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

+ W.P.(C) 16751/2023

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..... Petitioner

Through: Dr. Amit Mishra, Advocate.

versus

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

Through: Ms. Aishwarya Bhati, ASG with Mr.
Bhagvan Swarup Shukla, CGSC
along with Mr. Sarvan Kumar,
Advocate.

Ms. Mehak Nakra, ASC for GNCTD
with Ms. Disha Chaudhry and Mr.
Abhishek Khari, Advocates for R-2.
Dr. Harsh Pathak and Mr. Mohit
Choubey, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

15.01.2024

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1. Petitioner had approached this Court for a direction to the Respondents to permit medical termination of her ongoing pregnancy.

2. The facts of the case reveal that the Petitioner got married on 26.02.2023 and unfortunately her husband passed away on 19.10.2023. It is stated that the Petitioner underwent an ultrasound on 31.10.2023 wherein it was found that the Petitioner is 20 weeks pregnant. It is stated that the Petitioner wanted to terminate her pregnancy and, therefore, she 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, thereafter, approached this Court by filing the present Writ Petition.

3. This Court vide Order dated 04.01.2024, while placing reliance on the judgment of 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, permitted the termination of the pregnancy of the Petitioner.

4. On 08.01.2024 CM APPL. 1262/2024 was filed by the Petitioner seeking directions to the Respondents to follow the guidelines issued by the Ministry of Health and Family Welfare Govt. of India on 14.08.2017 under which termination of pregnancy was permitted even beyond 20 weeks of gestation period. This application was filed by the Petitioner on the basis of a report dated 06.01.2024 issued by the AIIMS stating that since the gestation period of the Petitioner was over 30 weeks and the fetus was viable and, therefore, it would be alive even after delivery. The said report also suggested that the anticipated requirement of NICU ICU care will range from 30-45 days with reasonable risk of physical & mental health of the child. The Report also stated that if the pregnancy is carried on till 37 weeks, the anticipated requirement of NICU will be minimal and there will be very high likelihood of morbidity free survival of the child. The Petitioner, therefore, filed the abovementioned application stating that she need not undergo the process of delivering the child.

5. In view of the Report dated 06.01.2024, this Court on 08.01.2024 directed the Petitioner to undergo Psychological evaluation at AIIMS. The AIIMS was directed to conduct the psychological evaluation of the



Petitioner and file its report. The matter was adjourned to 09.01.2024. The Medical Board of the Doctors of AIIMS was requested to join the proceedings through video conferencing and the proceedings were decided to be held in camera.

6. On 09.01.2024 Dr. Gagan Hans, Dr. Preethy Kathiresan, Dr. Smita Manchanda, Dr. Amitesh Khare, Dr. Archana Kumari, Dr. Anu Sachdeva and Dr. Barre Vijay Prasad, from AIIMS participated in the proceedings. The Petitioner was directed to undergo further counseling on 10.01.2024, 11.01.2024 & 12.01.2024 and the matter was fixed for hearing on 12.01.2024.

7. On 12.01.2024 the matter was posted for hearing on 13.01.2024 and the Medical Board of AIIMS was directed to give its report.

8. On 13.01.2024, a report dated 12.01.2024 has been filed. The said report reads as under:

“Following the court hearing on 12.1.2024 at 2:30 PM regarding the case number W.P.C 16751/2023. A review meeting was held in the Department of Obstetrics and Gynaecology with the Senior Faculty Members.

We at AIIMS are committed to following the instructions and orders of the Hon'ble Court and are sympathetic to the cause of the mother going through a mental illness, however it is imperative to optimize the condition of the mother and the fetus.

We would like to submit the following points to the Hon'ble court:

1. As care providers, we are committed to providing best possible care to the mother and fetus, the mother's interest being paramount. Taking cognizance of the fact that the patient has severe depression with a tendency to self-harm, it is strongly recommended the



she is admitted and treated on priority.

2. It is highly likely that the depression may persist, if not worsen after delivery. The effects of the preterm delivery on the mother should also be considered. This being her first pregnancy, a preterm induction of labor has a high chance of failure and may lead to caesarean section. This may have serious implications on her future pregnancies.

3. As the fetus has growth lag as per the USG dated 23.12.23, the fetus needs close monitoring. The outcome will be much better outcome if delivered at 34 weeks or beyond.

4. As per the MTP act, the provision of termination of pregnancies beyond 24 weeks is to be done for fetuses having significant abnormalities. Feticide in this case is neither justified nor ethical as the fetus is grossly normal.”

9. The matter was kept for orders today, i.e. 15.01.2024.

10. Today, Union of India has filed an application for recall of the Order dated 04.01.2024. AIIMS has also filed an application seeking directions based on the reports dated 12.01.2024 and 13.01.2024. The Registry is directed to number the said applications.

11. Since the Reports dated 12.01.2024 and 13.01.2024 indicates that the preterm induction of labor has a high chance of failure and may lead to caesarean section which may have serious implications on the future pregnancies of the Petitioner and can also lead to significant abnormality of the fetus. Keeping in view the health of the Petitioner as well as the fetus, the Petitioner is directed to undergo further Psychiatric Evaluation and Counseling on 16.01.2024, 17.01.2024 & 18.01.2024 at AIIMS

12. List on 19.01.2024.

13. AIIMS is directed to place on record a report indicating the physical



and mental health of the Petitioner as well as the fetus.

SUBRAMONIUM PRASAD, J

JANUARY 15, 2024

Rahul