

Neutral Citation No. - 2025:AHC:116122-DB

Court No. - 21

Case :- WRIT - C No. - 20205 of 2025

Petitioner :- Ab(2025) Through Her Guardian (Father)

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ashutosh Pandey, Praveen Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Manoj Kumar Gupta, J.

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard learned counsel for the parties.
2. The present petition has been filed on behalf of a minor, who is a victim of rape, for a writ of mandamus commanding the respondent authorities to terminate the pregnancy of the petitioner.
3. The facts narrated in the writ petition reveals that petitioner is a victim of Case Crime No.80 of 2025, under Section 65(1), 351(2) of BNSS, 2023, and 5j(ii) and 6 of POCSO, Act, 2012. In paragraph No.6 of the writ petition it is stated that the age of the petitioner is 17 years and half. The petition has been presented through her father and natural guardian, and is supported by his affidavit. The prayer is for permitting the petitioner to terminate the pregnancy. It appears that the matter was placed before a Co-ordinate Bench on 25.06.2025 and the said Bench granted time to respondents No.1, 2 and 3 to file counter affidavit.
4. The State-respondents have filed an affidavit stating that initially the petitioner filed an application before C.J.M., Agra dated 10.05.2025 for permission to get the pregnancy terminated. He called for a report from CMO, Agra. He constituted a medical board and it examined the petitioner on 13.06.2025, and at that time the age of the fetus was 26 weeks and 5 days. It is also stated in the affidavit, that the Board again examined the petitioner on 02.07.2025 and has submitted a report, according to which, the age of the fetus at the relevant time was 29 weeks and 1 day, thus at present, it would be around 31 weeks and termination of pregnancy could be a threat to the life of the mother and the baby in womb.

5. The matter was placed before us on 14.07.2025 and on a mention made by learned counsel for the petitioner that the case is urgent, we allowed the mention for urgent hearing and, accordingly, it was taken up.

6. Although the right to reproductive autonomy, termination of pregnancy, dignity and privacy of a pregnant person is paramount, but this Court having regard to the late stage of pregnancy was of the view that the petitioner should be properly counseled and made aware of the option that if she delivers the child, it could be given in foster care of some responsible agency/body, keeping the entire process confidential.

7. Accordingly, we passed the order requesting the Principal, S.N. Medical College, Agra to depute a Psychiatrist and a Clinical Psychologist to counsel the petitioner and her parents and further required input from District Magistrate, Agra in case the petitioner agrees to carry the pregnancy to full term. The entire exercise in this behalf was directed to be completed within two days and today's date was fixed.

8. In pursuance of the said order, the Principal, S.N. Medical College assigned a Psychiatrist and a Clinical Psychologist to counsel the petitioner and her parents. The Principal, S.N. Medical College has submitted his report in a sealed cover through the Additional Chief Standing Counsel and after going through it, we find that the petitioner and her guardian despite full session of counselling of 45 minutes did not agree for delivery and insisted for termination of the pregnancy. The relevant part of the joint report of the Psychiatrist and the clinical Psychologist is extracted below:

"काउंसलिंग सेशन के दौरान याची एवं उनके साथ उपस्थित परिजनों को सभी उपलब्ध विकल्प एवं उनसे जुड़े लाभ-हानि के बारे में विस्तार में बताया गया, परन्तु याची एवं उनके परिजन अपनी वर्तमान सामाजिक, आर्थिक एवं मानसिक स्थिति को संज्ञान में लेते हुए एवं समस्त जोखिमों को भली-भाँति समझने के बाद भी इस गर्भवस्था का गर्भसमापन कराना चाहते हैं तथा किसी भी अवस्था में वह इस गर्भावस्था को पूर्ण अवधि तक अथवा शिशु जन्म तक ले जाने के लिए सहमत नहीं है।"

(emphasis is ours)

9. Shri Rajiv Gupta, learned Additional Chief Standing Counsel states that he had a direct interaction with the Principal, S.N. Medical College,

Agra and he informed that the present physical and mental condition of the petitioner is not good, rather precarious. He states that the counselling team, despite all efforts, could not persuade the victim to carry the pregnancy. He states that according to their assessment, this is primarily because of the impact of crime and the resultant unwanted pregnancy. They also apprehend of social stigma, therefore, they are not at all agreeable to avail the options and insisted for termination of the pregnancy.

10. A Three Judge Bench of the Supreme Court in **A (Mother of X) vs. State of Maharashtra and Another, (2024) 6 SCC 327** while considering a case of pregnancy of thirty one weeks, examined in detail the Scheme of the Medical Termination of Pregnancy Act, 1971 (MPT Act) and observed as follows:

“21. The right to abortion is a concomitant right of dignity, autonomy and reproductive choice. This right is guaranteed under Article 21 of the Constitution. The decision to terminate pregnancy is deeply personal for any person. The choice exercised by a pregnant person is not merely about their reproductive freedom but also about their agency as recognised by this Court in *X v. State (NCT of Delhi)*. It is therefore imperative that the fundamental right of a pregnant person is not compromised for reasons other than to protect the physical and mental health of the pregnant person.”

11. Again in para 25 of the Law Report, it was emphasized that the first and paramount consideration is the physical and mental health of the pregnant person. In that context, the judgement takes into consideration the relaxation provided by the legislature under Section 3(2-B) in respect of foetal abnormality and held that the relaxation of prescribed timeline to such cases only *prima facie* appears to be unreasonable and arbitrary inasmuch as a victim of rape is comparable to a case where the foetus is found to be substantially abnormal. A pregnancy out of a consensual relationship cannot be equated with a pregnancy resulting from rape. To wit:

“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, 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)* 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.

26. The report failed to form an opinion on the impact of the pregnancy on the physical and mental health of the pregnant person. If a pregnant person meets the condition under Section 3(2-B) of the MTP Act then there would be no need for any permission by the courts. Therefore, whenever a pregnant person approaches the High Court or this Court, it is imperative for the Medical Board to opine on the physical and mental health of the pregnant person.”

12. Further elaborating, the Bench observed that:

“29. The MTP Act has removed the restriction on the length of the pregnancy for termination in only two instances. Section 5 of the MTP Act prescribes that a pregnancy may be terminated, regardless of the gestational age, if the medical practitioner is of the opinion formed in

good faith that the termination is immediately necessary to save the life of the pregnant person. Section 3(2-B) of the Act stipulates that no limit shall apply on the length of the pregnancy for terminating a foetus with substantial abnormalities. The legislation has made a value judgment in Section 3(2-B) of the Act, that a substantially abnormal foetus would be more injurious to the mental and physical health of a woman than any other circumstance. In this case, the circumstance against which the provision is comparable is rape of a minor. To deny the same enabling provision 9 of the law would appear *prima facie* unreasonable and arbitrary. The value judgment of the legislation does not appear to be based on scientific parameters but rather on a notion that a substantially abnormal foetus will inflict the most aggravated form of injury to the pregnant person. This formed the basis for this Court to exercise its powers and allow the termination of pregnancy in its order dated 22-4-2024³. The provision is arguably suspect on the ground that it unreasonably alters the autonomy of a person by classifying a substantially abnormal foetus differently than instances such as incest or rape. This issue may be examined in an appropriate proceeding should it become necessary.”

13. In the concluding part of the judgement, the legal principle, which has been emphasized, is that consent of a pregnant person in decisions of reproductive autonomy and termination of pregnancy is paramount. Again, in **XYZ vs. State of Gujarat, 2023 SCC OnLine SC 1573**, the court was faced with a request for termination of pregnancy of 27 weeks 2 days +/- 2 weeks. It has been held that Article 21 of the Constitution recognizes and protects the right of a woman to undergo termination of pregnancy, if her mental or physical health is at stake. Importantly, it is the woman alone who has the right over her body and is the ultimate decision maker on the question of whether she wants to undergo an abortion. In the instant case, as noted above, despite full session of counselling, the petitioner and her parents have not agreed to carry pregnancy to the full term. This may be because of fear of social stigma and/or abject poverty coupled with the fact that the crime

committed on her must have left her completely shattered both physically and mentally.

14. Considering the totality of facts and circumstances, the Court with heavy heart, permits the termination of pregnancy.

15. Accordingly, the following directions are issued:

a. The petitioner will remain present alongwith her parents before the Principal, S.N. Medical College, Agra tomorrow during the first session.

b. The Principal. S.N. Medical College will constitute a team of doctors comprising of Specialists to medically terminate the pregnancy tomorrow itself and if for some reason, the same is not possible, not beyond the next day.

c. The District Magistrate, Agra is directed to be involved in the process so that all medical ancillary expenses of the petitioner and her family are borne by the State, which shall be inclusive of their travel expenses and stay at Agra.

16. Let a copy of instant order be handed over to Shri Rajiv Gupta, learned Additional Chief Standing Counsel for onward communication and compliance by the District Magistrate, Agra and the Principal, S.N. Medical College, Agra.

17. The aborted foetus shall be preserved in accordance with law for forensic examination in the main case.

18. All concerned will take appropriate steps to maintain confidentiality.

19. Before parting, we put on record our appreciation for the support provided by the Principal, S.N. Medical College, Agra and his team of Specialists to the victim and this Court.

Order Date :- 17.7.2025

Mukesh Kr.