

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 25.01.2023**

+ **W.P.(CRL) 221/2023**

MINOR R THR MOTHER H Petitioner

Through: Mr. Anwesh Madhukar, Ms.
Prachi Nirwan and Mr. Yaseen
Siddiqui, Advocates

versus

STATE NCT OF DELHI & ANR. Respondents

Through: Mr. Sachin Mittal, ASC for
State with Mr. Nishant
Chauhan and Mr. Abhishek
Tyagi, Advocates with SI
Nisha Rani, P.S. Shalimar
Bagh

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The petitioner, a minor, has approached this Court through her mother under Article 226 of Constitution of India, praying for issuance of directions by virtue of writ of Mandamus to the Respondents to conduct medical termination of her pregnancy under Medical Termination of Pregnancy Act, 1971, as amended in 2021 (hereinafter "MTP Act").

2. Facts and circumstances compelling the petitioner to file the instant petition are that in the month of September 2022, the minor

child R, i.e. petitioner, who is aged around 14 years, was sexually assaulted and raped by the accused named in the FIR. Initially, though the petitioner missed her period for four months, she did not inform her mother about the same as she was scared. However, after her mother H noticed the physical changes in her, she had disclosed to her mother about the sexual assault. At the instance of petitioner/victim R, an FIR bearing no. 76/2023 was registered at Police Station Shalimar Bagh under Sections 376/328 of Indian Penal Code, 1860, and Section 4 of Protection of Children from Sexual Offences Act, 2012.

3. Thereafter, the petitioner was taken to BJRM Hospital for her MLC and her UPT was conducted which was found to be positive. On 19.01.2023, when she underwent a Medical Test/USG from a Diagnostic and Imaging Centre, she was found to be 24 weeks and 5 days pregnant. The Investigating Officer on 20.01.2023 approached the Child Welfare Committee-X, District-Outer North & North West Delhi, Alipur and the petitioner along with her mother were produced before the Board, whereby they stated that they do not wish to continue with the pregnancy of the petitioner and that she wishes to continue her education. However, on perusing the case of the petitioner, it was found that she was beyond the permissible gestational age limit under the MTP Act, 1971, hence she was directed to approach this Court and seek judicial intervention.

4. By way of present petition, following directions and reliefs have been sought from this Court:

“i) Direct the Respondent No.2 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; and

ii) Further direct the Respondents No.1 & 2 to medically terminate the pregnancy of the Petitioner; and

iii) Direct the Respondent No. 1 to bear all the expenses necessary for the termination of the pregnancy of the Victim, her medicines, food etc.; and

iv) Direct the Respondent No.2 to preserve the terminal foetus for the purposes of DNA testing which would be required with reference to the criminal case which stands registered; and/or

v) Pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case” .

5. Learned counsel for petitioner submits that petitioner/victim is a minor girl child of 14 years who is a victim of sexual assault and unwanted pregnancy. Learned counsel for the petitioner has drawn attention of this Court to various judgments on the aspect which is before this Court for consideration. Reliance is placed upon the decisions of (i) *Venkatalakshmi v. State of Karnataka, Civil Appeal 15378/2017, dated 21.09.2017* (ii) *Ms X through Her Legal Guardian v. Government of NCT of Delhi & Anr., 2022 SCC OnLine Del 2642*, and (iii) *R. v. Union of India Represented by Secretary, Ministry of Women and Child Development & Ors. 2021 SCC OnLine Ker 808*, wherein the Hon'ble Supreme Court as well as Co-ordinate benches of this Court had allowed the termination of pregnancy of rape victim beyond the gestational age of 24 weeks. It is stated that the petitioner as

well as her guardian have patently expressed their consent to terminate the foetus, since the continuation of the pregnancy would result in grave mental injury to the Petitioner herein who is a rape victim.

6. The grave issue before this Court is whether a rape victim of 14 years, who is carrying the pregnancy of around 25 weeks, can be permitted to terminate the same.

7. In order to appreciate the contentions of the petitioner and decide the issue at hand, a quick reference to Section 3 of MTP Act is necessary, which is reproduced hereinunder:

“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 twenty weeks, if such medical practitioner is, or

(b) **where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the 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 any serious physical or mental abnormality.

Explanation 1.—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.—**For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.**

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:—

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.

(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.”

(Emphasis supplied)

7.1. The statutory law, under Section 3 of MTP Act provides that termination of pregnancy of a woman where it exceeds 20 weeks but does not exceed 24 weeks can only be allowed in special categories, and where the medical practitioners are of the opinion that continuance of such pregnancy would either involve a risk to the life of the women or cause grave injury to her physical health or grave injury to her mental health. The categories under which pregnancy can be terminated where pregnancy is between 20 to 24 weeks has been prescribed by the Central Government under the Medical Termination of Pregnancy,

Rules 2003 [as amended by Medical Termination of Pregnancy (Amendment) Rules, 2021], wherein seven categories have been provided which are as under: -

“3B. Women eligible for termination of pregnancy up to twenty-four weeks.—

The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub- section (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely:-

- (a) **survivors of sexual assault or rape or incest;**
- (b) **minors;**
- (c) change of marital status during the ongoing pregnancy (widowhood and divorce);
- (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];
- (e) mentally ill women including mental retardation;
- (f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and
- (g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.” .

(Emphasis supplied)

7.2. A perusal of the aforesaid Rule reveals that clause (a) relates to victims of sexual assault, rape or incest and clause (b) relates to minors.

In the present case, the victim falls under both, i.e. clause (a) and (b) as she is a minor aged around 14 years, who is alleged to have been raped. Therefore, the victim would fall under the special categories as enumerated by the Central Government under the rules notified as per the mandate of section 3(2)(b) of MTP Act.

7.3. Furthermore, Explanation 2 to the aforesaid provision explicitly provides that where pregnancy is alleged to have been caused by an act of rape, the anguish caused by such a pregnancy shall be presumed to constitute grave injury to the mental health of pregnant woman as required under Section 3(2)(i) of MTP Act. Therefore, it is not in dispute that in case of a minor victim who is alleged to be sexually assaulted or raped and as a consequence of which she has conceived, the injury that is caused to her mental health is presumed even statutorily.

7.4. The question before this Court now remains as to whether this Court, using its extraordinary powers under Article 226, should allow the termination of pregnancy of minor victim at the stage of around 25 weeks of pregnancy.

8. Mother of the victim child is also present in the Court and since the petitioner is carrying pregnancy beyond the permissible limit of 24 weeks as per amended act, the consent of the guardian of the minor child is required. On 24.01.2023, when the petition had come up for hearing, considering the urgency in this matter, and the fact that after the last medical examination of victim child on 19.01.2023 when she was found to be about 24 weeks and 05 days pregnant, one more week had already passed, this Court had deemed it appropriate to ask the

mother of the victim child in Court itself as to whether she has consent for the medical termination of pregnancy to take place in this case, in a hospital which has a board so constituted for this purpose. The statement of the mother H of victim child R was accordingly recorded by this Court.

9. Also on 24.01.2023, this Court had perused the medical records of the petitioner wherein it had been mentioned that as per the USG test, the gestational age of fetus was around 24 weeks and 05 days, as on 19.01.2023. Considering the urgency in the matter, this Court had directed the Investigating Officer to take the minor victim/petitioner for conducting her medical examination as per law, on 25.01.2023, before the Medical Board of Ram Manohar Lohiya Hospital, New Delhi constituted under the MTP Act, who were requested to do the needful on 25.01.2023 and furnish the report the same day.

9.1. In compliance of the aforesaid order dated 24.01.2023, the petitioner/victim was taken to Ram Manohar Lohiya Hospital, Hospital, New Delhi on 25.01.2023 and a 6-member Medical Board, chaired by Professor and Senior Consultant (Obstetrics & Gynecology) was constituted at 2:30 PM and the examination of the petitioner/victim was conducted. This Court has received the report, dated 25.01.2023, from the Medical Board of concerned Hospital at 5:30 PM, wherein it has been opined as under:

“...Miss R Aged 14 years, CR No. 57432 dated 25/01/2023 (MLC: 220418 dated 18/01/23 at Babu Jagjivan Ram Hospital) (W.P.(CRI)221/2023) was examined by the Medical Board for MTP cases in presence of her mother Mrs. H. History and available records were examined. Ms. R

was physically examined and ultrasound performed to confirm gestation and the report is attached in the hospital records.

The Board observes that:

- I. Ms. R alleges rape and the pregnancy is of 24 weeks (+/-) 1 week by clinical examination and Ultrasound
2. Ms. R expresses her desire to terminate her pregnancy.
3. Ms. R is physically and mentally fit to give consent for MTP
4. Ms. R was explained the procedure and related complications of MTP including need for hysterotomy.
5. Mrs. R is having competence to give consent for MTP.

The Medical Board opines that Ms. R is physically and mentally fit to undergo MTP. Ms R may be admitted to Unit II Dr Indu Chawla, (Senior consultant & HOU) after necessary formality.

Members:

- Dr. Renuka Malik (Chairperson)
- Dr. Vivek Diwan (Member)
- Dr. Preeti Sainia in place of Dr. Shushma Rani (Member)
- Dr. Jaya Chawla (in place of Dr. Anjum Ara) (Member)
- Dr. Sarita Jilowa (Member)
- Dr. Gautam Sharma (in place of Dr. Mina Chandra). (Member)..."

9.2. The opinion of the Medical Board is that the petitioner/victim is physically and mentally fit to undergo MTP and that the pregnancy is of 24 weeks (+/- one week) and therefore, she may be admitted to the concerned unit of the concerned doctor under Senior Consultant and HOU for carrying out the same after necessary formalities. The

petitioner was explained the procedure and related complications of MTP including need for hysterotomy by the Board.

10. Under similar circumstances, the Hon'ble Apex Court in *Venkatalakshmi v. State of Karnataka, Civil Appeal 15378/2017, dated 21.09.2017*, as well as Co-ordinate Benches of this Court in *Ms X through Her Legal Guardian v. Government of NCT of Delhi & Anr., 2022 SCC OnLine Del 2642* and in *Surekha Gautam Khobragade v. State of NCT of Delhi Through Department of Health and Family Welfare, W.P. (Crl.) 69/2021, dated 18.01.2021* had also allowed termination of pregnancies of more than 24 weeks in cases of rape victims.

11. Though the statute does not provide for termination of pregnancies over the gestational age of 24 weeks except in case of detection of substantial foetal abnormalities, the provision in regard to which is Section 3(2B) of MTP Act, the extraordinary powers of the Constitutional Courts, however, have been recognized even by the Hon'ble Supreme Court of India and exercised several times by the High Courts to allow termination of pregnancies even in cases where pregnancy has exceeded the limit of 24 weeks.

12. In the case of sexual assault, denying a women 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 she has a right in relation to her body which includes saying Yes or No to being a mother. Section 3(2) of the MTP Act reiterates that right of a woman. To force the victim to give birth to child of a man who sexually assaulted would result in unexplainable miseries.

One will shudder to think what a victim who is carrying such fetus in her womb must be going through each day, being reminded constantly of the sexual assault that she has undergone. Cases where sexual assault results into pregnancy of the victim are even more traumatic as the shadow of such tragic moment lingers on each day with the victim. It is this mental agony which has been taken into account by the MTP Act which lays emphasis on not only grave physical injury but also mental health of a pregnant woman. It therefore provides under Section 3(2)(i) that if the continuance of pregnancy would involve grave injury to the mental health of a pregnant woman, she can legitimately seek to terminate the same. In furtherance of the same intent, Section 3(2) Explanation 2 of the MTP Act provides that –

“Explanation 2.- 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.”

The present case stands covered under this explanation.

13. In this context, it is not in dispute that a female invariably has a right to make reproductive choices and decisions which are concerned with her bodily integrity and autonomy. Reliance in this regard can be placed upon the decision of the Hon’ble Apex Court in *X v. The Principal Secretary Health and Family Welfare Department & Anr.*, SLP (C) No(s).12612/2022 dated 21.07.2022, and *Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1*. The Hon’ble Apex Court in *Justice K.S. Puttaswamy (Retd.) and Anr v. Union of India*

and Ors. (2017) 10 SCC 1, has also observed that the choice regarding procreation is an integral part of right to dignity enshrined under Article 21 of Indian Constitution.

14. This Court takes note of the fact that Article 21 of the Constitution of India dealing with right to life invariably includes a life lived with dignity. The child herein is a victim of rape. Termination of pregnancy in cases, like present one, cannot be reduced merely to be defined as right of a woman sexually assaulted, but also to be recognized as a human right, as it affects dignified existence of a victim if the same is not permitted. It is not the privacy of the rape victim which is invaded by sexual assault, but her body is wounded and her soul is scared. It would not be appropriate to expect the minor victim who is a rape victim to take the burden of giving birth and raising a child, especially in a situation where she herself is passing through the age of adolescent. Doing so, will amount to asking a child to give birth and raise another child. Given the social, financial, and other factors that are immediately associated with the pregnancy, an unwanted pregnancy would surely have an impact on victim's mental health.

15. The Child Welfare Committee report, annexed with the instant petition, regarding interaction with the child is on record. Perusal of the same as well as interaction with the child and the mother with this Court, disclosed that the child has studied upto 5th standard and after return from the village, she has not been able to continue her studies, though she wants to study further. Having no permanent place to stay, the mother and the victim child are the victims of circumstances and misfortune which has befallen the young lady of tender years. Sexually

assaulted in absence of her mother who had gone to work, she was too scared to seek help or to even inform her mother about sexual assault fearing the consequences. Unfortunately, she was not aware due to her tender age that non-disclosure of this fact may further invite a more miserable situation which may be difficult to fix.

16. In these circumstances, this Court is inclined to direct as under:

- i. The petitioner/victim shall make herself available at 11:00 AM on 27th January, 2023 before the competent authority of Ram Manohar Lohiya Hospital, New Delhi for the purpose of medical termination of her pregnancy;
- ii. The Superintendent, Ram Manohar Lohiya Hospital, New Delhi and the Medical Board will ensure that the termination of pregnancy of the minor victim/petitioner is undertaken by competent doctors in accordance with the provisions of the MTP Act, its rules and all other rules, regulations and guidelines prescribed for the purpose;
- iii. A complete record of the procedure which will be performed on the petitioner for termination of her pregnancy shall be maintained by the Medical Board;
- iv. The doctors concerned shall also preserve the tissue of the foetus as the same may be necessary for DNA identification and other purposes, in reference to the criminal case which is registered against the accused by the petitioner/victim;

- v. The State shall bear all the expenses necessary for the termination of the pregnancy of the petitioner, her medicines, food etc.;
- vi. If the child is born alive, despite the attempts at medical termination of the pregnancy, the doctors concerned shall ensure that everything, which is reasonably possible and feasible in the circumstances and in contemplation of the law prescribed for the purpose, is offered to such child so that he/she develops into a healthy child.

16.1. This Court has passed the aforesaid directions after taking the informed consent of guardian of petitioner and after referring the matter to Medical Board, RML Hospital and perusing the opinion of Medical Board. Needless to say, the doctors concerned while performing the procedure for medical termination of pregnancy of petitioner herein are expected to keep every safety aspect in view.

17. The victim might have nowhere to step forward to, and may find herself at a loss as to what lies next for her in life after the termination of pregnancy. This Court is now posed with a question as to what happens to the victim of sexual assault with unwanted pregnancy, living with parents, who are not able to get her educated. This Court has dealt with jurisprudence of poverty which plays vital role while a criminal court deals with a case as the present one. This Court has already mentioned above that the social contexts in which crimes are committed and the victims at times suffer need to be kept in mind while one disposes of a petition.

18. In this case, unfortunately, the victim child has studied upto 5th standard and thereafter, has not been able to attend the school. Petitioner's family is working as a construction workers and therefore, has not been able to send their children for studies. In this tragic story of a girl of 14 years of tender age, though she wishes to study, she is forced to sit at home due to the circumstances forced by poverty. The means of livelihood of her father and mother is working as watchman at construction sites. They look after the same to ensure safety of such construction sites, but were unable to provide safe environment and educational facilities to their own daughter. This case speaks volumes about the need to execute the directions issued in several judgments and ensuring execution of such orders to provide rights of persons working and living at construction sites ensuring that the programs for ensuring safety and education of every child is achieved as one of the constitutional goals.

19. Poverty has its own multi-dimensions, and poverty has its own jurisprudence too. A judge cannot separate herself from the social contexts in which a crime is committed and a victim suffers. The present case is also an example of how one tragic event of sexual assault has changed the entire life of the family who is struggling to feed their children and end up with a minor daughter impregnated due to sexual assault.

20. Cognizance of the law and fact are not the only things which a judge has to take. It is also cognizance of the social contexts and the repercussions that an order may cause are also of significant importance. A judgment passed in a case, through its directions at

times, has the potential to bring about a positive change in a life and set right what has been unsettled by a stroke of tragic incident. This Court is faced with such a circumstance where it cannot stop itself at taking cognizance of only the facts of present case, but feels the need to further enter in the arena of taking cognizance of the sufferings, psychological trauma and sense of being defeated by the circumstances that this poor family is going through. The cognizance of the same forces this Court to explore the jurisprudence of poverty and how a court exercising its extraordinary powers can bring about extraordinary positive change in the circumstances of a person badly defeated by its circumstances.

21. Article 226 of Indian Constitution empowers the High Courts to exercise its extraordinary powers to attain constitutional goal of justice to all and issue appropriate writs as well as other orders which it may deem fit in the facts and circumstances of a case. Thus, the extraordinary powers of the Court do not limit the Court only to the prayer sought before it but also give a relief beyond the relief sought.

22. In the circumstances of this case, though this Court has been approached for medical termination of pregnancy of a victim of sexual assault, the interaction of the victim and her mother with this Court has forced this Court's judicial conscience to also ensure that the victim child is relieved of trauma of an unwanted sexual assault created pregnancy is able to lead a meaningful life which is not limited by her poverty. The fact of her not being able to get educated despite wanting to go to a school makes this Court note that the facilities extended by various Government Schemes is not even known to majority of people

who might be the beneficiary of same.

22.1. This Court directs the Secretary, DSLSA to make outline of a programme for such workers in the city through its secretaries in all districts of Delhi at the construction sites so that such workers are informed about their right to education. The students of law colleges and other colleges under their programme of SUPW can arrange some programmes at construction sites, the students can volunteer for such purpose and can educate them about their educational rights and may pass their own creativity skills as well as basic education to them.

23. This Court notes further with a sense of sadness that in such cases the termination of pregnancy is not the end of the road of misery rather it takes another.

23.1. In the circumstances, as this Court is now confronted with, this Court deems it appropriate that the victim of tender age before this Court who wants to educate herself and be of value to the society and keeping in mind the constitutional duty of this Court deems it appropriate to direct the SHO concerned to ensure that after the MTP and the period of rest advised is over for the victim child, she will be admitted to a Government school nearby. This direction is being passed lest the victim faces another road block in securing admission in Government school due to her circumstances.

23.2. The Secretary, DSLSA is also requested that while they are doing commendable job in Delhi to educate people regarding their rights including legal rights, they may also explore possibility and frame a scheme where such victims are counselled and informed about their right to education and help them secure admission in a State run

school in appropriate cases. The victim child and her mother have expressed their willingness for the child to be admitted in a school. They have been counselled that they are entitled to certain rights which will be further told to them by DSLSA and they have been referred and directed to the Secretary, DSLSA concerned for the same.

24. It is also pertinent to note that the victim child was carrying pregnancy of 25 weeks when she was produced before this Court. Due to financial constraints, they were able to file a writ petition only through Delhi High Court Legal Services Committee. In these circumstances, this Court feels that crucial time is lost in the process of passing orders for medical examination of victim by a board in case of 24 weeks or above of pregnancy due to sexual assault which further endangers her life.

24.1. Considering the same, this Court passes the following guidelines to be followed by the investigating officers, *in cases where pregnancy exceeds 24 weeks*, which will be circulated through the Commissioner of Police to all investigating officers concerned:

- i. At the time of medical examination of a victim of sexual assault, it will be mandatory to conduct a Urine Pregnancy Test, as in many cases, this Court has noticed that such test is not conducted.
- ii. Upon the victim being found pregnant due to sexual assault, and in case the victim is major gives her consent and expresses her desire for conducting medical termination of pregnancy, the concerned investigating

officer will ensure that on the same day, the victim will be produced before such Medical Board envisaged under Section 3 of MTP Act, which this Court has been informed is constituted in following four hospitals in Delhi: (i) All India Institute of Medical Sciences (AIIMS), New Delhi, (ii) Dr. Ram Manohar Lohia Hospital, New Delhi, (iii) Safdarjung Hospital, New Delhi, and (iv) Lok Nayak Jai Prakash Narayan Hospital, New Delhi.

- iii. In case a minor victim of sexual assault is carrying pregnancy, upon the consent of her legal guardian and desire of such legal guardian for termination of pregnancy, the victim will be produced before such Board.
- iv. In case a minor victim is examined by such Board, appropriate report will be placed before concerned authorities, so that if an order is being sought regarding termination of pregnancy from the Courts, the Court concerned does not lose any more time and is in a position to pass an order on the same expeditiously.
- v. As per Section 3(2C) and 3(2D) of MTP Act, it is mandated that the State Government or Union Territory has to ensure that the Medical Boards are to be constituted in the hospitals. The Court is informed that such boards are not available in hospitals in each district, causing inconvenience to the Investigating Officers as well as to the victim at times who has to be taken for MTP and for

further examination. Thus, State Government/Union Territory should ensure that such mandate of Section 3(2C) and 3(2D) of MTP Act, are complied with and such Boards are constituted in all Government Hospitals which have proper MTP Centres and it should be mandatory to have such Boards constituted before hand.

24.2. The Ministry of Health Affairs, Government of NCT of Delhi and Union Ministry for Health Affairs will share the compliance of the aforesaid guidelines/directions with this Court within two months.

25. Before parting with this case, this Court wants to place on record its appreciation for the assistance rendered by the Medical Board, which has conducted the medical examination of the petitioner and provided its report within very short period of time of one day. This Court further appreciates the efforts of learned counsels for the petitioner as well as State for assisting the Court. The efforts of the Investigating Officer and promptness with which she got the medical examination of the petitioner conducted after registration of FIR is also appreciated.

26. The present writ petition is disposed of in above terms.

27. A copy of this order be forwarded by Registry to Investigating Officer, SHO concerned, and Superintendent, Ram Manohar Lohiya Hospital, New Delhi for information and compliance. Copy be also forwarded electronically.

28. Registry is also directed to forward a copy of this order to (i)

Secretary, DSLSA, (ii) Commissioner of Police, Delhi, (iii) Secretary, Ministry of Health & Family Welfare, Government of NCT of Delhi and (iv) Secretary, Ministry of Health & Family Welfare of India for taking note of its contents and ensuring compliance.

29. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 25, 2023/ns

