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

+ **W.P.(C) 12410/2022**

MS. R

..... Petitioner

Through: Ms. Hetu Arora Sethi, Mr. Rahul Jain,
Ms. Kavita Nailwal and Mr. Arjun
Basra, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Mehak Nakra, ASC(C), GNCTD
for R-1.

Mr. Satya Ranjan Swain and Mr.
Tanveer Oberoi, Advs. for AIIMS.

Insp. Dinesh Kumar, P.S. New
Friends Colony

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% **26.08.2022**

CM APPL. 37273/2022 (for exemption)

Allowed, subject to all just exceptions.

The application shall stand disposed of.

W.P.(C) 12410/2022

1. The petitioner, a 16 year old victim of rape has approached this Court for the medical termination of her pregnancy. The foetus is stated to be beyond 28 weeks old. The petition is supported by the affidavit of her brother who is stated to be 28 years old. The brother has been duly identified by the concerned Investigating Officer.

2. On the record is the report of the Medical Board constituted by AIIMS which has also recommended a medical termination of her pregnancy. The petitioner is constrained to approach this Court in light of the perception of the respondents that since the petitioner has crossed the 24 week of pregnancy threshold as constructed under the provisions of the Medical Termination of Pregnancy Act, 1971 [the Act], the termination would be impermissible.

3. The Court notes that in a recent decision of **Ms X Through Her Legal Guardian VS. Government Of Nct Of Delhi & Anr.** [W.P.(C) 10638/2022] rendered on 19 July 2022 while noticing the relevant provisions of the Act, it held as follows: -

“3. The Court notes that the aforesaid opinion fails to take cognizance of the notable amendments introduced in the Act in terms of Act No.8 of 2021. In terms of the amending Act, sub-section (2) of Section 3 came to be substituted in the following terms:

“(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.”

4. The Court notes that in terms of the Explanation so introduced where the pregnancy is alleged by a pregnant woman to have occurred on account of rape or sexual assault, the anguish caused by the pregnancy is presumed to constitute a grave injury to the mental health of the pregnant woman. It becomes relevant to note that Section 3(2) deals with situations where pregnancy has not exceeded 20 or 24 weeks. The mental anguish and injury to mental health that may be faced by a pregnant woman in case of rape is statutorily ordained to be presumed.

6. While dealing with the prayers addressed on this petition, the Court has borne in mind the following salient facts. Undisputedly, the petitioner is a victim of rape. She is stated to be about 13 to 17 years old. The assault on her person and the defilement of her body would have undoubtedly left scars which would take years to heal. Her misery and suffering would stand compounded even more if she were forced to bear the mantle of motherhood at such a tender age. The Court shudders to even imagine the state of despondency that would descend over her life. The mental and physical trauma that she would have to undergo if she were forced to carry the foetus and take on the onerous duties of motherhood is unimaginable. This Court is of the firm opinion that if the petitioner was forced to go through with the pregnancy despite the same having been caused on account of the incident of sexual assault, it would permanently scar her psyche and cause grave and irreparable injury to her mental health. The Court cannot visualize a more egregious invasion of her right to life as guaranteed by Article 21 of the Constitution.

7. It becomes pertinent to note that the Act deals with pregnancies which may extend upto 24 weeks. The decisions of the Court in **Surekha Gautum Khobragade** and **Pratibha Gaur Vs. Government of NCT** have however recognised the power of the Court in exceptional situations to invoke its extraordinary powers conferred by the Constitution where the provisions of the Act when strictly construed may not sanction a termination of pregnancy. If any case could be said to fall in that category, it is this.

8. The writ petition is accordingly allowed. The respondent hospital is consequently directed to constitute a Medical Board which may attend to the petitioner and oversee the termination of pregnancy. For the aforesaid purpose, let the petitioner appear before the Board which was constituted by the respondent hospital along with her legal guardian or any other member of her family on 21 July 2022 so that appropriate steps may

be taken in accordance with law. The Court further provides that if during the procedure for termination the Board and the attending doctors find that there arises a risk to the life of the petitioner, they would have the discretion to cancel the procedure for termination of pregnancy.

9. The Court further directs the respondent hospital to preserve the terminal foetus for the purposes of DNA testing which would be required with reference to the criminal case which stands registered. The preservation of the terminal foetus and the DNA that may be drawn therefrom shall abide by orders that may be passed by the competent criminal court.

10. The report of the Medical Board which was handed over by learned counsel for the perusal of the Court shall be placed in sealed cover and kept in the custody of the concerned Deputy Registrar to be handed over to learned counsel representing the respondent hospital upon obtaining due discharge.”

4. Accordingly, and for all the aforesaid reasons, the instant writ petition is allowed. Let the petitioner appear before the Medical Board constituted by AIIMS tomorrow which may undertake the requisite procedure for the medical termination of the pregnancy of the petitioner. Let the petitioner appear before that Board along with her brother as well as a responsible official that may be deputed by the Child Welfare Committee [CWC] on 27.08.2022 so that appropriate steps may be taken in accordance with law.

5. The Court further directs AIIMS to preserve the terminal foetus for DNA testing which would be required for the purposes of the criminal case which is pending. The preservation of the terminal foetus and the DNA that may be drawn therefrom shall abide by further orders that may be passed by the competent Court.

YASHWANT VARMA, J.

AUGUST 26, 2022 / SU