

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4126 OF 2025

Dr. Nikhil Datar & Ors.

.....Petitioners

Vs.

The State of Maharashtra and Ors.

.....Respondents

Ms. Meenaz Kakalia, for the Petitioners.

Mrs. P. P. Shinde, Additional Public Prosecutor, for the Respondent-State.

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

DATE : 28th JULY 2025.

P.C.:-

1. The Petitioners seek a direction that the Petitioner No.1 is free to undertake medical termination of pregnancy without disclosing the name and identity of the Petitioner No.2, who is a minor girl by placing reliance on the decision of the Supreme Court in *X. v. The Principal Secretary, Health and Family Welfare Department, Government of NCT, Delhi & Anr.* reported in (2022) 7 SCR 686.

2. Heard the learned counsel for the parties.

3. We have perused the judgment of the Supreme Court as aforesaid. Para 81 of the said judgment reads thus;

“81. To ensure that the benefit of Rule 3B(b) is extended to all women under 18 years of age who engage in consensual sexual activity, it is necessary to harmoniously read both the POCSO Act and the MTP Act. For the limited purposes of providing medical termination of pregnancy in terms of the MTP Act, we clarify that the RMP, only on request of the minor and the guardian of the minor, need not disclose the identity and other personal details of the minor in the information provided under Section 19(1) of the POCSO Act. The RMP who has provided information under Section 19(1) of the POCSO Act (in reference to a minor seeking medical termination of a pregnancy under the MTP Act) is also exempt from disclosing the minor's identity in any criminal proceedings which may follow from the RMP's report under Section 19(1) of the POCSO Act. Such an interpretation would prevent any conflict between the statutory obligation of the RMP to mandatorily report the offence under the POCSO Act and the rights of privacy and reproductive autonomy of the minor under Article 21 of the Constitution. It could not possibly be the legislature's intent to deprive minors of safe abortions.”

4. The Supreme Court also recognized the medical practitioner's fear of prosecution under POCSO, thereby hindering access to safe and legal abortion. The Hon'ble Supreme Court noted in the very said judgment, in para 20 as follows;

“20.A fear of prosecution under this complex labyrinth of laws, including linking of the MTP Act with the IPC, acts as a major barrier to safe abortion access, by having a chilling effect on the behaviour of RMPs. The chilling effect — historically associated with protection of freedom of speech and expression under Article 1925 — has an impact on the decision- making of medical professionals acting under the MTP Act and consequently impedes access to safe and legal abortions and the actualization of women’s fundamental right to reproductive autonomy.”

5. It appears that the Petitioner No.2 had consensual sexual relations with a boy known to her. She became pregnant consequent to the sexual relationship. Since the Petitioner No.2 is a minor, she and her parents are desirous of terminating the pregnancy, which is presently only of 13 weeks and hence, well within the restriction on the length of pregnancy, termination of which is permissible under the Medical Termination of Pregnancy Act (MTP), 1971 subject to the conditions laid down therein. Considering the future of the minor, it is natural that the Petitioner No.2 and her parents are unwilling to reveal her identity.

6. Ms. Meenaz Kakalia, learned counsel for the Petitioners, brought to our notice an order dated 7th May 2024 passed by a

Division Bench of this Court (where one of us was a member) in Criminal Writ Petition (St) No. 10276 of 2024, in which this Court had permitted the Petitioner No.1-the Doctor, to undertake MTP of the minor girl therein without disclosing her name and identity in terms of the decision of the Supreme Court as aforesaid.

7. In view of the aforesaid, we permit the Petitioner No.1 to undertake MTP of the Petitioner No.2- the minor girl without being compelled to disclose her name and identity in terms of the Supreme Court's decision as well as the order of this Court dated 7th May 2024.

8. Needless to state, that since the Petitioner No.2 is a minor, the forensic evidence of the fetus being collected and stored by the Petitioner No.1 only if consented by the Petitioner No.2 and her parents, to be transmitted to the Police Officer concerned in case any criminal prosecution is launched hereafter.

9. We are quite surprised that despite the clear finding of the Supreme Court as well as of this Court, repeatedly holding that in the facts of such cases, the identity of the minor girl need not be insisted upon to be revealed, the Doctors concerned are compelled to

approach this Court for such permissions as the Police insist upon the doctors to reveal the name and identity of the minor victims. This is nothing but harassment of the doctors as well as the minor victims. We thus, deem it appropriate that a copy of the Supreme Court's decision as aforesaid as well as the orders passed by this Court be circulated to all the Police Stations in Maharashtra for their information and for necessary action.

10. A copy of this order be sent to the Director General of Police, (DGP) Maharashtra State, to enable the DGP, Maharashtra State, to do the needful.

11. The Petition is allowed and accordingly, disposed of.

12. All parties to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)

Digitally
signed by
SHAMBHAVI
NILESH
SHIVGAN
Date:
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