

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE
ON THE 30th OF JANUARY 2023
WRIT PETITION No.2306 of 2023**

Between:-

**SMT. KIRAN W/O SHRI DHARMENDRA
JOGI, AGED 43 YEARS, OCCUPATION:
HOUSEWIFE, R/O MEAT MARKET, DABRA
POLICE STATION DABRA, DISTRICT
GWALIOR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI RAJENDRA SINGH YADAV – ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH THROUGH
THE PRINCIPAL SECRETARY, HOME
DEPARTMENT, VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)**
- 2. SUPERINTENDENT OF POLICE, DISTRICT
GWALIOR (MADHYA PRADESH)**
- 3. STATION INCHARGE POLICE STATION
DABRA, DISTRICT GWALIOR (MADHYA
PRADESH)**
- 4. STATE OF MADHYA PRADESH THROUGH
HEALTH AND FAMILY WELFARE
SOCIETY BHOPAL MADHYA PRADESH**

**THROUGH CHIEF MEDICAL OFFICER,
J.A.H. HOSPITAL GWALIOR (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI NEELESH TOMAR – GOVT. ADVOCATE)

*This petition coming on for admission this day, Hon'ble Shri
Justice Milind Ramesh Phadke passed the following:*

ORDER

1. By way of this writ petition under Article 226 of the Constitution of India, the Petitioner is seeking following reliefs:

“याचिकाकर्ता प्रार्थना करती है कि याचिकाकर्ता द्वारा प्रस्तुत याचिका स्वीकार की जाकर प्रति याचिकाकर्तागण क्रमांक 1 लगायत 4 को निर्देशित किया जावे कि वे याचिकाकर्ता की पुत्री का सक्षम डाक्टरों द्वारा बालिका का गर्भपात कराया जावे। और अन्य सहायता जो न्यायालय उचित समझे याचिकाकर्ता को दिलायी जावे।”

2. It is the case of the petitioner that her daughter is aged about 17 years 7 months and she went missing from home on 2.12.2022 and, accordingly, a missing person report was lodged vide No.146/2022 at Police Station Dabra. During investigation on 12.12.2022 a Crime No.1046/2022 was registered at Police Station Dabra under section 363 of IPC against one accused Girraj Goli. On 1.1.2023 the police recovered the daughter of the petitioner from the custody of Girraj from Lucknow. The daughter of the petitioner was send for medical examination and

it was found that she was carrying pregnancy of 7 weeks and 6 days and she being minor and subjected to sexual harassment didn't want to keep the child. Therefore, the petitioner who is mother of minor girl had sought termination of the pregnancy of her minor daughter by filing the present petition.

3. This Court vide order dated 25.1.2023 had directed the CMHO, Gwalior to constitute a Medical Board including experts in the field concerned to medically examine the prosecutrix and to submit report as to whether the medical termination of pregnancy of minor daughter of the petitioner is possible or not.

4. Today, the report of the Medical Board dated 27.1.2023 has been produced by the respondents in a sealed cover, which is opened in the open Court and taken on record. According to the said report, an ultrasound was conducted on the prosecutrix on 27.1.2023 and the prosecutrix was found carrying pregnancy of 8 weeks and 6 days. The report dated 27.1.2023 given by the Medical Board is reproduced as under:

“कार्यालय सिविल सर्जन सह मुख्य अस्पताल अधीक्षक, जिला ग्वालियर
कं./ / 2022 / दिनांक.....

e-mail:- csgwalior1@gmail.com Ph. : 0751-2461574

मेडिकल बोर्ड रिपोर्ट दिनांक 21.01.2023

आज दिनांक 21.01.2023 को मान.उच्च न्यायालय खण्डपीठ ग्वालियर के प्रकरण कं./डब्ल्यू.पी. 2306/2023 श्रीमती किरण विरूद्ध म.प्र. शासन में

पारित निर्णय दिनांक 25.01.2023 के पालन में मान. उच्च न्यायालय खण्डपीठ ग्वालियर के वर्णित प्रकरण में अभियोक्त्री की नाबलिक पुत्री का दो माह का गर्भ गिराने हेतु मान. न्यायालय से अनुमति चाही गई है। उक्त प्रकरण मे कार्यवाही हेतु विशेष मेडिकल बोर्ड का गठन दिनांक 21.01.2023 को दोपहर 12 बजे अधोहस्ताक्षरकर्ता के चेम्बर मे निम्नानुसार किया गया बोर्ड के समक्ष पीड़िता का परीक्षण किया गया जो निम्नानुसार है।

पहचान का चिन्ह गर्दन पर सीधे हाथ की तरफ काला तिल
ब्रोट बाई महिला आरक्षक पूजा पचौरी नम्बर 2717 थाना कम्पू ग्वा.

परीक्षण

बोर्ड के सर्वसम्मति के मतानुसार निम्नानुसार अभिमत दिया गया—

स्थिति	—	एवरेज
हाईट	—	133.50 सेमी.
बजन	—	31 किलोग्राम
नाडीगति	—	103 प्रति मिनट
रक्तचाप	—	126 / 84
तापमान	—	98.4 ^o f
श्वसन तंत्र	—	Lungs Clear, No crepts
हृदय/संचार तंत्र (सी.वी.एस.)	—	S1 S2 normal, Mild Tachycardia
तांतिका तंत्र	—	Well oriented with time, Place,& person
P/A	—	Soft, liver and spleen not palpable
P/V	—	Gynaecological examination P/v UT AV AF
		8 -10 weeks soft mobile fornices clear

Investigation – Blood group B+, HB 10.8, TLC 12260/cu mm, S bil. 0.34 mg/dl, Blood Urea 22.99 mg/dl, Creatinine 0.35 mg/dl, HIV-NR, HBSAG-NR, HCV- NR, VDRL-NR

Urine R&m - NAD, Alb-nil, Sugar_nil
 USG today - SLF of 8 Weeks 6 Days

अभिमत:—

1. उपरोक्त परीक्षणों के परिणामों के आधार पर बोर्ड सर्व सम्मति से इस निष्कर्ष पर पहुचा है कि विशेषज्ञों के द्वारा सभी आवश्यक सावधानियाँ बरतते हुये यथा संभव शीघ्र पीड़िता का टर्मिनेशन ऑफ प्रेग्नेंसी टर्शरी सेन्टर पर (Medical College) स्तर से किया जाना उचित होगा ।

डॉ० रजनी जैन
 स्त्रीरोग विशेषज्ञ

डॉ. सुरेन्द्र सोलंकी
 निश्चेतना चिकित्सक

डॉ.एम.के. पाण्डे
 रेडियोलोजिस्ट

डॉ. राजेश कुमार शर्मा
 चेयरमेन मेडिकल बोर्ड
 एवं सिविल सर्जन ग्वालियर”

6. This Court is dealing with the case of a girl aged about 17-18 years, who is carrying a foetus of a rapist and the girl, as well as her parents does not want that she should give birth to the child of a rapist. Not only this, the child will also have social stigma throughout his life and the girl, who is about 17 years & 7 months of age, has to deliver a child which will certainly be a life threat to the pregnant minor girl apart from social ostracization.

7. The Supreme Court in the case of **Murugan Nayakkar Vs. Union of India & Ors. in Writ Petition (Civil) No.749/2017** by order dated 6/9/2017 has held as under:-

"The petitioner who is a 13 years old girl and a victim of alleged rape and sexual abuse, has preferred this writ petition for termination of her pregnancy. When the matter was listed on 28.8.2017, this Court has directed constitution of a Medical Board at Sir J.J. Group of Hospitals, Mumbai. Be it noted, this Court had also mentioned the composition of the team of doctors. The petitioner has appeared before the Medical Board on 1.9.2017 and the Medical Board that has been constituted by the order of this Court expressed the opinion that the termination of pregnancy should be carried out. That apart, it has also been opined that termination of pregnancy at this stage or delivery at term will have equal risks to the mother. The Board has also expressed the view that the baby born will be preterm and will have its own complications and would require Neonatal Intensive Care Unit (N.I.C.U.) admission.

We have heard Ms. Sneha Mukherjee, learned counsel appearing for the petitioner, Mr. Ranjit Kumar, learned Solicitor General appearing for the Union of India and Mr. Nishant R. Katneshwarkar, learned standing counsel for the State of Maharashtra.

Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by this Court, we think it appropriate that

termination of pregnancy should be allowed.

In view of the aforesaid premise, we direct the petitioner to remain present at the Sir J.J. Group of Hospitals, Mumbai in the evening of 7.9.2017 so that the termination of pregnancy can be carried out preferably on 8.9.2017. Mr. Nishant R. Katneshwarkar shall apprise the Dean of Sir J.J. Group of Hospitals, Mumbai so that he/she can make necessary arrangements for termination of the pregnancy.

A copy of the order passed today be handed over to learned counsel for the petitioner and Mr. Nishant R. Katneshwarkar, learned standing counsel for the State of Maharashtra.

The writ petition is accordingly disposed of. There shall be no order as to costs."

8. In light of the aforesaid judgment, considering the age of the girl, trauma which she has to suffer and the agony she is going through at present and also keeping in view the medical report submitted by the Medical Board, this Court is of the opinion that the prayer made by the petitioner and her daughter deserves to be allowed and is accordingly allowed.

9. Thus, this Court while passing the order has to keep in mind the report of Medical Board dated 27.1.2023, the future of a minor girl aged 17 years & 7 months, who is carrying a foetus

of a rapist, the trauma she will have to face throughout her life while raising such child and not only this the child will also have to live his/her entire life with such social stigma.

10. In the present case girl (prosecutrix) being a minor is legally not in a position to decide anything for herself. Section 3(1), 3 (2) (b) (i) and Section 5(1) of the Medical Termination of Pregnancy Act, 1971 which reads as under :-

"3. When pregnancies may be terminated by registered medical practitioners.-(1) Notwithstanding anything contained in the Indian Penal Code(45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act. (2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a)...

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health.

5. Sections 3 and 4 when not to apply.-
(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman."

11. Since there is risk to the life of the pregnant minor girl and of grave injury to her physical and mental health, this Court is of the opinion that it cannot remain a silent spectator to the agony of minor undergoing torture and has to act and take a decision. In view of such facts, this Court directs that let an inter-disciplinary team of doctors be constituted by the Dean of G.R. Medical College and they shall carry out the necessary procedure of termination of pregnancy on **3rd February, 2023 at 10:00 AM** when the girl (prosecutrix) and her parents shall appear before the team of the doctors and fill necessary consent forms. It is also directed that senior doctor of the Department of Medicine and senior doctor of the Department of Cardiology shall examine the health condition of the girl (prosecutrix) before termination of pregnancy of girl (prosecutrix). It is requested that Dean of G.R. Medical College, Gwalior shall

constitute team of senior and experienced doctors for the sake of humanity. It is further directed that in terms of the law laid down by Division Bench of Bombay High Court in the case of **Shaikh Ayesha Khatoon Vs. Union of India, reported in 2018 SCC OnLine Bom 11**, the petitioner and her daughter shall be sensitized by the Committee/Medical Board about the risk factors involved in the procedure and it would be open for the petitioner's daughter to undergo the procedure of medical termination of pregnancy at her own risk and consequences. It is further made clear that the doctors who have put their opinions on record shall have the immunity in the event of occurrence of any litigation arising out of the instant procedure.

12. It is further clarified that identity of the girl shall be kept a secret and shall not be revealed to anybody. This is being done looking to the future of the girl. It is also directed that no legal claim can be put forth on the team of the doctors by the girl or her parents as they have understood the possible complications and the team of doctors will not be liable to any legal complications arising out of such procedure. It is further directed that relevant department in the G.R. Medical College or its associates may carry out DNA sampling of the foetus and preserve report of such DNA sampling to be produced before the competent Court where criminal case is pending.

13. With the aforesaid directions, this writ petition is allowed and disposed of. No costs.

14. Let a copy of the order be provided to learned Govt. Advocate free of cost for immediate transmission to the Dean, G.R. Medical College, Gwalior.

E-copy/Certified copy as per rules/dire.ctions.

(Milind Ramesh Phadke)
Judge

Pawar/-