



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 7828 OF 2023

(XYZ MINOR THROUGH HER NATURAL GUARDIAN MOTHER NAMELY SMT.NILIMA
W/O. RANJIT AATOTE VS. UNION OF INDIA AND OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Smt. Soniya Gajbhiye, Advocate for the petitioner.
Smt. Deepali Sapkal, AGP for respondent(s) State.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : NOVEMBER 29, 2023

This petition is filed by victim of sexual assault through her natural guardian i.e. mother, seeking direction to the Health Authorities, to terminate the pregnancy of the petitioner victim. The facts necessary for deciding the present petition are as under :-

2) Pursuant to a complaint lodged by the petitioner i.e. victim FIR No.0374/2023 for the offence punishable under Section 376, 376(2)(n), 376(3) of the Indian Penal Code, 1860 (IPC) and under Sections 3, 4, 5(j)(2),5(l) and 6 of the Protection of Children from Sexual Offences Act, 2012(POCSO), came to be registered on 31/10/2023 at Police Station Murtijapur (Rural), District Akola.

3) As the petitioner victim was carrying pregnancy, she was subjected to medical examination. The parents of the petitioner have submitted their consent to the Child Welfare Committee, Akola, thereby extending their consent for subjecting the petitioner victim to undergo medical termination of pregnancy. The pregnancy is of 24 weeks. It appears that she

was not subjected to termination of pregnancy which has prompted her to prefer this petition.

4) This Court after having issued notice, received a report from the Medical Board forwarded by Dean, Government Medical College, Akola, wherein the Board has made the following observations :-

“As per the rules, through examination was done by the medical board, petitioner has gestational age of 27 weeks 06 days on 25/11/2023 and following conclusions were drawn :

- 1. Petitioner is 14 years old, unmarried pregnant (minor).*
- 2. She is under POCSO act, 2012 under section 376.*
- 3. She has pregnancy with gestational age > 24 weeks and there is no identifiable congenital anomaly detected on recent anomaly scan. Hence permission for termination of pregnancy is denied.*
- 4. Termination of pregnancy can be done only after the permission from Honourable court.*

** Report of this meeting is handed over to accompanying LPC Reena Gawande, B.no.642, for further action.”*

5) In the aforesaid background, we have heard respective counsel for the parties. The learned counsel for the petitioner by inviting our attention to the social and financial condition of the petitioner and her parents would urge that they are willing to permit the Authorities to subject the petitioner to undergo medical termination of pregnancy, as the continuation of such pregnancy will not only cause hardship, but will also be adverse to the mental and physical health of the victim girl. Reliance is placed on the decision of the Apex Court in the matter of **XYZ vs. The State of Gujrat and others** reported in **2023 LiveLaw(SC)680**, particularly paragraphs 13, 17 and 19.

6) The learned APP while assisting the Court would submit that the Medical Board is of the view that victim girl is

aged about 14 years and victim of offences punishable under the provisions of the POCSO Act, and therefore, she cannot be subjected to undergo medical termination of pregnancy, as the gestational period is stated to be above 24 weeks and no abnormality in the scan is noticed.

From the above it is apparent that the petitioner is clinically fit to undergo the procedure.

7) We have considered the aforesaid submissions in the light of the reliance placed by learned APP on the Judgment of the Apex Court in matter of **X vs. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Anr., [Civil Appeal No.5802 of 2022 arising out of SLP (C) No.12612 of 2022]**, so also the Division Bench Judgment in the matter of **'A' vs. State of Maharashtra and anr. [Writ Petition No.2823 of 2022 decided on 27th June, 2022]**.

8) The fact remains that the claim of the petitioner and her parents would require to be considered in the light of the provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971.

9) The fact remains that the victim girl is aged about 14 years and unmarried and her financial condition, as has been canvassed by the petitioner, is not such to overcome the trauma and in case she is made to deliver a child at such a tender age of 14 years, she will suffer immensely, thereby causing grave injury to her physical and mental health. In support of above observations support can be drawn from the explanation 1 to Section 3 of the MTP Act.

10) The Apex Court in the matter of *X vs. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Anr.* (supra) has considered the explanations to Section 3(2) of the Medical Termination of Pregnancy Act, 1971 (MTP Act). The Apex Court held that where a woman alleges that a pregnancy was caused as a consequence of rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to her mental health.

11) Apart from above the pregnancy can be terminated in a hospital established or maintained by the government, or any place approved for the purposes of the MTP Act either by the government or by a District Level Committee constituted in terms of Section 4(b).

12) Para 15 and 16 of the aforesaid judgment were referring one of the ground which is canvassed by the petitioner that a minor unmarried girl carrying pregnancy will suffer from social stigma.

13) The Apex Court in para 29 of the said judgment has observed that the social stigma surrounding single women who are pregnant is even greater and they often lack support from their family or partner.

14) The learned counsel for petitioner so also learned APP have invited our attention to the Judgment of the Apex Court in the matter of *XYZ vs. The State of Gujrat and others* (supra). The Apex Court in the aforesaid Judgment, particularly in paragraphs 13, 17 and 19 has observed thus :-

“13. In Indian society, within the institution of marriage, generally pregnancy is a reason for joy and celebration and of great expectation, not only for the couple but also for their families and friends. By contrast, pregnancy outside marriage, in most cases, is injurious, particularly, after a sexual assault/abuse and is a cause for stress and trauma affecting both the physical and mental health of the pregnant woman the victim. Sexual assault or abuse of a woman is itself distressing and sexual abuse resulting in pregnancy compounds the injury. This is because such a pregnancy is not a voluntary or mindful pregnancy.

17. More recently, in the case of X vs. The Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Ors., AIR 2022 SC 4917; this Court, in another three-judge Bench lead by Dr. D.Y. Chandrachud, J. (as the learned Chief Justice then was) observed that a woman can become pregnant by choice irrespective of her marital status. In case the pregnancy is warranted, it is equally shared by both the partners. However, in case of an unwanted or incidental pregnancy, the burden invariably falls on the pregnant woman affecting her mental and physical health. Article 21 of the Constitution recognizes and protects the right of a woman to undergo termination of pregnancy if her mental or physical health is at stake. Importantly, it is the woman alone who has the right over her body and is the ultimate decision-maker on the question of whether she wants to undergo an abortion.

19. The whole object of preferring a Writ Petition under Article 226 of the Constitution of India is to engage with the extraordinary discretionary jurisdiction of the High Court in exercise of its constitutional power. Such a power is vested with the constitutional courts and discretion has to be exercised judiciously and having regard to the facts of the case and by taking into consideration the relevant facts while leaving out irrelevant considerations and not vice versa.”

15) The pregnancy carried by the petitioner is not voluntary or mindful pregnancy. Same is alleged to be out of sexual assault/abuse. Once the parents of the victim girl have already extended consent and the expert Board of Doctors having opined that the termination will not be harmful and would not be life threatening to the petitioner victim, considering the fact that the petitioner is a victim of offences punishable under the provisions of POCSO Act, she being unmarried and minor girl aged about 14 years is entitled to the relief claimed in the

petition. Hence, we deem it appropriate to allow the present petition.

16) We direct the respondent No.4 before whom the petitioner undertake to appear on 30/11/2023 at 9.30a.m. to terminate the unwanted pregnancy of the petitioner immediately.

17) We further directed the said Authorities to preserve the DNA of the fetus for the purpose of investigation of the offence in question.

18) An authenticated copy be supplied to the learned counsel for the petitioner as well as the respondents for taking necessary steps.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)