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WP-25213-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 6th OF JULY, 2026WRIT PETITION No. 25213 of 2026*PROSECUTRIX X**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Ajay Ojha - Government Advocate for respondents/State.
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ORDER

Pursuant to the letter addressed to the Registrar General dated 24.6.2026 as per directions issued by the Division Bench of this Court in the case of In reference (suo moto) vs State of M.P. : Writ Petition No. 5184 of 2025 decided on 20.02.2025, cognizance was taken and the letter was treated a s *suo moto* petition. Accordingly, this writ petition came up for consideration before this Court.

2. The facts of the case, in substance, are that the prosecutrix a minor girl aged about 17 years and one month, is a rape victim. During medical examination, the victim was found to be pregnant.

3. It is submitted that the prosecutrix 'X' being a rape victim, is having every right to get the termination of her pregnancy. The report of the Medical Board dated 04.07.2026 is produced before this Court which reads as under :

"अभिमत:-

गठित मेडिकल बोर्ड टीम द्वारा यह अभिमत है कि आज दिनांक 4 जुलाई 2026 को 10 सप्ताह की गर्भावस्था की अवधि में है इस गर्भावस्था में



एम.टी.पी. (MTP) करवाई जा सकती है। चूंकि अभियोक्त्री कम उम्र की है और वजन भी कम है जिसके कारण अत्याधिक रक्त स्राव एवं संक्रमण होने के कारण गायनिक आई.सी.यू. की आवश्यकता पड़ सकती है। चूंकि अभियोक्त्री किशोरावस्था खुद हाई रिस्क प्रेग्नेसी में है इसलिये माँ की सुरक्षा को देखते हुए गर्भपात मेडिकल कॉलेज में किया जाना उचित होगा अभियोक्त्री प्रियंका नंदा की सम्पूर्ण वस्तुस्थिति से उनके परिजन को भी अवगत करा दिया गया है।"

4. The report clearly indicates that the pregnancy can be terminated subject to certain risks. The risk factors will always be explained to the victim. In the present case, the risk factors has already been explained to the victim and her mother.

5. The relevant provisions under the Medical Termination of Pregnancy Act, 1971 which deal with the cases of termination of pregnancy are 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)

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."

6. Regarding the consent, in the case of *A vs State of Maharashtra*, reported in (2024) 6 SCC 327, the Hon'ble Supreme Court has held as under :

*"25. From a perusal of the MTP Act, its Statement of Objects and Reasons as well as the recommendation of the Shah Committee which examined the issue of liberalising abortion laws in India, [Report of the Committee to Study the Question of Legalisation of Abortion, Ministry of Health and Family Planning, Government of India, dated December 1966.] two clear postulates emerge as to the legislative intent of the MTP Act. Firstly, the health of the woman is paramount. This includes the risk avoided from the woman not availing unsafe and illegal methods of abortion. Secondly, disallowing termination does not stop abortions, it only stops safe and accessible abortions. The opinion of the RMP and the Medical Board must balance the legislative mandate of the MTP Act and the fundamental right of the pregnant person seeking a termination of the pregnancy. However, as noticed above and by this Court in *X v. State (NCT of Delhi)* [*X v. State (NCT of Delhi)*, (2023) 9 SCC 433] the fear of prosecution among RMPs acts as a barrier for pregnant people in accessing safe abortion. Further, since the MTP Act only allows abortion beyond twenty-four weeks if the foetus is diagnosed with substantial abnormalities, the Medical Board opines against termination of pregnancy merely by stating that the threshold under Section 3(2-B) of the MTP Act is not satisfied. The clarificatory report dated 3-4-2024 fell into this error by denying termination on the ground that the gestational age of the foetus is above twenty-four weeks and there are no congenital abnormalities in the foetus.*

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35. In *Suchita Srivastava v. Chandigarh Admn.* [*Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570], a three-Judge Bench of this Court has held that the right to make reproductive choices is a facet of Article 21 of the Constitution. Further, the consent of the pregnant person in matters of reproductive choices and abortion is paramount. The purport of this Court's decision in *Suchita Srivastava* [*Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570] was to protect the right to abortion on a firm footing as an intrinsic



element of the fundamental rights to privacy, dignity and bodily integrity as well as to reaffirm that matters of sexual and reproductive choices belong to the individual alone. In rejecting the State's jurisdiction as the parens patriae of the pregnant person, this Court held that no entity, even if it is the State, can speak on behalf of a pregnant person and usurp her consent. The choice to continue pregnancy to term, regardless of the court having allowed termination of the pregnancy, belongs to the individual alone.

7. In the present case, the petitioner is a rape victim. She is carrying pregnancy of 10 weeks on account of being raped victim. The victim and her mother gave consent on 04.07.2026 for termination of pregnancy which reflects from the communication dated 04.07.2026.

8. Under these circumstances, as the victim and her mother have shown their willingness for termination of pregnancy which is reflected from letter dated 04.07.2026, this Court deems it appropriate to permit the termination of pregnancy of the victim subject to the following directions :

- (i) The procedure of termination of pregnancy will be carried out in the presence of the expert team of doctors as expeditiously as possible. The expert doctors will explain to the family members as well as the petitioner (victim) 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 victim. 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 fetus 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) All necessary care and caution be taken by the doctors while carrying out the procedure for termination of pregnancy.



(vi) Considering the finding of the Medical Board, the Hospital and its medical team would take care to ensure sensitive treatment and handling of the petitioner / victim in connection with all procedures, whether medical or administrative, keeping her emotional and mental health at the forefront.

9. In above terms, the petition is **disposed off** finally.

10. Before parting to the case, it is relevant to mention that Section 3 of the Medical Termination of Pregnancy Act, 1971 provides that:

"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.

1[(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 2[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. This Court is coming across several matters wherein the age of fetus is less than 24 weeks. In pursuance to the statutory provisions provided under the Act of 1971, termination of pregnancy can be carried out by a registered Medical Practitioner where the age of the fetus does not exceed 20 weeks and if it exceeds 20 weeks but is less than 24 weeks, then by two registered Medical Practitioner. It is clearly provided under the Act of 1971. It is mentioned by the Medical Board that age of the fetus is 10 weeks. This Court failed to understand that once there is a specific provision provided under the Act of 1971, why permission of this Court is required for terminating pregnancy. The Board can take conscious view regarding to the same and looking to the health status and condition of the victim as well as consent, the procedure of termination could have been adopted.

12. This Court repeatedly coming across such matters where instead



of proceeding with the termination of pregnancy, the authorities are shifting their burden to one another and thereafter the matter travelled up to this Court and after getting a direction/permission from this Court for termination of pregnancy, the procedure is being carried out. Once the authorities themselves are competent to terminate the pregnancy in terms of provisions of Section 3 of the Act of 1971, then such permissions are not required from this Court. Cases of termination of pregnancy are of urgent nature and should have been addressed by the authorities themselves to the earliest, but despite of the same, time is being wasted for taking permission from the District Court as well as from the this Court prior to adopting the procedure. The Act of 1971 clearly provides that if victim who is less than 18 years of age, gives his consent for terminating her pregnancy in writing or consent is given by the guardian, the same can be terminated. Under these circumstances, there is no requirement for taking permission from this Court for adopting the procedure, if the terms of pregnancy does not exceed 24 weeks. Under, these circumstances, let an explanation from Civil Surgeon, Assistant Chief Superintendent of Hospital, District Madla be procured to the effect as to why in such cases where the age of fetus is less then 24 weeks, permission from the Courts is required.

13. Let a copy of this order be communicated to the Principal Secretary of the Health Department, State of M.P. and Director of the Health Department, State of M.P. to ensure that the Courts are not flooded with such kind of cases any more. Necessary directions to the aforesaid effect be issued by them.



14. Let a copy of this order be also forwarded to the counsel for the State, Special Judge, Mandla and Superintendent of Police, Mandla and the concerning Hospital for further action.

(VISHAL MISHRA)
JUDGE

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