

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 29th OF SEPTEMBER, 2023

WRIT PETITION No.24250 of 2023

Between:-

**PROSECTRIX OF CRIME NO.0409 OF 2023
THROUGH HER HUSBAND SHRI MAYANK
SHRIVASTAVA, S/O SHRI PRASAD KHARE,
AGED ABOUT 32 YEARS, R/O WARD NO.3,
INDERGARH, DISTRICT DATIA (M.P.)**

.....PETITIONER

(BY SHRI DHARMENDRA NAYAK – ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH THROUGH
THE PRINCIPAL SECRETARY,
DEPTMENT OF HEALTH & FAMILY
WELFARE, VALLABH BHAWAN,
BHOPAL (M.P.)**
- 2. CHIEF MEDICAL & HEALTH OFFICER,
DATIA DISTRICT DATIA (M.P.)**
- 3. THE OFFICE OF CIVIL SURGEON CUM
CHIEF HOSPITAL SUPERINTENDENT,
DISTRICT HOSPITAL DATIA (M.P.)**

4. THE STATION HOUSE OFFICER, POLICE
STATION INDERGARH, DISTRICT DATIA
(M.P.)

(BY SHRI A.K. NIRANKARI –
GOVERNMENT ADVOCATE.

*This petition coming on for admission this day, the court
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:

“i. That, it is respectfully requested that
a medical board be constituted to assess
the physical and mental health status of
the prosecutrix.

ii. Following the receipt of the
board's report may the termination of
the prosecutrix pregnancy be carried out
following due process of law in the
interest of justice.

iii. That, Upon the termination of the
pregnancy, it is further requested that the
respondents be directed to ensure post-
operative care of the
petitioner/prosecutrix.

iv. That, the other relief doing
justice, including cost be awarded.

2. It is the case of the petitioner that victim along with the
petitioner has lodged a report that one Ashwini Shrivastava S/o

Rajendra Shrivastava who is their neighbor comes to their house frequently due to which victim became friends with him. About three to four months ago when the victim was alone at home and the petitioner had gone out for work and her son Divyansh had gone to her sister-in-law's house, who lives in Indergarh, finding her alone at home the neighbour Ashwini Shrivastava brought cold drink and prasad to her house which she ate and after consuming the cold drink and prasad, she fell unconscious and after two-three hours when she regained consciousness Ashwini told her that he has made an obscene video of her and blackmailed her with this obscene video. Every day Ashwini, seeing her alone at home, would come to her house and forcefully made physical relations with her without her consent. On 01.07.2023, at around 12.00 in the night, Ashwini called her outside the house and when she came out of the house Ashwini pressurized her to come with him otherwise threatened her to make her video viral, so under duress she went with him on his motorcycle. He took her to Raja Ke Bagh Indergarh where he kept her for 12-15 days and had made physical relations with her several times without her consent. When she refused, he said that he will make her obscene video viral and kill her husband and child. On 13.7.2023 in the night when Ashwini was not in the room, she somehow escaped from the room and reached her house. She was scared, therefore, she

did not tell anything about this incident either at her house or to the police. Ashwini started harassing her again, so on 3.9.23 she told everything to her husband and came to the police station with him to lodge the report and on the basis of which the FIR has been lodged at Crime No.0409 of 2023 under section 376 (2) (n), 366, 384, 343, 506 of IPC.

3. On 23.9.2023 this Court had directed Government Advocate to verify whether the petition has been preferred at the behest of victim through her husband for the medical termination of pregnancy, through the concerned police station, on which the report dated 23.9.2023 was submitted by Station Incharge, Police Station Indergarh, District Datia in which it has been averred that the statement of the prosecutrix has been taken in which she has stated that she has information regarding the writ petition filed by her husband and the petition was filed with the her consent. Thereafter vide order dated 23.9.2023 this Court had directed the Chief Medical and Health Officer, 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 victim is possible or not.

4. Today, the report of the Medical Board dated 26.9.2023 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 26.9.2023 and the prosecutrix was found carrying pregnancy of 10 weeks 4 days. The report dated 26.9.2023 given by the Medical Board is reproduced as under:

“कार्यालय सिविल सर्जन सह मुख्य अस्पताल अधीक्षक, जिला ग्वालियर
क./मेडि.बोर्ड/2023 ग्वालियर दिनांक

मेडिकल बोर्ड रिपोर्ट दिनांक -26-09-2023

आज दिनांक 26-09-2023 को मान. उच्च न्यायालय खण्डपीठ ग्वालियर के प्रकरण क. डब्ल्यू पी. [24250@2023](#) श्री मयंक श्रीवास्तव विरुद्ध म.प्र. शासन एवं अन्य में पारित निर्णय दिनांक 23-09-2023 के परिपालन में पीड़िता के गर्भपात कराये जाने हेतु माननीय न्यायालय द्वारा अनुमति चाही है, उक्त क्रम में दिनांक 26-09-2023 को विशेष मेडिकल बोर्ड में वरिष्ठ विशेषज्ञों के समक्ष पीड़िता का परीक्षण किया गया जो निम्नानुसार है।

पहचान का चिन्ह:-	<u>Raised Black Mole on Lt. Check</u>
ब्राट बाइ:-	S.I Nandini Sharma
परीक्षण:- बोर्ड सर्वसम्मति के अनुसार-	
स्थिति:-	
हाईट/वजन:-	146 c.m. /45 ka.
नाड़ी गति:-	95 pulse
रक्त चाप:-	117/78 bp
तापमान:-	
श्वसन तंत्र:-	N.A.D
हृदय/संचार तंत्र/सीवीएस:-	N.A.D
तंत्रिका तंत्र:-	N.A.D
पी/ए:-	Liver not palpable.

Spleen not palpable.
NAD

पी/वी:-

Piv Cx 4f AVAF 10-12 weeks. 5Cm

Investigation-Blood Group B+ve . HB/11.8 TLC 10,270 S.Billi 0.32mg % Blood urea 12.67mg% Creatinine 0.39mg% HIV VDRL NR URINE R/M Alb-Traces, Sugar Nil USG to day SLF of 10 wks 4 days

अभिमत:- उपरोक्त परीक्षणों के परिणामों के आधार पर बोर्ड सर्वसम्मति से इस निष्कर्ष पर पहुँचा है कि विशेषज्ञों के द्वारा सभी आवश्यक सावधानियों बरतते हुये यथा संभव शीघ्र पीड़िता का टर्मिनेशन ऑफ प्रेग्नेंसी टर्शरी सेन्टर पर (Medical College) स्तर से किया जाना उचित होगा।

डॉ. रजनी जैन
स्त्री रोग विशेषज्ञ

डॉ. डी.के.शर्मा
निश्चेतना विशेषज्ञ

डॉ. सुरेन्द्र सिंह सोलंकी
रेडियोलॉजिस्ट

डॉ. सुरेन्द्र सिंह सोलंकी
पी.जी.एम.ओ निश्चेतना

डॉ राजेश कुमार शर्मा
जिला मेडिकल बोर्ड

सिविल सर्जन सह मुख्य अस्प.अधीक्षक ग्वालियर”

5. This Court is dealing with the case of a major married lady, who is carrying a foetus of a rapist and the victim, as well as her husband 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 life.

6. Considering the trauma which victim 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 wife deserves to be allowed and is accordingly allowed.

7. Thus, this Court while passing the order has to keep in mind the report of Medical Board dated 26.9.2023, the future of

a victim, 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. 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. Section 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."

8. Considering the aforesaid aspects this Court is of the opinion that it cannot remain a silent spectator to the agony of victim undergoing torture and has to act and take a decision. In view of such facts, this Court directs that let an interdisciplinary team of doctors be constituted by the Dean of G.R. Medical College, Gwalior and they shall carry out the necessary procedure of termination of pregnancy on **3th October, 2023 at 10:00 AM** when the victim (prosecutrix) and her husband 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 victim (prosecutrix) before termination of pregnancy of victim (prosecutrix). It is directed that Dean of G.R. Medical College, Gwalior shall

constitute team of senior and experienced doctors for the sake of humanity.

9. 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 wife 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 wife 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.

10. It is further clarified that identity of the victim shall be kept a secret and shall not be revealed to anybody. This is being done looking to the future of the victim . It is also directed that no legal claim can be put forth on the team of the doctors by the prosecutrix or her husband 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 Gwalior 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.

11. With the aforesaid directions, this writ petition is allowed and disposed of.

12. 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/directions.

(Milind Ramesh Phadke)
Judge

Pawar/-