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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 17.04.2025*+ **W.P. (CRL) 1231/2025 & CRL.M.A. 11665/2025**

MINOR S (THR. FATHER B)

.....Petitioner

Through: Mr. Anwesh Madhukar
(DHCLSC) alongwith Ms.
Prachi Nirwan, Advocate

versus

STATE & ANR.

.....Respondents

Through: Ms. Rupali Bandhopadhyia,
ASC (Criminal) with Mr.
Abhijeet Kumar Advocate

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J.**

1. The Court is once again faced with another unfortunate and distressing case of a 15-year-old child, a victim of rape, who – by way of this writ petition – seeks permission for the medical termination of a pregnancy exceeding 27 weeks.

2. Intervention of this Court has been sought for termination of her pregnancy since the current gestational age of the foetus is beyond the permissible limits as prescribed under the Medical Termination of Pregnancy Act, 1971 (as amended by the MTP



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Amendment Act, 2021) [hereafter '*MTP Act*'], i.e. beyond 24 weeks.

3. While at the time the case was taken up in the pre-lunch session, the report from the Medical Board – as envisaged under Section 3 of MTP Act – was awaited. The matter was kept after lunch so that the report can be received from the Medical Board and appropriate orders may be passed.

4. A copy of the report has been placed before this Court at about 3:00 PM which mentions that the victim 'S' and her mother have given their consent to terminate the pregnancy and the relevant portion is extracted as under:

“NEONATOLOGY OPINION

The current gestational age of the fetus is beyond the viability and there is strong possibility that the fetus will be alive after procedure and need care from Neonatal Intensive Care Unit for pre maturity

In view of above, the court may delegate a support person to stay in hospital for the care/feeding of baby, which is essential part of preterm care

ANESTHESIOLOGY OPINION

The child presently has anemia (Hb 9.6 g/dl) and upper respiratory tract infection. The patient needs time for further optimization prior to receiving anesthesia.

**THIS FITNESS & TERMINATION OF PREGNANCY IS
SUBJECT TO PERMISSION GRANTED BY
APPROPRIATE COURT.”**

5. The father of the victim child is present before the Court along with the Investigating Officer (IO) and the learned counsel, who is representing the petitioner from Delhi High Court Legal Services Committee.



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6. The facts as unfolded from the records reveal that the victim herein fell prey to the lust of her own first cousin, her parental aunt's son, on 01.11.20224, who sexually assaulted her on one night when her parents were away for attending a marriage in Uttar Pradesh, and when the victim was at home with her younger sister, who was sleeping and did not wake up despite her attempts to call, while she was being sexually assaulted. The 15 years old victim child, traumatized by the incident and threatened by the threats extended by the accused, did not reveal the incident to anyone – understandably so.

7. On 07.04.2025, while the victim did not get her monthly period and upon inquiry by her mother, an ultrasonography was conducted and it was revealed that she was 25 weeks and 6 days $\pm$ 2 pregnant. Immediately, on 08.04.2025, she was brought to Lal Bahadur Shastri Hospital, Delhi, where she was medically examined *vide* MLC No. 13325. The victim during her medical examination had disclosed the incident of sexual assault to the doctor concerned. The MLC also records the statement of the minor victim as well as her mother that they wish to terminate the pregnancy.

8. Thereafter, an FIR bearing no. 172/2025 was registered on 09.04.2025 at Police Station Mayur Vihar, Delhi for commission of offence punishable under Section 64 of Bharatiya Nyaya Sanhita, 2023 [hereafter '*BNS*'] and Section 6 of Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*']. The IO had



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promptly produced the petitioner before the Child Welfare Committee (CWC), District East, Delhi where the IO was directed to produce the victim before Lok Nayak Jai Prakash (LNJP) Hospital for medical check-up and consideration of medical termination of pregnancy of the victim child.

9. On 09.04.2025, the victim, through her father, had approached LNJP Hospital, seeking medical termination of the pregnancy. However, the Court is informed that their request was verbally denied since the gestational age of the foetus had exceeded the permissible limit prescribed under the MTP Act, and they were told that termination of pregnancy can be carried out only after appropriate directions from the competent Court of law are issued.

10. Eventually, due lack of clarity regarding the appropriate forum, the petitioner had initially approached the learned Trial Court through the IO, which had declined to pass any order for want of jurisdiction. Resultantly, the present petition has been filed before this Court.

11. The learned counsel appearing for the victim draws the attention of this Court to various judgments passed by the Hon'ble Supreme Court as well as this Court, and prays that the respondents be directed to medically terminate the pregnancy of the victim, due to grave mental injury that was inflicted upon her on account of rape committed upon her.

12. At the outset, it is essential to observe that this Bench in case of *Minor R Thr. Mother H v. State (NCT of Delhi): 2023 SCC*



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OnLine Del 383, under similar facts and circumstances, while allowing the termination of pregnancy of a minor rape victim which was beyond 24 weeks, had issued the following set of 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.



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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. ”

13. The aforesaid case was then taken up for compliance by this Bench *vide* order dated 01.08.2023. Pursuant to passing of the above-noted directions, appreciably, the Union of India had filed a compliance report dated 17.08.2023 by way of which this Bench had been informed as under:

“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”



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14. Thus, in compliance of this Court's directions, the judgment passed in *Minor R Thr. Mother H v. State (NCT of Delhi)* (*supra*) had been circulated in all Hospitals of Delhi, and one notification dated 03.04.2023 had been issued by the Government of NCT of Delhi, *vide* which permanent Medical Boards – as per Section 3 of MTP Act – had been constituted in 13 Hospitals of Delhi.

15. While disposing of the aforesaid case *vide* order dated 21.08.2023, this Court had observed 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.”**



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16. Thus, the intent of the directions issued by this Court in decision dated 25.01.2023 as well as the notification dated 03.04.2023 issued by the Government of NCT of Delhi was – that the medical examination of a minor victim of pregnancy of more than 24 weeks is conducted immediately in terms of MTP Act, and the report *qua* the same is prepared and kept ready when either the victim or any other person on her behalf approaches the appropriate Court of law seeking issuance of appropriate directions for medical termination of pregnancy, which is beyond the gestational period of 24 weeks.

17. Therefore, in compliance of the said order, the permanent Medical Boards had been constituted in 08 government (both State and Central) hospitals and 5 private hospitals, with a view to ensure that the directions were implemented in both letter and spirit, and in accordance with the context and intent underlying the order. It was thereafter expected that the permanent Medical Boards constituted in the concerned hospitals would not await a court order before examining a victim of rape and preparing a medical report regarding the feasibility of conducting medical termination of pregnancy in case the gestational period exceeds 24 weeks and the victim or anyone on her behalf expresses their desire to medically terminate the pregnancy which has resulted due to sexual assault of the victim.

18. However, this Court regrets that despite the above directions being issued by this Court, more than two years back, clarifying the



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position and also expressing its anguish as to how a victim, who is pregnant due to rape committed upon her, is left for days together awaiting a Court's order or an action by the Medical Board for medical termination of pregnancy, a judgment which was circulated to all the Hospitals in Delhi and resulted into a notification being issued by the Government of Delhi – the same was of no help to the victim herein.

19. A similar situation had also come up before this Bench in case of *Minor L Thr. Guardian J v. State & Anr.: 2023 SCC OnLine Del 7159*, when again, the Hospital concerned had refused to get the victim examined medically by the Medical Board, for the purpose of assessing as to whether it was feasible to terminate the pregnancy, on the ground that first, the victim was required to obtain an order from the Court. The said judgment was also directed to be circulated to the Commissioner of Police, Delhi, and Secretaries of Ministry of Health & Family Welfare, Government of NCT of Delhi, Ministry of Health & Family Welfare of India, and DSLSA.

20. This Court has been informed today that despite the issuance of the aforementioned directions, confusion and lack of clarity still persists. When a victim of rape carrying a pregnancy beyond the gestational period of 24 weeks is brought to a hospital for medical examination, the hospital concerned often insists on the production of a court order before seeking the opinion of the Medical Board regarding the feasibility of medical termination of pregnancy, where



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the victim and her family so desire.

21. Unfortunately, despite the directions issued *vide* judgment dated 25.01.2023, and again in judgment dated 03.11.2023 – wherein this Court had highlighted the grave loss of precious time in constituting the Board, seeking the Court’s opinion, and thereafter obtaining a judicial order for termination of pregnancy– the situation on the ground levelled remains largely unchanged. The intent to expedite and streamline the process for termination of a pregnancy conceived as a result of sexual assault has, regrettably, not translated into effective and time-sensitive action.

22. The present case again presents an instance where the minor victim, who is 15 years of age, who was carrying pregnancy of gestational period of about 26 weeks when the FIR was registered, was produced before the CWC on 09.04.2025, when the following order passed:

“Direction:

1. The child is placed in Hospital LNJPH as referred by LSH for ensuring medical wellbeing of the child.
2. The child be taken to LNJPH for medical checkup and their consideration of MTP as is desired by the father of the child and the child.
3. The child be produced before the CWC IV by the IO In-charge on the next date of hearing. If the MTP is performed the child be produced before CWC IV by the IO before the child is placed in CC/ restored to parents for appropriate orders.
4. IO to file a status report in the case before the next date of hearing. Verified age proof of the child as mandated u/s 94 of JJ Act be provided on the next date of hearing.
5. I/C HAQ to provide a support person and counselling be



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done.

Hindi main bata diya hai.”

23. The child had been medically examined for the first time on 08.04.2025, and was later taken to LNJP Hospital on 09.04.2025 pursuant to order of CWC. As informed to this Court by the victim’s counsel, the Hospital concerned had initially on 09.04.2025, refused to even get the examination of the victim conducted through the Medical Board and had rather insisted upon securing an order from this Court. This writ petition was filed before this Court on 17.04.2025, however, the report of the Medical Board was not ready even till the matter came up for hearing before this Court on 17.04.2025. It was only at about 3:00 PM, when the hearing was midway and the report was insisted upon, that it was sent digitally to the IO and placed before this Court. It is also material to note that the said report has been signed on 17.04.2025 and the meeting of Medical Board had taken place on 16.04.2025, whereas the victim had been produced before the Hospital on 09.04.2025 itself by the IO, as per the orders of CWC. Thus, in a nutshell, though the victim had been referred to LNJP Hospital on 09.04.2025 by the orders of CWC, the Hospital only got her medical examination conducted on 16.04.2025, thereby causing a delay of about one week, which is of serious consequence in case of such pregnancies which need to be terminated having resulted due to sexual assault on the minor.

24. Therefore, once again, the Medical Board constituted



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permanently, with a view to save the crucial time in such cases, did not follow the directions issued by this Court, and once again, in one more case, crucial time was lost from 09.04.2025 to 17.04.2025. The more distressing is the fact that the victim, a 15 year old child, remains admitted in the hospital, awaiting medical termination of pregnancy as the consent of medical termination of pregnancy by the mother of the victim had been given on 09.04.2025 itself.

25. The trauma faced by the victim, of being sexually assaulted by her first cousin, multiplied by almost seven months of silence having been threatened by him and she being child, not able to disclose it even to her immediate family, cannot be brushed aside. And even today she passes each day in the hospital awaiting termination of a pregnancy not only unwanted but also reminding her each day of the assault undergone by her. The apprehension of the child as to what bodily pain she will undergo when the termination of pregnancy will be conducted as a 15 year old, is not comparable to agony she is undergoing and the psychological pain faced by her, earlier within the four walls of her home and now confined on a hospital bed.

26. Therefore, this Court seeks an **explanation** from the Medical Superintendent of LNJP Hospital, as to why there was a delay of one week in conducting the medical examination of the victim through the Medical Board and in preparing the report, despite the victim having been produced before the Hospital on 09.04.2025 in compliance with the orders of the CWC, despite the directions issued



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by this Court and circulated to all the hospitals including the present hospital and compliance having been filed regarding implementation of the said directions. **The said explanation shall be placed before this Court, by the respondent no. 2, within a period of one (01) week from date.**

27. Insofar as the prayer of medical termination of pregnancy is concerned, it shall be relevant to take note of observations of this Bench in case of *Minor R Thr. Mother H v. State (NCT of Delhi)* (*supra*), wherein this Court had held that such cases would stand covered under the Explanation 2 of Section 3(2) of MTP Act:

“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.”

28. Therefore, considering the aforesaid facts and circumstances of the case, and that the pregnancy of the victim herein, aged about 15 years, is a result of sexual assault committed upon her by her cousin brother, this Court is inclined to pass following directions:

- i. The petitioner/victim, the Court is informed, is admitted in the hospital/respondent no. 2. The competent authority of LNJP Hospital, New Delhi shall make necessary arrangements for medical termination of pregnancy of the



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victim which has resulted due to rape committed upon her tomorrow i.e. 18th April, 2025, subject to all necessary medical precautions and procedures etc.;

ii. The Superintendent, LNJP 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 stands 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, the Superintendent, LNJP Hospital, New Delhi, shall ensure that everything, which is reasonably possible and feasible in the circumstances is offered to such child, and the Child Welfare Committee



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concerned shall do the needful in accordance with law;

29. This Court has passed the aforesaid directions after it was brought to the notice of the Court that the informed consent of the guardian of the victim has been obtained by the medical board, the statement made by the father of the victim, who is present before the Court, and after perusing the opinion of Medical Board of LNJP Hospital. *Needless to say*, the doctors concerned while performing the procedure for medical termination of pregnancy of victim herein are expected to keep every safety aspect in view.

30. **Before parting with this case**, this Court notes that the present case has once again brought to light, the distressing reality that victims of sexual assault, particularly those who are minors and come from socio-economically disadvantaged backgrounds, often remain unaware of the appropriate legal forum to approach, or the procedure to be followed, in cases involving termination of pregnancy resulting from sexual assault.

31. In the present case as well, it was brought to the notice of the Court that initially, the victim's family had approached the Trial Court, which is not vested with the jurisdiction to pass any order for termination of pregnancy as required in the present case. It was only thereafter that assistance was sought from the Delhi High Court Legal Services Committee (DHCLSC), which eventually facilitated the filing of the present petition before this Court. This delay, occurring at a stage where time is of critical importance for a minor



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who is carrying a pregnancy of more than 27 weeks, once again highlights the urgent need for a better and coordinated mechanism to be adopted by all concerned stakeholders.

32. Accordingly, in order to ensure that such confusion or delay is avoided in the future, and that victims of sexual assault are provided prompt and appropriate legal guidance and medical support, the **following directions** are issued:

- 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



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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.

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.

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



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34. The Registry is directed to circulate a copy of this judgment 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, (v) Secretary, DSLSA, and (vi) Director (Academics) Delhi Judicial Academy, for information and compliance.

35. This Court also places on record its appreciation for the learned counsel appearing for the victim, the learned Additional Standing Counsel for the State, as well as the Investigating Officer in the present case, for their prompt efforts in ensuring that the matter was brought before this Court without any further delay and who very ably assisted the Court.

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

37. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 17, 2025/ns