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WP-21061-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 17th OF JUNE, 2025WRIT PETITION No. 21061 of 2025*PROSECUTRIX X**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Ms. Divyakeerti Bohrey - Advocate for appellant.

Shri Swapnil Ganguly - Deputy Advocate General for respondents/State.

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ORDER

In pursuance to the letter addressed to the Hon'ble Chief Justice dated 16.06.2025 by Prof. Geeta Guin, Professor and Head Department of OBS and GYNE, NSCB Medical College and Hospital Jabalpur, seeking permission for termination of pregnancy of a rape victim who was a minor aged about 15 years, cognizance was taken and the letter was treated as suo moto writ petition in pursuance to the directions given under the signatures of the Hon'ble Acting Chief Justice. The writ petition came up for consideration before this Court.

2. From the perusal of the letter, it is seen that the victim was having six months pregnancy. The family is very poor and ignorant and after giving information to the police department the said letter was sent by the Prof. and Head of the Department addressing the Hon'ble Chief Justice.

3. The learned Deputy Advocate General appearing before this Court has sought information and opinion with respect to termination of pregnancy of



the petitioner. A committee comprising of five doctors was constituted who were to assess the case of the petitioner. The committee gave its report on 17.06.2025 observing as under :

"The POCSO survivor is 15 years 5 month 16 days on date 17/6/25 as per document (aadhar-card) resident of 00, Jhhamar district Narsinghpur , 487114 is admitted in the department of Obstetrics and Gynaccology on 10/06/25.

1. The survivor's hemoglobin is 9.10 g/dl, TLC-9,75 x103/uL. platelet -299 103/uL, Blood group - "O+ve" dated 13/06/25. (USG reports Single intrauterine live fetus of Mean gestational age 29 weeks 6 days with fetal cardiac activity seen at scan , cephalic, placenta - upper segment, anterior/ maturity grade II reviewed by consultant Radiodiagnosis On 16/06/25.

2. The survivor's pregnancy is approximately 29 weeks 6 days duration by USG on 16/06/25.

3. Till the point of examination, the survivor does not have any complication associated with or caused by pregnancy. Complications in Obstetrics, whether abortion or labour are probable and unpredictable and many times unpreventable. The process of abortion is termed as Mini Labour and hence subject to similar complications as that of labour at term Continuation of pregnancy can predispose her to certain complications that tend to occur later in pregnancy and delivery at term. particularly in teenage pregnancy.

4. The survivor has been interviewed in detail by the Psychiatrists who is of the opinion that she has no symptoms suggestive of any major psychiatric disorder.

5. There is an extremely remote possibility that the pregnancy, if terminated at present, the baby will be born alive but the chances of survival is very low. If, however the baby survives, then it can suffer some physical and



mental disabilities. Team of expert committee consisting of three gynecologists , one radiologist and psychiatrist , after examining the survivor and reviewing investigation report , we opine that the survivor's pregnancy can be terminated with explained risk and informed consent of the survivor's guardian.

4. From the perusal of the report, it is seen that the POCSO survivor is 15 years 05 months and 16 days as on 17.06.2025 and she is having pregnancy of 29 weeks 6 days as on 16.06.2025. She was interviewed in detail by the Psychiatrists who is of the opinion that she has no symptoms of suggestive of any major psychiatric disorder. Further, a remote possibility of baby surviving was given by the committee. It was specifically pointed out that chances of surviving baby are very low. However, if the baby survives, then it can suffer some mental and physical disabilities. But the opinion was that "the survivor's pregnancy can be terminated with explained risk and informed consent of the survivor's guardian".

5. The said report along with the other relevant documents are placed on record by the Deputy Advocate General. The document further contains the consent given by the father and mother of the victim dated 17.06.2025. It is pointed out by the learned Deputy Advocate General that FIR was got registered for offence under Section 64(1) and 64(2)(m) of BNS, 2023 and under Section 5(i) and 6 of POCSO Act, 2012 at crime No.322/2025. The victim was brought to the hospital by the parents and they are ready to keep the victim in case the pregnancy is terminated apprehending the social threats.

6. It is argued by the counsel for the State that Section 3 of the Medical



Termination of Pregnancy Act, 1971 does not permit the pregnancy exceeding 24 weeks. It is further argued that there are judgment on this issue which was referred to the Division Bench of this Court in the case of In Reference (Suo Motu) v. The State of Madhya Pradesh and others: W.P. No.5184/2025 which was decided on 20.02.2025 wherein after due consideration, the SOP has been formed which is required to be followed upto 24 weeks and exceeding 24 weeks.

7. In the present case, the age of the fetus is exceeding 24 weeks. Therefore, the SOP is required to be followed in the present case which is as under:

"SOPs to be followed in case where the age of foetus/pregnancy of survivor of sexual assault or rape or incest is exceeding 24 Weeks:-

Whenever a case of rape is registered at any police station, the following procedure shall be adopted:-

(i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant and the pregnancy is more than 24 weeks, shall forthwith forward the victim to the concerned District Court, preferably Special Judge/POCSO; (ii) The learned Judge of the District Court preferably Special Judge/POCSO, regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the victim to the concerned medical officer/Board to expeditiously submit its report, if the pregnancy of the victim can be terminated;

(iii) The District Court, preferably Special Judge/POCSO, after obtaining the said medical report, under intimation to the victim and her parents, directly refer such case and report to the nearest Registry of the High Court; (iv) The Registry of High Court, in turn, shall register



such reference as a Writ Petition under Article 226 of the Constitution, Suo Motu, and list the matter immediately before the concerned Bench having the roster, so that appropriate orders regarding termination of pregnancy can be passed by the High Court without any undue delay;

(v) If directed by the High Court that termination of pregnancy is required then, the procedure of termination of pregnancy will be carried out in the presence of the expert team of doctors. The expert doctors will explain to the family members as well as the petitioner the risk of getting the termination of her pregnancy and also other factors;

(vi) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention and other medical facilities including that of a presence of a Pediatrician as well as a Radiologist and other required doctors will be made available to the victim;

(vii) The post operative care, upto the extent required, will be extended to the victim;

(viii) The doctors will ensure that a sample from the fetus is protected for DNA examination and will be handed over to the prosecution for using in the criminal case."

8. Learned Deputy Advocate General appearing for the State has argued that the Division Bench of this Court while preparing the SOP has missed to consider the vital aspect of the matter i.e. the termination of pregnancy after 24 weeks is not permissible. It has further failed to consider the aspect that fetus is having a life after 6 or 7 weeks and directing for termination of pregnancy at a delayed stage when the fetus is already alive, will create great complications and will be having a high risk to the survivor/victim as well as the fetus alive. Therefore, he has raised objections with respect to terminating the pregnancy at such an advanced stage wherein the age of the



fetus is pointed out to be 29 weeks and 6 days as on 16.06.2025.

9. Heard the learned counsels for the parties.

10. Section 3 of the MTP Act, 1971 deals with termination of pregnancy and the relevant is 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) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the 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; or (ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

Explanation 1.—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant



woman. Explanation 2.—For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:—

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who having attained the age of



eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

11. The Hon'ble Supreme Court in the case of A (Mother of X) v. State of Maharashtra and another : 2024(6) SCC 327 had an occasion to deal with a similar issue and has held that as under:-

“28. The powers vested under the Constitution in the High Court and this Court allow them to enforce fundamental rights guaranteed under Part III of the Constitution. When a person approaches the court for permission to terminate a pregnancy, the courts apply their mind to the case and make a decision to protect the physical and mental health of the pregnant person. In doing so the court relies on the opinion of the Medical Board constituted under the MTP Act for their medical expertise. The court would thereafter apply their judicial mind to the opinion of the Medical Board. Therefore, the Medical Board cannot merely state that the grounds under Section 3(2-B) of the MTP Act are not met. The exercise of the jurisdiction of the courts would be affected if they did not have the advantage of the medical opinion of the board as to the risk involved to the physical and mental health of the pregnant person. Therefore, a Medical Board must examine the pregnant person and opine on the aspect of the risk to their physical and mental health.

29. The MTP Act has removed the restriction on the length of the pregnancy for termination in only two instances. Section 5 of the MTP Act prescribes that a pregnancy may be terminated, regardless of the gestational age, if the medical practitioner is of the opinion formed in good faith that the termination is immediately necessary to save the life of the



pregnant person. Section 3(2-B) of the Act stipulates that no limit shall apply on the length of the pregnancy for terminating a foetus with substantial abnormalities. The legislation has made a value judgment in Section 3(2-B) of the Act, that a substantially abnormal foetus would be more injurious to the mental and physical health of a woman than any other circumstance. In this case, the circumstance against which the provision is comparable is rape of a minor. To deny the same enabling provision of the law would appear prima facie unreasonable and arbitrary. The value judgment of the legislation does not appear to be based on scientific parameters but rather on a notion that a substantially abnormal foetus will inflict the most aggravated form of injury to the pregnant person. This formed the basis for this Court to exercise its powers and allow the termination of pregnancy in its order dated 22-4- 2024 [A v. State of Maharashtra, 2024 SCC OnLine SC 608] . The provision is arguably suspect on the ground that it unreasonably alters the autonomy of a person by classifying a substantially abnormal foetus differently than instances such as incest or rape. This issue may be examined in an appropriate proceeding should it become necessary.

30. Moreover, we are conscious of the fact that the decision to terminate pregnancy is one which a person takes seriously. The guidelines to terminate pregnancy as well as the scheme of the MTP Act show the seriousness attached to the well-being of the pregnant person throughout the process envisaged under the MTP Act. Change in the opinion of the Medical Board may cause undue trauma and exertion to a pregnant person whose mental health is understandably under distress. While we understand the need for a Medical Board to issue a clarificatory opinion based on the facts and circumstances of each case, the board must explain the reasons for the issuance of the clarification and, in particular, if their opinion has



changed from the earlier report. Pregnant persons seeking termination of pregnancy seek predictability for their future. The uncertainty caused by changing opinions of the Medical Board must therefore balance the distress it would cause to the pregnant person by providing cogent and sound reasons.”

12. The Hon'ble Supreme Court in *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*, 2023 (9) SCC 433 had an occasion to consider the constitutional values animating the interpretation of MTP Act and Rules and with the Right to Reproductive Autonomy of a woman. The Supreme Court held that the MTP Act is an aid to interpretation understanding injury to mental health and held as under:-

“64. When interpreting a sub-clause or part of a statutory provision, the entire section should be read together with different sub-clauses being a part of an integral whole. [Balasinor Nagrik Coop. Bank Ltd. v. Babubhai Shankerlal Pandya, (1987) 1 SCC 606; Madanlal Fakirchand Dudhediya v. Shree Changdeo Sugar Mills Ltd., 1962 SCC OnLine SC 65 : 1962 Supp (3) SCR 973 : AIR 1962 SC 1543] In terms of Section 3(2)(b) of the MTP Act, not less than two RMPs must, in good faith, be of the opinion that the continuation of the pregnancy of any woman who falls within the ambit of Rule 3-B would involve : (i) a risk to her life; (ii) grave injury to her physical health; or (iii) grave injury to her mental health. Alternatively, not less than two RMPs must, in good faith, be of the opinion that there is a substantial risk of the child suffering from a serious physical or mental abnormality, if born. Women who seek to avail of the benefit under Rule 3-B of the MTP Rules continue to be subject to the requirements of Section 3(2) of the MTP Act.

65. One of the grounds on the basis of which termination of pregnancy may be carried out is when the continuance of a



pregnancy would involve risk of injury to the mental health of the woman. The expression “grave injury to her physical or mental health” used in Section 3(2) is used in an overarching and all-encompassing sense. The two Explanations appended to Section 3(2) provide the circumstances under which the anguish caused by a pregnancy may be presumed to constitute a grave injury to the mental health of a woman.

*66. Courts in the country have permitted women to terminate their pregnancies where the length of the pregnancy exceeded twenty weeks (the outer limit for the termination of the pregnancy in the unamended MTP Act) by expansively interpreting Section 5, which permitted RMPs to terminate pregnancies beyond the twenty-week limit when it was necessary to save the life of the woman. In *X v. Union of India* [*X v. Union of India*, (2017) 3 SCC 458], *Mamta Verma v. Union of India* [*Mamta Verma v. Union of India*, (2018) 14 SCC 289], *Meera Santosh Pal v. Union of India* [*Meera Santosh Pal v. Union of India*, (2017) 3 SCC 462], *Sarmishtha Chakraborty v. Union of India* [*Sarmishtha Chakraborty v. Union of India*, (2018) 13 SCC 339], this Court permitted the termination of post twenty-week pregnancies after taking into account the risk of grave injury to the mental health of a pregnant woman by carrying the pregnancy to term.*

*67. The grounds for approaching courts differ and include various reasons such as a change in the circumstances of a woman's environment during an ongoing pregnancy, including risk to life, [*A v. Union of India*, (2018) 14 SCC 75; *X v. Union of India*, (2017) 3 SCC 458; *Meera Santosh Pal v. Union of India*, (2017) 3 SCC 462; *Tapasya Umesh Pisal v. Union of India*, (2018) 12 SCC 57; *Mamta Verma v. Union of India*, (2018) 14 SCC 289] risk to mental health, [*X v. Union of India*, (2017) 3 SCC 458; *Meera Santosh Pal v. Union of India*, (2017) 3 SCC 462; *Sarmishtha Chakraborty v. Union of**



India, (2018) 13 SCC 339; Mamta Verma v. Union of India, (2018) 14 SCC 289; Z v. State of Bihar, (2018) 11 SCC 572 : (2018) 2 SCC (Cri) 675] discovery of foetal anomalies, [A v. Union of India, (2018) 14 SCC 75; Sarmishtha Chakraborty v. Union of India, (2018) 13 SCC 339; Tapasya Umesh Pisal v. Union of India, (2018) 12 SCC 57; Mamta Verma v. Union of India, (2018) 14 SCC 289] late discovery of pregnancy in case of minors and women with disabilities, [X v. Union of India, (2020) 19 SCC 806] and pregnancies resulting from sexual assault or rape. [Z v. State of Bihar, (2018) 11 SCC 572 : (2018) 2 SCC (Cri) 675; X v. Union of India, (2020) 19 SCC 806] These are illustrative situations thrown up by cases which travel to the court. Although the rulings in these cases recognised grave physical and mental health harms and the violation of the rights of women caused by the denial of the option to terminate unwanted pregnancies, the relief provided to the individual petitioner significantly varied.

68. The expression “mental health” has a wide connotation and means much more than the absence of a mental impairment or a mental illness. The World Health Organisation defines “mental health” as a state of “mental well-being that enables people to cope with the stresses of life, realise their abilities, learn well and work well, and contribute to their community”. [World Health Organisation, “Promoting Mental Health: Concepts, Emerging Evidence, Practice (Summary Report)” (2004).] The determination of the status of one's mental health is located in one's self and experiences within one's environment and social context. Our understanding of the term “mental health” cannot be confined to medical terms or medical language, but should be understood in common parlance. The MTP Act itself recognises the need to look at the surrounding environment of the woman when interpreting injury to her health. Section 3(3) states that while interpreting



“grave injury to her physical or mental health”, account may be taken of the pregnant woman's actual or reasonably foreseeable environment. The consideration of a woman's “actual or reasonably foreseeable environment” becomes pertinent, especially when determining the risk of injury to the mental health of a woman.”

13. If the aforesaid principles are applied to the present facts and circumstances of the case it is seen that the survivor is a rape victim. She is a minor aged about 15 years 5 months and 16 days as on 17.06.2025. The team of experts consisting of three Gynaecologist, one Radiologist and one Psychiatrist after examining the survivor have opined that the survivor's pregnancy can be terminated with extreme risk and informed consent of the survivor's guardian. The risk factor is explained to the victim as well as the parents and they have given the consent for terminating the pregnancy. The Hon'ble Supreme Court has permitted for termination of pregnancy in cases where the fetus have exceeded the age of 30 weeks. The same was followed by the Division Bench of this Court in the case of Victim X Vs. The Superintendent of Police Department, Bhopal (W. A. No.1078/2024) decided on 09.05.2024. In the instance case also the medical experts suggests that the pregnancy is a high risk pregnancy. There is high risk in both the conditions i.e. carrying pregnancy to the term and in terminating the pregnancy. The team of experts has categorically observed that pregnancy if terminated at present, the baby will be born alive, but chances of survival are very low. However, if the baby survives then it can suffer some mental or physical disabilities.

14. Considering the overall facts and circumstances of the case as well as



the medical opinion given by the body of experts, this Court deems it appropriate to allow this petition permitting termination of pregnancy subject to the following conditions:-

"(i) The procedure of termination of pregnancy will be carried out in the presence of the expert team of doctors. The expert doctors will explain to the family members as well as the petitioner the risk of getting the termination of her pregnancy and also other factors.

(ii) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention and other medical facilities including that of a presence of a Pediatrician as well as a Radiologist and other required doctors will be made available to her.

(iii) The post operative care up to the extent required, will be extended to the petitioner. It will be the duty of the State Government to take care of the child, if born alive.

(iv) The doctors will also ensure that a sample from the foetus is protected for DNA examination and as and when required will be handed over to the prosecution for using in the criminal case itself.

(v) A specialized team of Doctors shall take a decision as to when to terminate the pregnancy. All necessary care and caution shall be taken by the Doctors while carrying out the procedure for termination of the pregnancy."

15. With the aforesaid observations, this petition is allowed and disposed off.

(VISHAL MISHRA)
JUDGE

