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

% **Date of Decision: 03.11.2023**

+ **W.P. (CRL) 3239/2023**

MINOR L THR GUARDIAN J

..... Petitioner

Through: Mr. Anwesh Madhukar
(DHCLSC) with Ms. Prachi
Nirwan, Mr. Devesh
Khanagwal, Advocates
alongwith victim Minor L in
person

versus

STATE & ANR.

..... Respondents

Through: Mr. Yasir Rauf Ansari, ASC
(Criminal) for the State with
Mr. Alok Sharma, Mr. Vasu
Aggarwal, Advocates and SI
Preeti, P.S. Seemapuri, Delhi

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

SWARANA KANTA SHARMA, J (ORAL)

CRL.M.A. 30111/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.



W.P. (CRL) 3239/2023

3. The instant writ petition under Article 226 read with Article 21 of Constitution of India as well as Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed seeking following reliefs:

- “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 as warranted under Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971, and;
- ii) Further direct the Respondents No.1 & 2 to medically terminate the pregnancy of the Victim/Petitioner in view of the Explanation No. 2, Section 3(2) of the Medical Termination of Pregnancy Act, 1970 (as amended till date), and
- iii) Direct 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 fetus 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.”

4. The present case unfolds the unfortunate tale of a 16 years old victim who is carrying pregnancy of gestational period of 25 weeks, seeking medical termination of pregnancy. The victim having lost both her parents is presently living with her aunt. She had lodged a complaint with the police regarding molestation by her paternal uncle, however, during her medical examination, when she discovered that she was pregnant, she admitted that the pregnancy was a result of her relationship with a boy named Aryan, who had sexually assaulted her in his flat. On 31.10.2023, the petitioner had



approached CWC, District Shahdara and North West with a request of terminating a foetus. The CWC had sought medical opinion from the designated hospital and had adjourned the case to 13.11.2023. The petitioner had again approached respondent no. 2 hospital with request to termination of pregnancy which was orally dismissed since the current gestational age of the foetus was beyond 24 weeks.

5. By way of this petition, the medical termination of pregnancy of the victim has been sought since the minor victim in this case has conceived due to sexual assault.

6. Learned counsel for the petitioner submits that the victim herein is a minor girl child of 16 years who is a victim of sexual assault and unwanted pregnancy and thus, the petitioner has approached this Court seeking issuance of directions for forming of medical board, submitting an opinion qua the medical termination of pregnancy of the victim child petitioner and for medical termination of the pregnancy of petitioner/victim. It is stated that since the pregnancy is a result of sexual assault and the victim child herein is only 16 years of age, appropriate direction be issued for termination of pregnancy, after directing respondent no. 2 i.e. G.T.B. hospital, Delhi to constitute a medical board for termination of pregnancy and preserving the foetus for the purpose of DNA test.

7. In the present case, CWC had passed certain direction vide order dated 31.10.2023, the relevant portion of which reads as under:

“ Directions

1. **The Child is handed over to IO and is directed to seek** proper medical opinion in this matter from the designated hospital as per the prevailing laws and take an



appropriate action for the well-being of the child. Further submit the report before CWC-V on or before the next date of follow up.

2. BBA is directed to assign the support person in this matter to provide emotional and psychological support to the child and submit the report on the next date of the follow up.

3. DCPU-II is directed to conduct the SIR and submit the report on the next date of the follow up.

Next date of follow up 13.11.2023.”

8. This Court notes that the victim has not yet been examined by a Medical Board as envisaged under the Medical Termination of Pregnancy Act, 1971.

9. Before advertng to the merits of the case, this Court deems it appropriate to discuss the statutory framework governing medical termination of pregnancy of rape victims wherein such pregnancy exceeds the gestational period of 24 weeks. This Bench in judgment titled *Minor R Thr. Mother H v. State (NCT of Delhi) 2023 SCC OnLine Del 383, dated 25.01.2023*, had discussed the law on the same including judicial precedents and the relevant portion of judgment is extracted hereunder for reference:

“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.

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.

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.



10. In case of *Minor R Thr. Mother H (supra)*, this Bench while allowing the prayer of the minor victim of sexual assault for medical termination of pregnancy, this Bench had passed the following guidelines and directions:

“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...”

(Emphasis supplied)

11. Thus, *vide* the aforesaid judgment, this Bench had passed guidelines and directions to ensure that precious time for medical termination of pregnancy of rape victims is not lost in the process of seeking directions from the Court for constituting a medical board and thereafter issuance of orders for medical termination of pregnancy. **The said directions were passed keeping in mind that every day, every hour, every minute of such pregnancy, which is**



a result of sexual assault, is not only traumatic and affects the psychological health of a victim and her family, but also is critical for her physical health and welfare, in case the termination of pregnancy is to take place.

12. Further, this Bench *vide* order dated 01.08.2023 had listed the aforesaid matter for furnishing of compliance report, which was filed on behalf of Union of India on 17.08.2023 and on 21.08.2023, the following order was passed:

“2. The Union of India has filed the compliance report dated 17.08.2023, by way of which this Court has been informed that:

- i. the Govt. of NCT of Delhi vide Notification dated 03.04.2023 has constituted the Medical Boards in several Hospitals in Delhi;
- ii. in compliance of the order of this Court, Union of India vide its letter dated 11.08.2023 had directed the concerned Department of Govt. of NCT of Delhi to comply with the directions of this Court as contained in the judgment dated 25.01.2023;
- iii. pursuant to aforesaid letter issued by Union of India, the concerned Department of Govt. of NCT of Delhi has furnished an action taken report dated 14.08.2023.

3. In compliance of directions passed by this Court, the notification dated 03.04.2023 was issued vide which medical boards were constituted in 13 Hospitals in National Capital Territory of Delhi. The said notification reads as under:

4. This Court takes note of the fact that the concerned Department of NCT of Delhi has complied with the order/directions of this Court dated 25.01.2023 in its letter and spirit. **This Court expresses appreciation for the concerned authorities/Union of India that they have taken note of the emergent situation regarding termination of pregnancy of the victims wherein the pregnancy period exceeds 24 weeks and have included**



all the directions of this Court in the notification which was circulated, as reproduced above, after constituting the medical boards as required under law.

5. This Court further **hopes that the Delhi Police and the doctors concerned will diligently follow the directions** which have now been circulated vide notification dated 03.04.2023. The notification also notifies the Government and Private hospitals and the medical boards constituted therein in compliance of the order of this Court.

6. **With this, the compliance of the order dated 25.01.2023 has been made which will ensure that a victim carrying pregnancy of period of more than 24 weeks, will face no problem when she is produced before the Court seeking appropriate directions for termination of pregnancy, so that crucial time is not lost in the process of passing orders for medical examination of victim by a medical board in case of pregnancy due to sexual assault which further endangers her life...."**

13. However, this Court notes with a strong sense of **disapproval and displeasure** that the judgment passed by this Bench dated 25.01.2023 in *Minor R Thr. Mother H (supra)* wherein guidelines and directions were issued regarding medical termination of pregnancy of rape victims, though on paper, were shown to have been complied with, however, the present case reveals the reality that the said directions are not being followed either by the police or by the hospitals concerned.

14. This Court is surprised **that though on paper this Court has been informed that its order has been complied with which was recorded vide order dated 21.08.2023**, the investigating officer and the learned counsel for the victim states that when they had approached the concerned hospital i.e. respondent no. 2, the doctors concerned had refused to give an opinion regarding medical



termination of pregnancy in absence of a judicial order. However, as noted in preceding paragraphs, in terms of directions issued by this Bench in *Minor R Thr. Mother H (supra)*, the hospital and the doctors concerned were duty bound to give their medical opinion as to whether the minor victim of sexual assault was fit to undergo medical termination of pregnancy.

15. The present petition is a result of such indifference to the directions issued by this Court as even the medical opinion was not given by the hospital concerned, which led the minor victim to knock the doors of this Court even for constitution of medical board to assess her medical condition. In this regard, this Court is also constrained to note that *vide* order dated 21.08.2023, this Court had also observed that in compliance of the judgment of this Court in *Minor R Thr. Mother H (supra)*, a notification had been issued by the Government of NCT of Delhi *vide* which medical boards were constituted in 13 Hospitals, including Guru Teg Bahadur Hospital, Delhi i.e. respondent no. 2 where the victim herein was taken for obtaining medical opinion regarding medical termination of her pregnancy.

16. Therefore, this Court notes with **strong sense of disapproval** that the doctors concerned had not given any opinion regarding termination of pregnancy of the victim of sexual assault despite directions of this Court and notification constituting medical boards in this regard issued by Government of NCT of Delhi in compliance of order of this Court. It is also noted that the investigating officer had also not moved any application in writing seeking medical



opinion from the concerned hospital in this regard, but the investigating officer, who was present in the Court during the course of hearing of the present case, has stated and submitted before this Court that an oral request had been made by her for seeking medical opinion regarding termination of pregnancy of the victim herein, which was orally turned down by the concerned doctor.

17. Thus, the situation at hand presents a perfect example of the judicial orders passed by this Court being complied with on paper but not in its spirit, thereby compromising the physical well being of the victim.

18. In such circumstances, considering the gravity of the situation as the victim is 16 years of age and the period of pregnancy is more than 25 weeks, this Court deems it appropriate to direct as under:

- i. The minor victim herein will be produced before the Superintendent, Guru Teg Bahadur Hospital, Delhi tomorrow i.e. 04.11.2023 at 10:00 AM by the investigating officer (IO) concerned;
- ii. The Superintendent, Guru Teg Bahadur Hospital, Delhi is directed to ensure that the victim is examined immediately by the Medical Board constituted at the hospital, *vide* notification dated 03.04.2023 issued by Government of NCT of Delhi, tomorrow itself i.e. 04.11.2023;
- iii. **In case the Medical Board opines that the victim herein is physically and mentally fit to undergo medical termination of pregnancy:**
 - a. the Superintendent, Guru Teg Bahadur Hospital, Delhi



shall ensure that all **necessary arrangements** are made for the purpose of medical termination of her pregnancy which shall be conducted at the earliest and preferably **within 24 hours of obtaining opinion of Medical Board**;

- b. The Superintendent, Guru Teg Bahadur Hospital, 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;
- c. 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;
- d. 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;
- e. The State shall bear all the **expenses** necessary for the termination of the pregnancy of the petitioner, her medicines, food etc.;
- f. **If the child is born alive, despite the attempts at medical termination of the pregnancy, the Superintendent, Guru Teg Bahadur Hospital, Delhi,**



shall ensure that everything, which is reasonably possible and feasible in the circumstances is offered to such child, and the Child Welfare Committee concerned shall do the needful in accordance with law;

g. The Superintendent, Guru Teg Bahadur Hospital, Delhi shall also file a **compliance report before this Court within 24 hours** of conducting medical termination of pregnancy of the minor victim.

iv. However, it is made clear that in case the Medical Board is of the opinion that the victim herein is either physically or mentally unfit to undergo medical termination of pregnancy, the Superintendent, Guru Teg Bahadur Hospital, Delhi shall file the medical report before this Court forthwith with the necessary observations, tomorrow itself i.e. **04.11.2023 by 3:00 PM for further directions.**

19. The Registry is directed that the matter shall be put up for compliance/directions as soon as the compliance report is filed by the Superintendent, Guru Teg Bahadur Hospital, Delhi.

20. **Before parting with this case**, this Court makes it clear that it is taking a lenient view and is not issuing any contempt notice to the hospital/respondent no. 2 for refusing to give medical opinion, or taking any action against the investigating officer for her not producing the victim before the medical board though she was



bound to do so by the directions passed by this Bench in *Minor R Thr. Mother H* (*supra*), since a benefit is being given to all concerned that the aforesaid directions, which had been taken on record by the Government of NCT of Delhi and Union of India in August, 2023 itself, may not have been adequately brought to the notice of all the concerned parties including the investigating officers and all the hospitals in Delhi.

21. In these circumstances, this Court **unequivocally** directs that in future, such lapse on the part of concerned authorities will be treated seriously as such lapses can adversely affect the physical well-being of child victim, and each passing day poses threat to the life of minor victim and also makes it difficult to carry out medical termination of pregnancy.

22. This Court once again emphasises and directs that the copy of this judgment as well as judgment dated 25.01.2023 in case titled *Minor R Thr. Mother H v. State (NCT of Delhi) 2023 SCC OnLine Del 383*, be forwarded to (i) Commissioner of Police, Delhi, (ii) Director, Delhi Police Academy, (iii) Secretary, Ministry of Health & Family Welfare, Government of NCT of Delhi, (iv) Secretary, Ministry of Health & Family Welfare of India, and (v) Secretary, DSLSA.

23. **The Commissioner of Police, Delhi shall ensure that the directions issued by this Court are circulated to all the SHOs in Delhi and all the investigating officers for necessary compliance. The Director, Delhi Police Academy shall ensure that the necessary information regarding this issue is incorporated in the**



training curriculum of Delhi Police Academy. The Secretaries of Ministry of Health & Family Welfare, Government of NCT of Delhi, and Ministry of Health & Family Welfare of India shall ensure that the aforesaid directions are circulated in all the Government as well as Private Hospitals in Delhi for necessary information and compliance. The Secretary, DSLSA is directed that necessary information regarding the directions issued by this Court shall be made available and uploaded on the websites of DSLSA.

24. This Court as part of its constitutional duty once again reiterates that the directions passed by this Court regarding the lapses committed in medical assistance and examination as well as medical termination of pregnancy in relevant cases are not taken lightly by anyone concerned.

25. In this regard, the detailed directions contained in the judgment of *Nabal Thakur v. State* 2023 SCC OnLine Del 4765 and *Minor R Thr. Mother H v. State (NCT of Delhi)* 2023 SCC OnLine Del 383 are directed to be complied with in letter and spirit with utmost sensitivity towards the victims of sexual assault who need to be assisted by a positive and sensitive approach and not with indifference and empty formality.

26. It is also directed that all the concerned authorities hereinabove shall file a compliance report before this Court within a period of one month.

27. Accordingly, the present petition alongwith pending applications, if any, stands disposed of in above terms.



28. Copy of this order be given *dasti* under the signature of Court Master.

29. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 3, 2023/ns