IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10704 OF 2023

XYZ ... **Petitioner**

VERSUS

The State of Maharashtra, ... **Respondent**
Through it's Principal Secretary,
Health Department, Mantralaya,
Mumbai 32

Mr. Vithal M. Chate, Advocate for the Petitioner
Mr. A. V. Deshmukh, AGP for the Respondent-State.

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

DATE : 29th August, 2023

ORDER:

1. On 28th August, 2023, we had passed the following order:

"1. This matter was mentioned at 10.30 a.m. Considering the urgency, we have taken up this matter on the production board.

2. The mother of the minor girl is the Petitioner before us. The minor was taken for the medical check up. She is 13 years and 8 months old, her date of birth being 16.12.2009. The minor was examined in a private hospital and after she was informed on 21.08.2023 that the minor is pregnant, that the Petitioner approached the Tophkhana Police Station on the same day. A MLC was registered and by completing the formalities, the minor was referred to the Police Station, Ambhora which has registered an FIR on 22.08.2023. The biological brother of the minor's father is said to have committed the offence, punishable u/s 376 of the IPC.

3. Considering the grave urgency, at the time of mentioning itself, we informed the learned Advocate for the Petitioner to ask the Petitioner and her minor daughter to start from their village Shirapur, Tal.Ambhora since they desired to get her examined at the Government Medical College and Hospital, which is the nearest Government medical facility, for termination of the pregnancy.

4. In view of the above, we direct the Dean of the Government Medical College and Hospital at Aurangabad to refer the case of the minor to the Board for a medical check up at 4.00 p.m. since the minor and her mother would be reaching the hospital around 3.45 pm. The Medical Board shall examine the minor and submit it's detailed report in proper format, as is prescribed in Law. The Board will also express an opinion as to whether medical termination of the pregnancy can be permissible and if yes, whether a live child is likely to be born ?

5. List this petition on 29.08.2023 in the "passing orders" category.

6. The Medical report be tendered to the Court through the learned AGP."

2. Today, we have received the report of the Medical Board in Form-D, Sub-clause (ii) of Clause (b) of Rule 3A of the Rules framed under the Medical Termination of Pregnancy Act, 1971, dated 28.08.2023. The report alongwith the covering letter addressed to the learned AGP dated 28.08.2023 (two pages), is taken on record and collectively marked as "X" for identification.

3. The relevant portion of the medical report indicates as under:

"2. Available reports and investigations:

Sr. No.	Report	Opinion on the findings

3. Additional Investigations (if done):

Sr. No.	Investigations done	Key findings
1	USG Obstetrics	Single live intrauterine pregnancy of 29 weeks 5 days gestation, Effective fetal weight 1342 grams
2	CBC, Urine routine	HB-8.3 gm, PCV 24%, TLC 6700, PLATELET 3.3 Lac/mm, urine routine normal

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

Justification for the decision:

- Survivor is minor & pregnancy is due to sexual assault, termination can be done.
- After termination of pregnancy, child will be born alive.

Survivor had moderate anemia, may require blood/blood products transfusion. There is possibility of a surgical intervention (hysterotomy) and other unforeseen risks involved in termination of pregnancy. After termination of pregnancy, child will be born alive and there will be morbidities due to premature birth & low birth weight. A live baby requires Guardian for further care."

4. It is, thus, apparent that firstly, the minor, who is around 13 years and 9 months old, is moderately anemic. If the termination of pregnancy is to be carried out, she would require blood/blood products transfusion. There is a possibility of surgical intervention (hysterotomy) and other unforeseen risks involved in termination of pregnancy. After such termination is carried out, the child will be born alive and since

the foetus is single live intrauterine with pregnancy of 29 weeks 5 days gestation as on 28.08.2023, the child would suffer morbidities due to premature birth and low birth weight. A live baby would require the guardian for further care.

5. It is obvious that if the child is to be brought into this world through the termination of pregnancy mode, the child will be born alive with a beating heart and as per the report of the Medical Board, the child would survive. However, it would suffer morbidities due to premature birth. This would seriously hamper the growth and fitness of the child in future. So also, the chances of adoption, if the child is to be put up for adoption by consent of the minor and her parents, would be dampened.

6. It is rare that a child with deformities could be adopted by an childless couple. If the child is born after the complete gestation of 40 weeks, it would be fully developed and would be a healthy baby. Nature has it's own way of developing the foetus and external medical innervation cannot compensate or supplement the natural growth of a child in the womb of the mother. If a well grown and healthy baby is born, the chances of adoption would brighten as any issue-less couple would be happy to adopt a healthy baby.

7. The learned Advocate for the Petitioner, having gone through the medical report, sought a pass over to take instructions from the parents of the minor. Thereafter, the matter was called out and the learned Advocate submitted on instructions that the parents are agreeable to continue with the pregnancy looking at the aspect of the high risk to their minor daughter, if she has to suffer medical termination of pregnancy, as well as the condition of the foetus. They have further stated that they would take care of the minor and she would reside with them in their own home. They do not want to lodge her in any shelter home. The only request made by the parents is that the minor needs a 'registration as a would be mother' in a medical hospital or facility. If this Court directs the Government Rural Hospital through it's Medical Officer at Taluka Ashti, District Beed to register the minor without disclosing her identity and by mentioning the name of the parents, about which, secrecy could be maintained, it would assist the parents to take the minor to the said hospital at the time of the delivery of the child when she would suffer natural labour pains.

8. We appreciate the mindset and the view of the parents of the minor who have shown graciousness. They have shown great concern about the health of the minor as well as the baby which is to be born. We also appreciate their gesture of willing to take care of the minor in

their own home. They appear to be pragmatic and warm hearted parents.

9. In this circumstances, we direct the Medical Officer of the Government Rural Hospital at Ashti to register the minor, without disclosing her name, by mentioning her identity as "XYZ" and issue her the Registration card. We also direct the Medical Officer to ensure that the minor gets appropriate medical attention and treatment as and when her parents feel the necessity of carrying her to the said medical facility, either for a check-up or for a routine sonography test to assess the growth of the foetus which is presently said to be normal as per the medical report. We also direct the Medical Officer to be extremely supportive to the minor and her parents in this case and ensure that if she requires any assistance of a specialized Doctor or a psychologist for counseling, the Medical Officer would immediately get in touch with the Dean, Government Medical College and Hospital at Aurangabad to ensure that the minor gets appropriate assistance at appropriate stages and as when necessary.

10. Since the father of the minor is working as a Labourer and is hand to mouth, we direct the Government Rural Hospital, Ashti, Civil Hospital, Beed as well as the Government Medical College and Hospital at Aurangabad, not to charge any fees and she or her parents will not

have to pay for any charges even at the time of the delivery of the child or for medication, as and when required.

11. Besides the above, if at all the Petitioner is in any difficulty, we grant liberty to the Petitioner as well as the learned Advocate representing the Petitioner today, to file a civil application for directions with regard to any issue in connection with the minor, her health and medical assistance.

12. In the event, the parents feel the necessity or need to admit the minor in a private hospital, the parents are at liberty to show the registration certificate/card of the Government Rural Hospital, Ashti and on the basis of which, no private hospital shall refuse admission to such minor. However, necessary procedure with regard to the medico legal case shall be followed by the Hospital and the Investigating Officer of the Ambhora Police Station would be informed about the same.

13. After the child is delivered and the time is ripe for adoption, the mother is at liberty to take a decision as to whether, she desires to keep the child or seek assistance of the Child Welfare Committee for giving the child for adoption. In these circumstances, paragraphs 132, 133 and 134 of the judgment in **XYZ vs. Union of India and others, 2019 (3) Bom. CR 400**, would be applicable and if the mother

does not desire to keep the child, the Child Welfare Committee would follow the prescribed procedure for declaring the child to be legally "free for adoption" and adopt appropriate steps to place the child in an appropriate agency or orphanage as is prescribed in law. Paragraphs 131 to 134 of the judgment in XYZ (supra) read as under:-

> *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.*
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> *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.*
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> *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. Vagyani 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."

14. Since an FIR has been registered in this case, we are conscious that a sample for the DNA test will have to be taken for conducting the said test which would assist the concerned Court in the criminal trial. The learned AGP informs us, upon consultation with the Medical Board, that it would be appropriate and safer to take such sample for DNA test after the Baby is born. We, therefore, direct the Investigating Officer of the Ambhora Police Station to keep in touch with the parents of the victim and watch the progress of the

victim's pregnancy and under due consultation with the District Civil Surgeon, ensure that the sample for DNA test is collected at the appropriate time for performing DNA test of the Baby.

15. We direct the learned Registrar (Judicial) of this Court to serve a copy of this order on the Dean, Government Medical College and Hospital, Aurangabad, the Medical Officer of the Government Rural Hospital at Ashti, the District Civil Surgeon of the Civil Hospital, Beed and the Station House Officer/Investigating Officer of Police Station, Ambhora.

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

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

JPChavan