused by rape, the anguish caused by such pregnancy may be presumed to constitute grave injury to mental health of the victim. In case of **Minor R. Through Mother H Vs. State (NCT of Delhi) and another, 2023 SCC OnLine Del 383**, wherein the Delhi High Court permitted to terminate 24 weeks and 5 days pregnancy of a minor child aged about 14 years which was resulted due to rape, by considering that the right to life invariably includes right to

live with dignity guaranteed under Article 21 of the Constitution of India as well as the Child Welfare Committee Report about traumatic condition of the minor.

13. The learned counsel for the petitioner admits that, the petitioner victim will be completing the age of 18 years on 29th July, 2023. Since the petitioner-victim and accused developed physical relations on number of times, this which resulted in conceiving. The petitioner herself brought a pregnancy kit from a medical store and confirmed pregnancy. Therefore, it appears that the petitioner victim is not innocent and she was having full maturity of understanding. Thereafter, she disclosed fact of her pregnancy to her lover-accused and then both of them fled away with an intention to perform marriage, but due to shortage of few days to attain majority, they did not get married. Therefore, if the petitioner was not interested to carry the pregnancy, in that event, she could have sought permission for termination of pregnancy soon after confirmation of pregnancy, by approaching this Court.

14. Section 3 of the Medical Termination of Pregnancy Act, 1971 provides for termination of pregnancy by a registered medical practitioner. Sec. 3 of the Act, reads as under:

"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 a 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."

Section 4 deals with the place where the pregnancy may be terminated, section 5 enumerates the situations where sections 3 and 4 would not apply. Section 5 is reproduced hereunder:-

"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 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."

15. At this juncture, we may mention that parliament has enacted the Medical Termination of Pregnancy (Amendment)Act, 2021 whereby the upper limit for statutorily permitting medical termination of pregnancy has been extended from 20 weeks to 24 weeks. The said amendment has been notified and has come into effect from 29th September, 2021.

16. The Petitioner's Sonography report dt. 13.07.2023 issued by Dr. Sumit GulbHITE reads as under:

"Single live fetus in variable lie and variable presentation at present scan.

- *Fetal Skull: Fetal head shape and bone density appears normal. Ventricle, cisternal magna and nuchal fold size appears normal. Posterior fossa structures appears normal.*
- *Face: Orbits, nose, mandible and lips appears normal. No e/o cleft lip or palate. Fetal face seen in coronal and profile view.*
- **Spine** : *Spine Appears intact with no obvious spina bifida seen. Sacral curve appears normal.*
- *Extremities: All the four limbs noted. Visualized limbs appears normal and corresponds to gestational age.*
- *Neck: No obvious cystic lesion seen in the neck.*
- *Thorax: Both lungs show normal echogenicity. No any cystic lesion within the lung parenchyma.*
- *Heart: Cardiac position and axis is normal. RA/RV size normal. LA/LV Size normal. Formal flat showed normal movements four chambered heart noted. Cardiac inlet and outlet appears normal and shows normal crossing.*
- *Abdomen: Interior abdominal wall and diaphragm are intact. Upper abdomen shows stomach, portal vein and gall bladder in normal position and alignment.*
- *Both Fetal kidneys are normal in size and echogenicity. Fetal bladder is distended and appears normal.*
- *Normal three vessels umbilical cord noted. Cord insertions appears normal. Uterine arteries (Mean PI:0.74) shows normal Doppler velocities.*

Liquor – is adequate for this gestation.

*Placenta – Posterior & shows Grade I maturity.
Internal Os:- Closed. Cervical length – 3.6 cm*

FETAL PARAMETERS

LMP : 26 Feb 2023 :19w4d EDD by LMP : 02 Dec 2023

Ave. Age. 24 wks 3 days EDD by scan : 30/10/2023

H.R. :- Normal 152 bmp Fetal wt : 696 gm

IMPRESSION:- *Single live Intrauterine Pregnancy of average maturity 24 wks 3 days with Adequate liquor; No IUGR. No obvious anomaly detected at present scan with normal Doppler waveforms.*

- All the fetal anomalies cannot be detected on USG due to variation in fetal movements, position and amount of liquor. Imaging conclusions need to be correlated with other investigations and clinical findings; for a final diagnosis).

** Fetal parameters are subject to statistical variations.*

** For detail cardiac evaluation (if clinically indicated/or h/o previous congenital heart disease) fetal echo-Doppler by expertise is suggested."*

17. Again on 19.07.2023, the Medical Board examined the petitioner/ victim. On medically examination, the Medical Experts found age of gestational foetus to be 24 weeks 3 days with no obvious anomaly and growth of foetus is normal. The Medical Board gave negative opinion in respect of termination of pregnancy. The Medical Board can give decision of termination beyond 24 weeks of pregnancy only for foetal abnormality cases. The medical board further opined that a child born will show signs of life, but not capable of its independent survival.

18. We (Coram : Ravindra V Ghuge and Y G Khobragade, JJ) have recently held in our judgment delivered on 20.06.2023 in the case of XYZ v/s State and another, W.P. No.6340 of 2023, that if a child would be born alive, after the full term natural delivery or by forcible medical interventional delivery, the issue would be about a live child being born. The medical report clearly indicated that a live baby would be born and the baby would be required to be kept in NICU for survival. Hence, we refused permission for the termination of pregnancy.

19. The question, therefore, is that, if a live baby will be born even today after a forcible delivery of the child, considering the request of the probable mother for terminating the pregnancy, it would lead to an under developed live child being born. There are chances of certain deformities being developed due to such forcible delivery. The disadvantage of permitting forcible delivery of the child today is that a child which would have naturally developed into a well grown baby in the 40th week, will have to be brought into this world at a premature stage and that too forcibly.

20. Taking into consideration the Medical Board's Report before us today, it clearly indicates that, a live baby would be born and the baby may survive. Therefore, if the foetus of 24 weeks and 3 days

(now 25 weeks) is permitted to be aborted, which is going to be a forced delivery, there may be chances of abnormalities in the child, which would handicap the child permanently. In any case the child is going to be born alive and the natural delivery is just 15 weeks away from today. Therefore, we do not incline to permit for termination of pregnancy.

21. In the backdrop of the girl having accompanied her friend and having had physical relations with him for a couple of weeks until they were apprehended, we are of the view that the future health of the child as well its physical and mental development needs to be considered at this stage. When a live child is going to be born even today, we might as well let the child be born after 15 weeks and if the petitioner desires to give away the child to an orphanage, she shall have the liberty of doing so.

22. In our judgment dated 20th June, 2023, in **Writ Petition No. 6340 of 2023 XYZ – Vs- The State of Maharashtra & anr.**, we declined to grant termination of pregnancy of 28 weeks in similar facts and circumstances of the present case considering paras 124 to 134 of the Judgment in **XYZ vs Union India and other, 2019 (3) Bom. C. R. 400**, which reads as under:

“124] In all such cases, where permission is granted to medically terminate pregnancies the provisions in the MTP Rules, 2003 and the MTP Regulations, 2003, will have to be complied with by the registered medical practitioners, hospitals/clinics and the approved places in terms of section 4(b) of the MTP Act. Therefore, the directions which we have issued, are in addition to and certainly not in derogation of any of the requirements prescribed under the MTP Act, the rules and regulations made there under.

125] In some cases, including, in one of the cases in this batch of Petitions, the medical board suggested that the pregnant mother and/or her family members give an undertaking that if, despite attempts at medical termination of pregnancy, the child is born alive, then the pregnant mother and/or her family members take full responsibility for such child.

126] At the outset, we make it extremely clear that if despite attempts at medical termination of pregnancy, the child is born alive, then, first and foremost the registered medical practitioner and the hospital/ clinic concerned will have to assume the full responsibility to ensure that such child is offered the best medical treatment available in the circumstances, in order that it develops into a healthy child. Though there is debate as to whether the fetus (child in the womb) is a person, entitled to rights, there is no debate on the issue that a child, born alive, is a person, in whom, the right to life and personal liberty inheres. Therefore, taking into consideration the provisions of Part III and Part IV of the Constitution, we make it clear, that under no circumstances, such a child must be neglected or left to perish, particularly where the pregnant or her family members may not be in a position to or may not be willing to assume responsibility in such matters.

*127] In the aforesaid regard, we refer to the decision of the Supreme Court in *Parmanand Katara vs. Union of India* (1989) 4 SCC 286 where it was held that there can be no second opinion that preservation of human*

life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and reiterated with gradually increasing emphasis, that position.

128] The Supreme Court has further observed that a Doctor at the government hospital positioned to meet this State obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. So far as this duty of medical profession is concerned, it is a duty coupled with human instinct and therefore, it needs neither any decision nor any code for compliance. In any case, Code of Medical Ethics framed by the Medical Council of India Item 13 specifically provides for it.

129] In M. Nagraj (supra), the Constitution Bench in the context of certain fundamental rights, including the right to life and human dignity, has held that the values impose a positive duty on the State to ensure their attainment as far as practicable. The rights, liberties and freedoms of the individual are not only to be protected against the State, they should be facilitated by it. It is the duty of the State to not only to protect the human dignity but to facilitate it by taking positive steps in that direction.

130] Therefore, if the child, despite attempts at medical termination of pregnancy, is born alive, then the parents as well as the Doctors owe a duty of care to such child. The best interest of the child must be the central consideration in determining how to treat the child. The extreme vulnerability of such child is itself reason enough to ensure that everything which is reasonably possible and feasible, in the circumstances, will have to be offered to such child, so that it develops into a healthy child.

131] In such matters, the instinct of the parents, will no doubt take over when it comes to the love and care to be offered to such child. However, in the unfortunate situation, where for several myriad factors, the parents of such child are unwilling to or genuinely not in a position to care for such child, then, the “parens patriae” doctrine, will oblige the State to assume parental responsibility in relation to such child.

132] Even apart from the “parens patriae” doctrine, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, will apply to such an unfortunate situation. There are detailed provisions under the Juvenile Justice Act to deal with cases of “abandoned child” as defined under section 2(1) or “child in need of care and protection” as defined in section 2(14) of the Juvenile Justice Act. The hospital/clinic authorities, must take necessary measures as prescribed under the Juvenile Justice Act to deal with such unfortunate situations. The best interest of the child, must be the primary consideration in all such matters.

133] According to us, both the parens patriae doctrine as well as provisions of Juvenile Justice Act obliged the State to assume parental responsibility in relation to such children. Therefore, the State, consistent with the provisions of the Juvenile Justice Act will have to protect and take care of such children, should, such need arise. Mr. Vagyan and Ms. Kantharia, the learned Government Pleaders, on the basis of instructions, have

assured this Court, that consistent with the provisions of section 27 of the Juvenile Justice Act, the State Government, where it has not already done so, will by notification in the Government Gazette constitute for every District, one or more Child Welfare Committees (CWC) for exercising the powers and discharging the duties conferred upon such Committees in relation to children in need of care and protection under the Juvenile Justice Act.

134] The learned Government Pleaders, on the basis of instructions, have assured this Court that the State and its agencies like CWC etc. will, after compliance prescribed procedures, declare such children legally "free for adoption", in case the enquiries establish that such children have no one to care for or are abandoned or surrendered. In any case, we direct the State and its agencies to take all steps in this regard, keeping in mind the principle of the best interests of such children."

23. The learned AGP has expressed his apprehension as regards keeping the girl in the hospital for 15 weeks. The biological mother has instructed the learned Advocate to make a statement that after the child is born, it would be handed over to an orphanage for adoption. Naturally, if the baby is well developed and delivered naturally or as a full term baby, there would be no deformity and the chances of adoption would be brightened.

24. We have held in our judgment dated 20th June 2023 in **Writ Petition No. 6340 of 2023** (supra) that there are certain social organizations which take care of such 'would be' mothers like "Shaskiya Vatsalya Mahila Vastigruh" (Mother Home), near Ashok

Stambh, Gangapur Road, Nashik, or the Government's Savitribai Mahila Rajyagruha at Aurangabad, where the girl can be lodged. Likewise, we permit the Petitioner (biological mother) and the pregnant lady (would be mother) to opt for either of these shelter homes. If that happens with the consent of the biological mother and the 'would be mother', we direct the concerned authorities at the relevant place to ensure that a female Psychologist is provided to take care of the 'would be mother'.

25. We also direct the said organization to ensure that proper medical assistance is provided to the 'would be mother' and she shall be given every assistance to be admitted in the hospital at the right time when the delivery is to occur. Subject to following the medical protocol, if the 'would be mother' desires to hand over the child in adoption, she would be at liberty by following due procedure laid down in law. We leave option open to the Petitioner to choose a shelter home, either at Nashik or the Government's Savitribai Mahila Rajyagruha at Aurangabad.

26. The District Officer, Women and Child Development Department at Nashik or at Aurangabad, as the case may be, would assist the 'Would Be Mother' and shall have interaction with her on routine basis in order to monitor her condition.

27. Besides medical assistance, all other facilities as are normally made available to the inmates of the Mother Home and especially to the pregnant women, would be extended to her. So also, the assistance of a counselor/psychiatrist/ motivator, would also be extended to her in order to ensure that she is at peace and is in a stable physical and mental condition.

28. Pursuant to the above, in the event, the petitioner needs any assistance beyond what is provided under this order or if she is in any difficulty and requires legal or medical assistance, she is at liberty to make such request directly to the concerned authorities or through a civil application in this Court. After the child is delivered and the time is ripe for the petitioner to leave the Mother Home, she is at liberty to take a decision as to whether, she desires to keep the child or seek assistance of the Child Welfare Committee.

29. The **Writ Petition is, accordingly, disposed off.**

30. Rule is accordingly discharged.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan