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

Date of decision: 04th JANUARY, 2024

IN THE MATTER OF:

+ W.P.(C) 16751/2023

R

..... Petitioner

Through: Dr. Amit Mishra, Mr. Amit Rana,
Advocates.

versus

THE UNION OF INDIA THROUGH SECRETARY MINISTRY OF
HEALTH AND FAMILY WELFARE & ORS. Respondents

Through: Mr. Bhagvan Swarup Shukla, CGSC
with Mr. Sarvan Kumar, Advocate.
Ms. Mehak Nakra, ASC (C) for
GNCTD with Mr. Abhishek Khari
and Ms. Disha Chaudhry, Advocates
for R-2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. Petitioner has approached this Court for a direction to the Respondents to permit medical termination of the ongoing pregnancy of the Petitioner under the Medical Termination of Pregnancy Act, 1971 and the Medical Termination of Pregnancy Rules, 2003.

2. The facts of the case reveal that the Petitioner got married on 26.02.2023. It is stated that the husband of the Petitioner passed away on 19.10.2023. It is stated that the Petitioner came back to her parents' house and when the Petitioner went for an ultrasound on 31.10.2023 it was found that the Petitioner is 20 weeks pregnant. It is stated that in December, the

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Petitioner decided not to continue the ongoing pregnancy and approached the doctors for medical termination of her pregnancy. Since the gestation period of the Petitioner was over 24 weeks, the Petitioner was not allowed to medically terminate her pregnancy. The Petitioner has, thereafter, approached this Court by filing the present Writ Petition.

3. This Court on 22.12.2023 directed the All India Institute of Medical Sciences to constitute a medical board to examine the condition of the Petitioner and to give a report as to whether the Petitioner is in a condition to undergo the procedure for termination of pregnancy. Pursuant to the directions of this Court, a Medical Board was constituted and the Petitioner was examined by the Board. A report dated 23.12.2023 of the Medical Board from AIIMS Hospital has been received. As per the Report of the Medical Board, the fetus is 29 weeks by date. The Medical Board has opined against the termination of the pregnancy of the Petitioner on the ground that Clause 3B(c) of the MTP Rules, 2003 permits medical termination of pregnancy only up to 24 weeks of gestation.

4. When the matter came up for hearing on 27.12.2023, it was submitted to this Court that the Petitioner is suffering from extreme trauma due to unfortunate demise of her husband and Psychiatric evaluation of the Petitioner should be conducted at the AIIMS. Accordingly, the Medical Superintendent, AIIMS Hospital was requested to get the Psychiatric evaluation of the petitioner done and file a report.

5. A Psychiatric evaluation report has been filed by the Medical Superintendent. Relevant portion of the said report reads as under:



“In this regard it is informed that the Petitioner Ms. R had visited the outpatient department (OPD) of Psychiatry AIIMS on 28.12.2023 and expressed depressed mood and suicidal foeticidal thoughts after which she was admitted with mother as the nominated representative in view of risk of harm to self and others (foetus). On mental status examination, she had depressed affect and ideas of worthlessness, suicidal thoughts secondary to refusal to MTP, foeticidal thoughts with impaired judgement and insight 1/5. She was provisionally diagnosed as depression with problems related to death of spouse and a differential diagnosis of adjustment disorder was made. During admission patient and her mother repeatedly demanded of MTP refusing any treatment for her health. Later, the petitioner Ms. R and her mother took leave against medical advice. She was suggested to undergo treatment for her depressive symptoms and remain under supervision by family members. At this time, it cannot be speculated definitively whether the continuation of pregnancy can be detrimental to the petitioner's health from a psychiatric view point. However, she may be advised to undergo treatment for her mental condition tor avoiding detrimental condition to her health.”

(emphasis supplied)

6. The short question which, therefore, arises for consideration is as to whether this Court should permit the Petitioner to undergo termination of her pregnancy or not.

7. Rule 3B (c) of the MTP Rules, 2003 and more particularly Rule 3B(c) of the said Rules reads as under:



“3B. Women eligible for termination of pregnancy up to twenty-four weeks. - The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of subsection (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely: -

(c) change of marital status during the ongoing pregnancy (widowhood and divorce);

.....”

8. The Petitioner lost her husband on 19.10.2023 and on that date the Petitioner could have been permitted to medically terminate her pregnancy due to change in her marital status. However, the decision to terminate her pregnancy was taken by the Petitioner after two months.

9. The Psychiatric evaluation Report of the Petitioner given by the AIIMS shows that the Petitioner is going through immense trauma and is showing suicidal tendencies.

10. The Apex Court in X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another, 2022 SCC OnLine SC 1321, while considering Rule 3B of the MTP Rules and more particularly Rule 3B(c) of the said Rules has observed as under:

“90. Further, the decision to give birth to and raise a child is necessarily informed by one's material circumstances. By this, we mean the situational, social, and financial circumstances of a woman or her family may be relevant to her decision to carry the pregnancy to term. Those who fall victim to emergencies or disasters may unexpectedly find themselves without a



home or separated from their families. They may have lost loved ones. Their livelihood may be adversely affected and they may undergo other deeply impactful changes in their lives, both material and psychological. The possibility that they have suffered grave injuries which alter their mobility or quality of life cannot be discounted. The myriad changes that may take place in the aftermath of a disaster, emergency, or humanitarian crisis cannot be exhaustively listed or envisaged. Each woman's circumstances are unique and we have merely listed (by way of illustration) some of the many potential repercussions of the catastrophes accounted for in Rule 3B(g).

91. *A woman in such situations may have decided to have a child before the emergency or disaster which changed her material circumstances. However, this change may understandably impact each woman's evaluation of her ability to raise a child as well as her willingness to carry the pregnancy to term. While many women may decide to carry the pregnancy to term, others may no longer find the pregnancy to be a viable or practical option. **It is ultimately the prerogative of each woman to evaluate her life and arrive at the best course of action, in view of the changes to her material circumstances.***

92. *Rule 3B(c) states that a “change in the marital status during the ongoing pregnancy (widowhood and divorce)” renders women eligible for termination of their pregnancy under Section 3(2)(b). The impact of the continuance of an unwanted pregnancy on a woman's physical or mental health should take into consideration various social, economic, and cultural factors operating in her actual or reasonably foreseeable environment, as provided in Section 3(3). The rationale behind Rule 3B(c) is comparable to the rationale for Rule 3B(g) i.e., a change in a woman's material circumstances during the ongoing pregnancy.*



93. Rule 3B(c) is based on the broad recognition of the fact that a change in the marital status of a woman often leads to a change in her material circumstances. A change in material circumstance during the ongoing pregnancy may arise when a married woman divorces her husband or when he dies, as recognized by the examples provided in parenthesis in Rule 3B(c). The fact that widowhood and divorce are mentioned in brackets at the tail end of Rule 3B(c) does not hinder our interpretation of the rule because they are illustrative.

94. A change in material circumstance may also result when a woman is abandoned by her family or her partner. When a woman separates from or divorces her partner, it may be that she is in a different (and possibly less advantageous) position financially. She may no longer have the financial resources to raise a child. This is of special concern to women who have opted to be a homemaker thereby forgoing an income of their own. Moreover, a woman in this situation may not be prepared to raise a child as a single parent or by coparenting with her former partner. Similar consequences may follow when a woman's partner dies.

95. Women may undergo a sea change in their lives for reasons other than a separation with their partner (Rule 3B(c)), detection of foetal “abnormalities” (Rule 3B(f)), or a disaster or emergency (Rule 3B(g)). They may find themselves in the same position (socially, mentally, financially, or even physically) as the other categories of women enumerated in Rule 3B but for other reasons. For instance, it is not unheard of for a woman to realise that she is pregnant only after the passage of twenty weeks.⁸⁸ Other examples are if a woman loses her job and is no longer financially secure, or if domestic violence is perpetrated against her,⁸⁹ or if she



suddenly has dependents to support. Moreover, a woman may suddenly be diagnosed with an acute or chronic or life-threatening disease, which impacts her decision on whether to carry the pregnancy to term.

....

96. A recognition of the fact that there may be a change in a woman's material circumstance animates Rule 3B(c), Rule 3B(g) and Rule 3B(f). However, Rule 3B does not enumerate all the potential changes that a woman's material circumstances may undergo. It merely specifies some of the potential changes to a woman's material circumstances, in sub-rules (c), (f) and (g). From the object and purpose of the MTP Act, its overall scheme, and the categories of women specified in Rule 3B, it is evident that it was not the intention of the legislature to restrict the benefit of Section 3(2)(b) and Rule 3B only to women who may be confronted with a material alteration in the circumstances of their lives in the limited situations enumerated in Rule 3B. Rather, the benefit granted by Rule 3B must be understood as extending to all women who undergo a change of material circumstances.

101. 98. To this, we may add that a woman is often enmeshed in complex notions of family, community, religion, and caste. Such external societal factors affect the way a woman exercises autonomy and control over her body, particularly in matters relating to reproductive decisions. Societal factors often find reinforcement by way of legal barriers restricting a woman's right to access abortion. The decision to have or not to have an abortion is borne out of complicated life circumstances, which only the woman can choose on her own terms without external interference or influence. Reproductive autonomy requires that every



pregnant woman has the intrinsic right to choose to undergo or not to undergo abortion without any consent or authorization from a third party.

102. The right to reproductive autonomy is closely linked with the right to bodily autonomy. As the term itself suggests, bodily autonomy is the right to take decisions about one's body. The consequences of an unwanted pregnancy on a woman's body as well as her mind cannot be understated. The foetus relies on the pregnant woman's body for sustenance and nourishment until it is born. The biological process of pregnancy transforms the woman's body to permit this. The woman may experience swelling, body ache, contractions, morning sickness, and restricted mobility, to name a few of a host of side effects. Further, complications may arise which pose a risk to the life of the woman. A mere description of the side effects of a pregnancy cannot possibly do justice to the visceral image of forcing a woman to continue with an unwanted pregnancy. Therefore, the decision to carry the pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman.

124. The object of Section 3(2)(b) of the MTP Act read with Rule 3B is to provide for abortions between twenty and twenty-four weeks, rendered unwanted due to a change in the material circumstances of women. In view of the object, there is no rationale for excluding unmarried or single women (who face a change in their material circumstances) from the ambit of Rule 3B. A narrow interpretation of Rule 3B, limited only to married women, would render the provision discriminatory towards unmarried women and violative of Article 14 of the Constitution. Article 14 requires the state to refrain from denying to any person



equality before the law or equal protection of laws. Prohibiting unmarried or single pregnant women (whose pregnancies are between twenty and twenty-four weeks) from accessing abortion while allowing married women to access them during the same period would fall foul of the spirit guiding Article 14. The law should not decide the beneficiaries of 106 (1999) 2 SCC 228

133. The MTP Act recognises the reproductive autonomy of every pregnant woman to choose medical intervention to terminate her pregnancy. Implicitly, this right also extends to a right of the pregnant woman to access healthcare facilities to attain the highest standard of sexual and reproductive health. It is meaningless to speak of the latter in the absence of the former. Reproductive health implies that women should have access to safe, effective, and affordable methods of family planning and enabling them to undergo safe pregnancy, if they so choose.”

11. There is a change in the marital status of the Petitioner. The Petitioner has become a widow. The Psychiatric evaluation Report of the AIIMS indicates that the Petitioner is suffering from extreme trauma due to the death of her husband. Condition of the Petitioner can result in the Petitioner losing her mental balance and she can harm herself in the process.

12. In view of the law laid down by the Apex Court in X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another (supra) wherein it has held that that it is the prerogative of each woman to evaluate her life and arrive at the best course of action in view of the change in material circumstance and also in view of the fact that the



right to reproductive choice also includes the right not to procreate, this Court is of the opinion that, at this juncture, the Petitioner should be permitted to terminate her pregnancy because allowing the Petitioner to continue with the pregnancy can impair the mental stability of the Petitioner as she is showing suicidal tendencies.

13. Accordingly, the Petitioner is permitted to undergo the procedure for termination of her pregnancy at AIIMS. AIIMS is requested to conduct the procedure even though the Petitioner has crossed her gestation period of 24 weeks.

14. It is made clear that this Order has been passed in the peculiar facts and circumstances of the present case and the same be not treated as a precedent.

15. With these observations, the Writ Petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JANUARY 04, 2024

Rahul