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

+ **W.P.(CRL) 2877/2024**

MINOR S THR. HER MOTHER A

.....Petitioner

Through: Mr. Anwesh Madhukar, Advocate
(DHCLSC) with Ms. Prachi
Nirwan, Advocate with petitioner
and her mother in person.

versus

STATE & ANR.

.....Respondent

Through: Mr. Alok Sharma, Proxy Advocate
for Mr. Yasir Rauf Answari, ASC
(Crl.) for State with IO/WSI
Preeti, P.S. Seemapuri.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

17.09.2024

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Crl.M.A.28086/2024

1. Exemption allowed subject to just exceptions.
2. Application stands disposed of.

W.P. (CRL) NO. 2877/2024

3. The present petition involves a minor child, who is stated to be 15 years old. She is stated to be a rape victim and is lacking ordinary normal mental faculties, which has also impacted her physical abilities. It is stated that the said minor child is approximately at 27 weeks of gestational period. On the basis of the allegation that the minor child is a survivor of sexual assault, the intervention of this Court is sought to seek termination of her pregnancy even though the permissible limits as provided under the Medical Termination of Pregnancy Act, 1971 and as



amended by the Amendment Act of 2021, seems to have been crossed. It is stated that respondent no.2 hospital had verbally rejected the request of the mother of the minor child seeking medical termination of the pregnancy, despite the consent given by her. In context of the above allegations, FIR bearing no.558 dated 14th September, 2024 in P.S. Seemapuri, District Shahdara, under Sections 376 IPC, 1960 (erstwhile) and Section 6 of the POCSO Act, 2012 has been registered. The MLC conducted in Guru Teg Bahadur Hospital/respondent no.2 dated 14th September, 2024 after redacting the name of the minor child has also been placed on record. After perusal, this Court finds that the parents of the victim/minor child were unable to give any history of any sexual or physical assault. It is also be noted that the minor child is reportedly not in a condition to give any history keeping in view the lack of her mental faculties since birth. It has also been given to understand to this Court that the minor child is unable to speak. The MLC also reveals that the minor child was also referred to IHBAS for psychiatric evaluation. Possibly, the last three days being holidays, further medical examination and other examinations were not conducted.

4. The Investigating Officer, who is present in person, has handed over the bench, the Form 'D', which is the scheduled form, in which the opinion of the Medical Board for pregnancy termination beyond 24 weeks, as per the Medical Termination of Pregnancy Act, 1971, has been rendered and furnished, which is reproduced as under:-

“FORM D

(See sub-clause (ii) of clause (b) of rule 3A)

Report of the Medical Board for Pregnancy Termination Beyond 24 weeks

Details of the woman seeking termination of pregnancy:-



1. Name of the woman:
2. Age : 14
3. Registration/Case Number: CR No.GTB-66415, MLC No. – G140/24
4. Available reports and investigations:

S.No.	Report	Opinion on the findings
1.	Hb – 10.6 LFT – Bil 0.6, OT/PT – 17/29.	NAD
2.	KFT – Urea/creat. – 22/0.4 PT-NR – 10.6/0.83	NAD
	Bld. Group : B(+)	NAD

5. Additional Investigations (if done):

S.No.	Investigations done	Key findings
1.	USG 16/09 SLIUF, CA(+) liquor – adq., Cephalic, placenta, ant., Not low lying, BPD – 26+ 1 wk, limited evaluation of congenital anomalies.	
2.	HIV – Neg. viral markers – awaited	

6. Opinion by Medical Board for termination of pregnancy:
 - a) **Allowed (✓)**
 - b) Denied

Justification for the decisions: **a) minor**
b) Sexual assault survivor
c) Requested for medical termination of pregnancy.

7. Physical fitness of the woman for the termination of pregnancy:
 - a. **Yes (✓)**
 - b. No.

Members of the Medical Board who reviewed the case:



S.No.	Name	Signature
1.	Dr. Radhika A.G.	Sd/- 17/9/24
2.	Dr. Rachna Agarwal	Sd/- 17/9/24
3.	Dr. Ravi Sachan	Sd/- 17/9/24
4.	Dr. Rohit Sharma	Sd/- 17/9/24
5.	Dr. Seema Rani	Sd/- 17/9/24
6.	Dr. Rashmi Gera	Sd/- 17/9/24
7.	Dr. Sushma Kumari	Sd/- 17/9/24

Date and Time:..... ”

(emphasis supplied)

5. The Medical Board consists of seven Specialists, out of whom the Specialist at Srl. No.5 Dr. Seema Rani is stated to be a Psychiatrist. The Board, after having examined the minor child had in fact, advised “*medical termination of pregnancy*”. The opinion of the Medical Board regarding physical fitness of the minor child, is also in affirmative. Keeping in view the fact that the Medical Board itself has recommended medical termination of pregnancy under the Medical Termination of Pregnancy Act, 1971, this Court sees no reason for any legal impediment as to why such orders be not passed.

6. The mother is also present in person in Court and has given her unqualified consent for conducting medical termination of pregnancy of her minor daughter, since the minor daughter is a person having deprivation of mental faculties and unable to comprehend and give her consent in that regard.

7. Accordingly, the Medical Superintendent of respondent no.2/Guru Teg Bahadur Hospital, Shahdara, Delhi, is directed to admit the minor



child today forthwith and proceed with the termination procedure in accordance with the prescribed medical rules. The product of the termination/foetus may also be preserved for the purpose of DNA sampling and other analysis, if required under the FIR bearing no.558 dated 14th September, 2024. The hospital is also directed to ensure all proper medical facilities are provided to the minor child including the appropriate diet and other medicines which are required. All procedure and treatment shall be provided at the expense of the State.

8. It is directed that the hospital also be sensitive to the psychiatric and psychological evaluation of the minor child keeping in view the noting made in the MLC. This Court also directs that the minor child be given adequate counselling by the clinical psychologists or psychiatrist as the situation may warrant, both pre and post termination of the pregnancy.

9. Having regard to the fact that the MLC also notes that the minor child was referred to be referred to IHBAS for psychiatric evaluation, this Court directs the Guru Teg Bahadur Hospital, Dilshad Garden, in case such department is available with it or that the IO, post the operation, approach the IBHAS along with minor child for further psychiatric evaluation and necessary treatment.

10. Keeping in view the fact that the present petition revolves around a minor child that too suffering from impaired mental faculties, it is deemed appropriate that the Child Welfare Committee of the concerned area may need to intervene for ensuring the “*best interests of the child*” under the Juvenile Justice (Care and Protection of Children) Act, 2015 are complied to its fullest extent.



11. The concerned Child Welfare Committee shall take into consideration all the reports, both mental and physical, and decide the future course of action, so far as the minor child is concerned.

12. The IO shall place this order before the Medical Superintendent, Guru Teg Bahadur Hospital, the concerned Competent Authority of IHBAS as also the concerned jurisdictional Chairperson, Child Welfare Committee for taking further steps and necessary action to implement the aforesaid directions.

13. The Secretary, DSLSA shall take necessary steps under the Delhi Victims Compensation Scheme, 2018 in order to release adequate compensation to the minor child keeping in view the allegations made in the FIR and the report of the MLC. The Secretary, DSLSA is directed to complete the aforesaid process within six weeks from today. The status report in that regard shall be filed by the IO within eight weeks from today.

14. Mr. Madhukar, learned counsel for the petitioner-minor child states that this Court had in W.P.(Crl.)221/2023 titled ***Minor R Thr Mother H Vs. State of NCT of Delhi & Anr.*** vide the judgment dated 25.01.2023, in identical situations, laid down certain guidelines to be followed by the hospital and police which is contained in Paras 24.1 and 24.2. He states that despite such clear directions, it appears that the same are not being complied with due diligence.

15. Considering the aforesaid submissions of learned counsel, this Court reiterates the directions given by this Court in the case of ***Minor R Thr Mother H*** (Supra) in Para 24.1 and 24.2, which are reproduced hereunder:-



*“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.”

16. It is with some anxiety that this Court reiterates the aforesaid directions and expects that the concerned hospital as also the police authorities who are handling these matters, to treat the said guidelines as appropriate directions by this Court and implement the same in all earnest.

17. The minor child is present in court has been closely observed by this Court. It is apparent that the minor child is not in a position to have any understanding of what she has already gone through and what she will be going through during pre and post termination of her pregnancy. This Court is acutely aware of the fact that the minor child who is not even aware of what she has been put to may not even be aware of what she will be going through post termination of the pregnancy keeping in view the psychological, physiological and hormonal changes which may occur. It is in this background and the sensitivity of the matter that this Court has passed the aforesaid directions.

18. At the end, this Court appreciates the efforts taken by the IO WSI Ms. Preeti, in acting in promptitude of taking the minor child to the respondent no.2-hospital today itself and placing the report at the earliest before this Bench.

19. 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.



20. With the aforesaid directions, the present petition is allowed.
21. Copy of the order be given Dasti under the signature of the Court Master.

TUSHAR RAO GEDELA, J

SEPTEMBER 17, 2024

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