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

+ W.P.(CRL) 1471/2025

MINOR S THR FATHER V

.....Petitioner

Through: Mr. Anwesh Madhukar, Adv.
(DHCLSC) with Ms. Prachi
Nirwan, Mr. Pranjal Shekhar,
Adv. alongwith
father of the survivor in
person.

versus

STATE NCT OF DELHI AND ANRRespondents

Through: Mr. Amol Sinha, ASC (Crl.)
with Mr. Ashwini Kr., Mr.
Kshitiz Garg, Ms. Chavi, Mr.
Nitish & Ms. Sanskriti, Advs.
SI Deepika P.S. Sonia Vihar.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% **05.05.2025**

1. This hearing has been done through hybrid mode.
2. The present petition under Article 226 of the Constitution of India read with Article 21 of the Constitution of India as well as Section 528 of the BNSS, 2023 seeks the following prayers:-

“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, 1971 (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 foetus 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.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IS DUTY BOUND SHALL EVER PRAY.”

3. The petitioner is a 12 year old rape survivor, who is approximately 26-27 weeks pregnant and by way of present petition which has been filed through father prays for termination of her pregnancy which is beyond the permissible limits prescribed under Medical Termination of Pregnancy Act, 1971.

4. The facts of the present case are that the survivor, was subjected to alleged sexual assault in September 2024 by the driver of the van which was used by her to commute to school from her residence. The accused had allegedly criminally intimidated the survivor of dire consequences and therefore, she did not disclose the incident to anyone.

5. On 01.05.2025, the survivor on account of experiencing abdominal pain approached the Hindu Rao hospital for her medical examination where she was informed of the pregnancy. Consequently, the police authorities were notified and ultrasound of the survivor was conducted by the said hospital which revealed that the survivor was approximately 26-27 weeks' pregnant. The said information was conveyed to the family members of the survivor and to the investigation officer of the concerned police station. Hence, the present petition.

6. The present petition was listed on 02.05.2025 and this Court on the said day had passed the following directions:-

“4. Learned ASC for the State/respondent No.1, who appears on



advance notice, submits that the survivor in the present FIR is presently at Guru Teg Bahadur Hospital. It is pointed out that initially she was taken to Hindu Rao Hospital, however, there was no facility for the purposes of constitution of board for medical opinion.

5. Issue notice.

6. Learned ASC for the State/respondent No.1 accepts notice.

7. Let Medical Superintendent, Guru Teg Bahadur Hospital, constitute a Board to submit an opinion with regard to the feasibility of termination of pregnancy of the survivor/petitioner as provided under Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971, as also with respect to the mental and physical well being of the survivor/petitioner.

8. Let the opinion be placed on record before the next date of hearing.”

7. The opinion of the board has been handed up in Court and the same is taken on record. As per the opinion of the medical board, the termination of pregnancy of the survivor has been allowed. It is further recorded therein that the survivor is also physically fit for said termination. The relevant portion of the said opinion read as under: -

6. Opinion by Medical Board for termination of pregnancy:

- ☒ a) Allowed
b) Denied

Justification for the decision:

POCSO Case (12 yr), desirous of termination of pregnancy

7. Physical fitness of the woman for the termination of pregnancy:

- ☒ a. Yes
b. No

“6. Opinion by Medical Board for termination of pregnancy:

- a) Allowed (Ticked)
b) Denied

Justification for decision: POCSO Case (12 yr), desirous of termination of Pregnancy

7. Physical fitness of the woman for the termination of pregnancy:

- a. Yes (Ticked)
b. No”



8. The petitioner's father 'V' is present in Court today and submits that he has given consent for the termination.

9. Learned counsel appearing on behalf of the petitioner submits that the survivor is 12 years old and the unwanted pregnancy be permitted to be terminated and reliance is placed on the following judgments: -

- i) Venkatalakshmi v. The State of Karnataka & Ors., Civil Appeal No. 15378/2017, passed by the Hon'ble Supreme Court of India on 21.09.2017;
- ii) Minor S (Thr Father B) v. State & Anr., 2025:DHC:2710;
- iii) Minor R Thr. Mother H v. State (NCT of Delhi), 2023 SCC Online Del 383;
- iv) Mrs. X v. GNCTD & Anr., 2022/DHC/005344;

10. Reliance has also been placed on the following observations made by a Coordinate Bench of this Court in **Minor 'R' through mother H v. State NCT of Delhi & Anr., 2023:DHC:570**: -

"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.”

11. It is pointed out that the survivor is presently admitted at respondent No.2, Hospital. As already noted above, the opinion of the board has been received. As per the opinion of the board consisting of eight (8) doctors, who have examined the survivor, it is stated that termination can be allowed and



also that the survivor is physically fit for the said termination.

12. Looking at the age of the survivor and the facts and circumstances of the present case, this Court is inclined to allow the present petition with the following directions: -

- a) Respondent No.2 is directed to terminate the pregnancy of the survivor in view of the Explanation 2 to Section 3(2) of the Medical Termination of Pregnancy Act, 1971.
- b) It is further directed that respondent No.1 shall bear all the expenses necessary for the carrying out the procedure including medicines, food etc.
- c) It is further directed that respondent No.2 shall preserve the terminated foetus for the purposes of DNA testing which would be required for the investigation in the FIR registered in the present case.
- d) It is further directed that after the procedure is completed, respondent No.2 shall hand over the custody of the survivor to her father namely "V".

13. In view of the above, the present petition is allowed and disposed of.

14. Copy of the order be communicated to the Medical Superintendent, Guru Teg Bahadur Hospital, for necessary information and compliance and through electronically as well.

15. Order be given *dasti* under the signature of the Court Master.

16. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

MAY 5, 2025/nk

[Click here to check corrigendum, if any](#)