

W.P.No.18135 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.05.2025

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.No.18135 of 2025

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.. Petitioner

Vs.

1.The Inspector of Police,
AWPS Pallavaram,
Tambaram District,
Tamil Nadu.

2.The Dean,
Chengalpattu Government Medical College Hospital,
G.S.T.Road, Kancheepuram, Chengalpattu,
Tamil Nadu – 603 001.

3.The State,
Rep. by Secretary,
Health Department,
Secretariat, Fort St. George,
Chennai – 600 009.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd respondent to medically terminate the pregnancy of the petitioner's daughter M in accordance with Section 5 of the Medical Termination of Pregnancy Act, 1971 expeditiously.



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For Petitioner : Ms.Deepika Murali
For R1 : Mr.R.Muniyapparaj
Additional Public Prosecutor
For RR 2 & 3 : Ms.M.Sneha
Special Panel Counsel

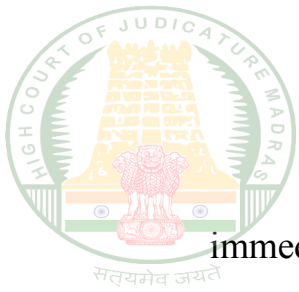
ORDER

The petitioner seeks for the following relief:

“to pass a Writ of Mandamus directing the 2nd respondent to medically terminate the pregnancy of the petitioner's daughter M in accordance with Section 5 of the Medical Termination of Pregnancy Act, 1971 expeditiously.”

2.The petitioner pleads that he is the father and natural guardian of a minor girl named XXXX. The child is aged about 13 years. She is studying VIII standard.

3.The child is a victim of multiple sexual assault by atleast 13 accused persons. As a result of the assault, the child XXXX has become pregnant. On coming to know of this fact, the petitioner reached out to the Child Help Line on 05.05.2025. Officials from the Child Help Line



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immediately visited the residence of the petitioner and recorded the statement of the child. They also informed the 1st respondent police on the very day.

4.The petitioner states that his child was originally examined at a Private Hospital in Pammal. On their directions, the child was sent to Government Hospital at Chrompet. When the child was at the Hospital in Chrompet, the 1st respondent police recorded a statement from her. Subsequently, on the advice of the Hospital at Chrompet, the child was shifted to the Chengalpattu Government Medical College Hospital at Chengalpattu. Yet again, a statement of the child was recorded at that Hospital.

5.Subsequently, the police have registered an FIR in Crime No.17 of 2025 under Sections 5(l), 5(g), 5(j)(ii) read with 6(1) of the Protection of Child From Sexual Offences Act, 2012, against the accused persons. The child XXXX is around 28 weeks pregnant. As the child neither has the physical nor mental capacity to take the pregnancy to its full term, the petitioner approached the 2nd respondent invoking the Medical Termination of Pregnancy Act, 1971. The 2nd respondent tendered an

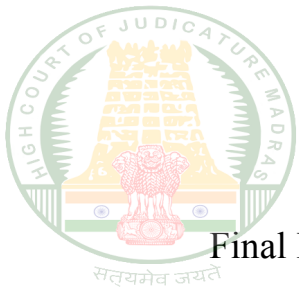


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opinion on 12.05.2025 stating that as the gestational age is more than 24 weeks, they are not in a position to proceed further without an order of the Court. Hence, this writ petition.

6.When the matter came up for admission yesterday, I heard Ms.Deepika Murali for the petitioner, Mr.R.Muniyapparaj, Additional Public Prosecutor for the 1st respondent and Ms.M.Sneha, Special Panel Counsel for the respondents 2 & 3.

7.Ms.M.Sneha, Special Panel Counsel has produced the instructions that have been given by The Dean, Chengalpattu Government Medical College Hospital, Chengalpattu, on 13.05.2025. The Psychiatrist opinion is that there are no psychological contra indication for medical termination of pregnancy and that psychologically, the child is fit at present. The Cardiologist has opined that there is low risk for anesthesia and surgical intervention for termination. The Radiologist opinion states that there are no gross anamolies existing and that the gestational age of the fetus is 27 to 28 weeks with adequate growth and liquor. The Neonatologist has opined that the fetus has crossed the period of viability and there is no fetal abnormalities. The



Final Medical Board opinion states as follows:

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“Final Medical Board opinion with OG opinion,

According to the MTP act, pregnancy resulting from rape is considered to cause grave injury to the mental health of the pregnant women and thus is a legal ground for Medical Termination. Hence termination of pregnancy to be considered.”

8.Ms.M.Sneha, Special Panel Counsel states that the Medical opinion has made it clear that as the fetus has crossed the period of viability, they will have to induce the child XXXX to deliver the baby. Pregnancy having resulted from rape of the child, it would cause grave injury to mental health of the child XXXX.

9.There are precedents of the Supreme Court and this Court which point out that where gestational age has exceeded 20 weeks, Courts have the power to order Medical Termination of the Pregnancy. Reference may be made to the following judgments:

(i)A Vs. Union of India, [(2018) 4 SCC 75];

***(ii)Murugan Nayakkar Vs. Union of India,
[2017 SCC Online SC 1092];***



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(iii)***Sarmishtha Chakraborty Vs. Union of India, [(2018) 13 SCC 339]*** and

(iv)***Meera Santosh Pal Vs. Union of India, [2017 3 SCC 462]***.

10.The golden thread, which flows through all these judgments, is that the Medical Termination of Pregnancy should be granted when medical reports point out the risk involved in continuing the pregnancy. The child is a victim of aggravated sexual assault. She is hardly 13 years old. The report of the expert who constituted the Medical Board point out that continuation of the pregnancy would result in serious complications of the health of the child.

11.To a query from the Court as to whether the pregnancy can be carried to full term, Ms.M.Sneha on instructions from the 2nd respondent states that the victim being of a short stature, it poses a danger to her life if the pregnancy is carried on any further.

12.During the course of hearing, Ms.Deepika Murali brought to my notice that in terms of POCSO Rules, 2020, the petitioner has



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appointed TULIR – Centre for Prevention and Healing of Child Sexual

Abuse, No.74, E.V.K.Sampath Road, Vepery, Chennai – 600 007, as a support person. The support person was, present in the Court, while hearing was going on. She made a request through Ms.Deepika Murali to bring to the notice of this Court certain additional facts which have taken place in this case. The nature of the case being such as above, I permitted Ms.Vidya Reddy, Support Person to make her statement.

13.She brought to my notice that Section 164 statement that was recorded yesterday was not by a Magistrate, but by a member of the Juvenile Justice Board. She pointed out that though the Police got an intimation as early as on 05.05.2025, the FIR came to be registered on 07.05.2025. She states that the accused were aged between 17 to 19 years and as a few of them are below the age of 18 years, they have been treated as juvenile in conflict with law and the others are to be tried before the POCSO Court in Chengalpattu. She pleads that appropriate directions may be given in this behalf to ensure that the justice is rendered to the child.

14.The act of sexual assault of a woman, by its very nature, reflects

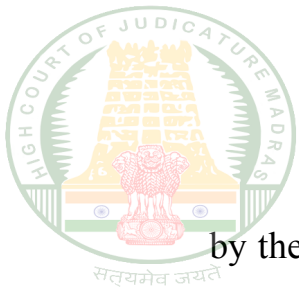


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the sad state in which the society is placed. This is more so in a case where the victim is said to be aged about 13 years. While she would be looking forward for a bright future, she is forced to undergo a surgical procedure to save her life and that of the fetus that she is carrying. The additional factor in this case is that the writ petitioner himself has been certified multiple sclerosis to an extent of 90% and UDID certificate has also been issued to that effect by the Government of India. The petitioner and his family belong to a strata just above the poverty line. It is the duty of law to embrace such persons and ensure that they not only enjoy equality before law, but also equal protection of the law.

15.The statement recorded from the victim should be by a Magistrate. The concept of Board of Magistrates no longer exist under the law. In case, a statement is recorded by a person not authorized to record the same, it could have disastrous consequences. As rightly pointed out by Ms.Deepika Murali, though a reading of the FIR attracts the provisions of the Information Technology Act, the police have not invoked it immediately. It was pursuant to the intervention of Mr.R.Muniyapparaj, Additional Public Prosecutor that the said offence was included. For the fact that there have been certain errors committed



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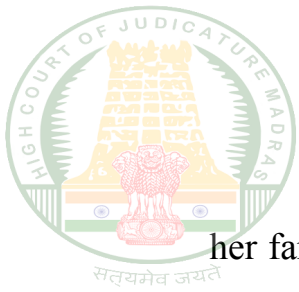
by the investigating officer, I am not inclined to accede to the request of

Ms.Deepika Murali and transfer the investigation to any other authority.

The Tamil Nadu police have enough and more able officers to investigate a dastardly offence as the present one. The fear of Ms.Deepika Murali can be addressed by giving appropriate directions while disposing of the writ petition.

16.Poverty of an individual should not be a ground for denial of justice. The present case is one such example. The father has pointed out his suffering from multiple sclerosis. The mother seems to be home maker. There are no other relatives who are assisting the family. With the paltry income that the writ petitioner is generating as salary, he has to take care of three human beings. Such instances are not unknown to the society. May be, there are several children, like the child involved in the present case, who on account of the poverty and ignorance could not come and knock the doors of the Court.

17.Fortunately, this Court has a vibrant legal services authority. Under similar circumstances, the Delhi High Court has called upon the legal services authority to step in and assist minor like the petitioner and



her family. In **Minor S. Vs. State and another** in **W.P.(Crl).No.1231 of**

2025 and Crl.M.A.No.11665 of 2025 dated **17.04.2025**, that too being a

case of a 15 year old child who was a victim of a rape, Dr.Justice

Swarana Kanta Sharma passed the following directions:

“i. Whenever a minor victim of sexual assault, who is found pregnant with a gestational period of pregnancy exceeding 24 weeks, is produced before the CWC and is referred to a hospital for medical examination or medical termination of pregnancy, the concerned CWC shall forthwith inform the Delhi High Court Legal Services Committee (DHCLSC) regarding the case, since in case, medical termination of pregnancy is sought and consent is given by the victim or her family, as the case may be, an urgent order from a Court of law will be required for such medical termination of pregnancy. The communication shall include the details of the victim as permitted under law (without disclosing the identity of the victim), the order passed by CWC, the copy of the FIR which is placed before CWC, when the victim is produced before it, by the IO and any other document relevant for filing a petition before the competent Court.

ii. Upon receiving such information, DHCLSC shall immediately take appropriate steps to assess whether any legal intervention is required, including the need to approach the competent Court seeking an order for medical termination of pregnancy which is beyond 24 weeks in case of a rape victim where she or her guardian seek medical termination of pregnancy. This will enable DHCLSC to take timely action, and where necessary, ensure that the matter is brought before the competent court without delay.



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iii. *The above direction shall be circulated to all CWCs functioning in the National Capital Territory of Delhi and shall be scrupulously followed.*

iv. *To conclude, this Court reiterates that, as directed in the judgment titled **Minor R Thr. Mother H v. State (NCT of Delhi)** (supra) dated 25.01.2023, as well as in the judgment titled **Minor L Thr. Guardian J v. State & Anr.** (supra) dated 03.11.2023, the medical examination of a minor rape victim carrying a pregnancy beyond 24 weeks must be conducted immediately by the Medical Board of the concerned Hospital in terms of the MTP Act, and the report be prepared and kept ready, without insisting the victim to first approach a Court of law for obtaining an order for medical examination by the Board."*

18.I am of the view that the procedure that has been adopted by the Delhi High Court should also be followed in the State of Tamil Nadu also. This will ensure that the victims of sexual assault are given appropriate legal advise at the earliest point of time. It would not be out of place to refer to the second explanation to Section 3 of the Medical Termination of Pregnancy Act, 1971, which states the anguish caused by pregnancy to women, who has been a victim of rape, shall be presumed to constitute a grave injury to the mental health of the pregnant women.

19.In the light of the above, the Writ Petition is ordered on the following directions:



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(i)The 2nd respondent shall arrange for Medical Termination of Pregnancy of the petitioner's daughter XXXX and shall complete the procedure at the earliest. This being an area of expertise, the procedure that the 2nd respondent will adopt is entirely within its discretion and should at all times be informed by the best interests of the child XXXX;

(ii)The 1st respondent has registered a case in Crime No.17 of 2025 under the provisions of the Protection of Child From Sexual Offences Act, 2012. The 2nd respondent shall ensure such steps are taken either by collecting the blood samples of the child, if born alive or preserve the fetus, if otherwise, for carrying out any medical test including DNA test for the purpose of the case;

(iii)The prayer for transfer of investigation is rejected. The investigation shall be monitored by **Mr.Asra Garg, IPS, Inspector General of Police, North Zone. Mr.Asra Garg, IPS** shall decide the appropriate course of investigation and if he considers necessary, he shall appoint an investigating officer and constitute a team of his choice to take up the matter further;



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(iv)The statement of the victim, not having been recorded by the Magistrate empowered to do so, the police shall ensure that the statement is recorded by the jurisdictional Magistrate;

(v)The alleged perpetrators shall be assessed if they should be tried by the Juvenile Justice Court or by the Regular Court;

(vi)A copy of this order shall be sent to the Tamil Nadu Legal Services Authority for it to do the needful as directed in this order;

(vii)The child XXXX shall be in the Chengalpattu Government Medical College Hospital, Chengalpattu, **till 31.05.2025**. The expenses of the child shall be borne by the State;

(viii)On discharge from the Hospital, the child will be produced before the Child Welfare Committee (CWC), Kancheepuram, and the Child Welfare Committee, Kancheepuram shall pass orders directing the child to be kept in a home. CWC shall ensure that appropriate counselling is tendered for the child XXXX and her parents. It shall also consider payment of compensation for the child as per the Rules prevailing and



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(ix)The child having undergone the process of giving statements three times earlier and fourth time by virtue of this order, CWC will not record any fresh statement from the child. No costs.

13.05.2025

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

NOTE: (i)Upload Order Copy on 13.05.2025.

(ii)The 2nd respondent shall act on a web copy of the order and need not wait for the certified copy of the order to be issued.

To

- 1.The Inspector of Police,
AWPS Pallavaram,
Tambaram District, Tamil Nadu.
- 2.The Dean,
Chengalpattu Government Medical College Hospital,
G.S.T.Road, Kancheepuram, Chengalpattu,
Tamil Nadu – 603 001.
- 3.The State,
Rep. by Secretary, Health Department,
Secretariat, Fort St. George, Chennai – 600 009.



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4.The Tamil Nadu State Legal Services Authority,
North Fort Road, High Court Campus,
Chennai – 600 104.

5.The Public Prosecutor,
Madras High Court, Chennai.



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V.LAKSHMINARAYANAN, J.

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