

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

WPA 817 OF 2023

02 05.4.2023
Sc Ct. no.2

Y

Vs.

State of West Bengal & Ors.

Mr. Sandip Mandal
Mr. Abhilash Mittal
Mr. Somath Saha.

.... For the Petitioner

Mr. Subir Kumar Saha
Ms. Bedashruti Bose.

.... For the State

This is a writ petition filed by the mother of a minor girl. The mother claimed that, the minor girl had been a victim of rape and sexual assault. The mother lodged a complaint before the jurisdictional police station informing the incident on **March 9, 2023 at page 17 to the writ petition**. On the basis of the said complaint, the jurisdictional police station, viz. Bagdogra Police Station had registered an **FIR with the Bagdogra Police Station**, vide, **Bagdogra Police Station Case No.114 of 2023 dated March 9, 2023, Annexure - P4 at page 16 to the writ petition**. The charge leveled under **Section 6** of the **Protection of Children from**

Sexual Offences Act, 2012 (for short 'the ***POCSO Act***').

The minor girl had been admitted at the ***North Bengal Medical College and Hospital, Siliguri***. The relevant medical documents showing the physical condition of the minor girl are annexed to the writ petition as ***Annexures – P5 to P8 at pages 18 to 42 to the writ petition***. A Medical Board had already been constituted and the minor girl was examined. From a report of the ***Zonal Medical Board, North Bengal Medical College, Annexure – P7 at page 40 to the writ petition***, it appeared that, the minor girl has been carrying with ***twin live-fetuses***.

Learned counsel for the petitioner, Mr. Sandip Mandal then drew attention of this Court to ***Annexure-P8 at page 42 to the writ petition*** being the ***Treatment Card dated March 20, 2023***, issued by the Head of Department Gynecology, North Bengal Medical College and Hospital, wherefrom it appeared that, he had reviewed the patient and opined that, ***as there was no termination order from the Court for the ongoing pregnancy, antenatal care to be given***. It also appeared that, the ***Department of Psychiatry*** had also evaluated the minor girl and formed their opinion. From the document being

Annexure – P7 at pages 40 to 41 to the writ petition being the report of the **Zonal Medical Board** it appeared that, the **age of the twin-fetuses were 25 weeks and 25 week one day respectively as on March 20, 2023**. All these facts were also brought to the notice of the highest authority of the District Police on **April 1, 2023, Annexure – P9 at page 43 to the writ petition.**

Through the instant writ petition the mother of the minor girl had prayed for the following reliefs:

“a. Allow the petitioner to have termination of pregnancy of her minor daughter in the North Bengal Medical College & Hospital or any other hospital.

b. A writ in the nature of Mandamus do issue commanding the respondent no.2, 3 and 4 to take all lawful steps to comply all the legal formality accompanied by the petitioner, if necessary for termination of pregnancy of the victim girl.

c. A writ in the nature of Mandamus do issue commanding the respondent no. 4 to have the opinion whether pregnancy of the victim daughter of the petitioner can be terminated or not within two days and if pregnancy can be terminated then to make all arrangement for termination of pregnancy within 3 days.

And/or

Any such order/orders as Your Lordship may deem fit and proper.”

The relevant averments as to the right to apply before this Court in its high prerogative writ jurisdiction under Article 226 of the Constitution of India pleaded by the mother of the minor girl are quoted below :

“1. That the petitioner is deserted married woman. The husband of the petitioner left her in the year 2016 leaving behind her along with two minor children out of them, the elder child is a daughter aged about 12 years and a son is aged about 9 years. Being the responsible and duty bound mother of the said minor son and daughter, the petitioner has been maintaining and looking after her said minor children including their welfare and education and for that the petitioner has been working in a beauty parlour.

Photocopy of the Aadhar Card of the petitioner is annexed herewith and marked as letter ‘P-1’.

1. That the date of birth of the minor daughter of the petitioner is 08-08-2011 and now she is aged about 11 years 7 months.

Photocopy of the Birth Certificate of the said minor daughter is annexed herewith and marked as letter “P-2”.

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7. That since 13-03-2023, the daughter of the petitioner is admitted to the respondent no.3, under the supervision of the doctors of the north Bengal Medical College & Hospital and her treatment is going on.

Photocopy of the prescriptions and medical examination reports are annexed herewith and marked as letter ‘P-6’ collectively.”

From the averments made in the writ petition it appeared that, the husband of the petitioner left her in the year **2016** leaving behind her along with two minor children out of them the elder child is this minor daughter, who is **about 12 years old today**. The Date of Birth of the minor daughter was **August 8, 2011**. The averment also showed that, since **March 13, 2023**, the minor girl was

admitted at the North Bengal Medical College and Hospital and is still there.

In the light of the above facts this writ petition was taken up for consideration for the first time on April 4, 2023 when this Court had observed as follows :

*“Considering the facts and circumstances stated above, and subject to further hearing of the writ petition tomorrow, i.e. **April 5, 2023** and considering the extreme urgency involved in the matter with the advancement of the growing up of the **twin-fetuses**, as stated above, the **respondent no.3, (the Superintendent, North Bengal Medical College and Hospital) and the respondent no.4, (the Chairman, Zonal Medical Board, North Bengal Medical College and Hospital) are directed to examine the minor girl thoroughly and in every possible manner by today and then shall file a report duly signed by them in the form of an affidavit which may be affirmed by any other appropriate and responsible authority of the said Medical College and Hospital by tomorrow before this Court with their opinion as to the feasibility and possibility of termination of the pregnancy and its medical consequences with the medical impact thereof on the general health of the said minor girl, who is carrying the twin-fetuses.***

*The writ petition shall appear for further consideration tomorrow, i.e., **April 5, 2023** under the heading “**Motion (Top)**”.*

Pursuant to the direction made by this Court on April 4, 2023 a report in the form of an affidavit affirmed on April 5, 2023 had been filed. The report was signed by the concerned doctors of the

Zonal Medical Board. The content of the report is quoted below :

“Memo No. ..NBMCH/1840 Date..04/4/2023
 Name – Sushma Sarkar
 Age – 12 Years, Sex-F
 Ward-Gynae

Vide order No – WPA 817 of 2023
 Vide order No. – WPA 817 of 2023

This is to inform you that Miss SUSMA SARKAR, 12 years, Female, daughter of KALU SARKAR, residence at Vill-Bagdogra, P.S. – Bagdogra is now carrying twin pregnancy of 28 wks. Gestation. As twin babies achieve period of viability and not associated with any congenital malformation and any pregnancy related complication except the young age that is 12 years, so termination of this pregnancy cannot be done under prevailing MTP Act 2021. The termination can be carried out on the basis of your Honourable Court order. However termination of this pregnancy at this age of gestation carries risk of massive haemorrhage, infection, sepsis, surgery & Anaesthetic risks even maternal death. Furthermore delivery of live babies is possible, that may require resuscitation. So the Honourable court may order whether to resuscitate babies or not and send material for Forensic testing.”

This report was prepared by the relevant Medical Board consisting of the numbers of Doctors, who are the expert on the subject and in the field on which the matter is being dealt with in the legal parlance. This Court not being an expert on the field has to depend and proceed on the said medical report as the Court cannot substitute its view nor can give a second opinion. The **glaring opinions and factors as would be evident from the said report of the Medical Board that, the age of the gestation carries risk of massive**

complications even the same can go up to the maternal death.

It is equally true and trite that the ***Medical Termination of Pregnancy Act, 1971*** (for short the said MTP Act) under its diverse provisions and the judicial interpretations thereunder in the catena of judicial pronouncements made by the Hon'ble Supreme Court in various matters from time to time had recognized the mental health of the mother. The mother should not and cannot travel through a mental trauma or cannot pass through a situation which is against the dignity of life of a mother, just because the mother after being ravished or otherwise had undergone an unwilling pregnancy. The continuation of an unwilling or forceful pregnancy, as in the fact of this case, including giving birth of a child as a result of such unwilling pregnancy and to continue with such child would cause a severe mental pressure and trauma to the mother. Therefore, as it appeared from the Medical report dated April 4, 2023, quoted above, ***just because the twin fetuses achieved the period of viability and not associated with any congenital mal formation and the minor girl does not suffer from any pregnancy related complications except the young age, i.e., 12 years***, it was incorrect to arrive at a finding that

termination of such an unwilling pregnancy cannot be done under the prevailing MTP Act.

This Court needs to ponder at this stage as to whether continuance of such unwilling pregnancy would involve a risk of causing grave injury to the mental health of the minor girl and whether the constitutional safeguard for protection of life can be extended to her, if so, to what extent. The minor girl is entitled to protection of her life in terms of **Article 12** of the Constitution of India. Her personal life and liberty which, *inter alia*, include to live with dignity and without any trauma shall not be deprived. This constitutional protection of life and liberty, including to lead a life without any phobia, fear, trauma and with dignity had been statutorily recognized and are embedded within the said MTP Act.

On a plain reading of the Statement of Objects and Reasons carefully and meaningfully along with various provisions of the statute, specifically, in the light of **Article 21** of the Constitution, it would be found that, the protection were afforded, encompassed within its fold. The valuable right of the mother to lead a normal healthy life - post-delivery and not a compromised existence that could affect her mental health, caused agony, pain, trauma and crippled her

economically, without the State coming forward to address these critical issues and unburdening or at least alleviating her sufferings. While dealing with this matter, from a constitutional Court, this Court is not unmindful that, the sufferings of the minor girl including the sufferings of her twin children whose compromised existence would be inextricably linked with the minor girl mother. At this juncture, the role of the State comes, which is crucial. The State being sovereign, does not sleep. The State should take the role for the wellbeing of the minor girl mother and that of her twin children. It is the State, the sovereign, who in such a situation should adopt a pro-active welfare role and must go ahead to render all its support required to the mother and her children. The personal life and liberty to live with dignity and without any trauma, is understood under **Article 21** of the Constitution of India, is inextricably linked with that of the unborn children and will continue even after the minor girl gives birth to the children.

No fetus can grow up naturally if the life of the mother is not supported and smooth sailing. The statute also provided for mothers' health, strength and also life. Just by giving birth out of an unwilling pregnancy rest of the life of the mother cannot be in a compromised existence.

However, in the light of the said report furnished by the **Medical Board dated April 4, 2023** as quoted above, one crucial factor is there, of which this Court cannot be unmindful, that the termination of pregnancy at this stage of gestation may carry a risk even to the extent of **maternal death**. Here this Court got stuck as the life of the minor girl is paramount at this stage. If ultimately, the minor girl has to sacrifice her life in the event of termination of her unwilling pregnancy at this advanced stage, then the question automatically comes to the mind of this Court that whose personal life, liberty and dignity shall be protected as guaranteed under **Article 21** of the Constitution.

For those reasons and discussions, **this Court cannot proceed to grant any relief for medical termination of the pregnancy of the said minor girl.**

The relevant Medical College & Hospital and the Medical Board under whose supervision the minor girl had been admitted and is still there, shall take all possible medical care in dealing with the case of the minor girl and shall take all further steps with regard to the necessary treatment and medical assistance required for the minor girl and

the fetuses without any laches or negligence whatsoever.

However, this Court further observes that in the event the said minor girl and her family are incapable to nurture and maintain the twin children and if no claim for adoption or maintenance of the said twin children are received or lodged, then the minor girl and her family may approach and apply before the jurisdictional District Magistrate and/or the appropriate authority under the ***Juvenile Justice (Care and Protection of Children) Act of 2015*** (hereafter the Act of 2015) for adoption and foster care of the twin children. In that event, the appropriate State Authority and/or the appropriate authority under the Act of 2015 shall take all necessary measures and care for the adoption and/or foster care and/or upbringing and/or well being of the said twin children strictly in accordance with law without any negligence or laches.

The concerned police authority of the Bagdogra Police Station, where the criminal case was registered, shall take all possible and necessary steps for the reasonable conclusion of the criminal trial in a most expeditious manner at the earliest.

With the above observations, this writ petition, **WPA 817 of 2023** stands disposed of without any order as to costs.

A copy of this order shall also be placed before the District Magistrate, Jalpaiguri, for his/her knowledge and perusal by the Registrar, Circuit Bench, Jalpaiguri, forthwith.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)