



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

Date of decision: 05<sup>th</sup> FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 1444/2024 & CM APPL. 5984/2024**

S

..... Petitioner

Through: Dr. Amit Mishra, Advocate.

versus

THE UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with Ms. Priya Mishra, GP and Mr. Sachin Dubey, Advocate for R-1.

Ms. Mehak Nakra, ASC (C) for GNCTD with Mr. Abhishek Khari and Ms. Disha Chaudhory, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The Petitioner has approached this Court seeking directions for permitting medical termination of her ongoing pregnancy of 28 weeks under the provisions of the Medical Termination of Pregnancy Act and the Rules framed thereunder.
2. The facts reveal that the Petitioner is an unmarried female student aged 20 years and is a permanent resident of Delhi. It is stated that on 25.01.2024, the Petitioner had visited Dr. Batra's Diagnostic Centre for an ultrasound scan. It is stated that during the course of it, it came to the knowledge of the Petitioner that she is 27 weeks pregnant and it was informed to her that the due date for delivery is 25.04.2024.
3. It is stated that prior to the conduct of ultrasound scan, the Petitioner had not found any symptoms of pregnancy due to irregular menstrual periods from August 2023 to January 2024, and that she had not shown any



bodily symptoms usually indicating pregnancy.

4. It is contended by learned Counsel for the Petitioner that carrying the pregnancy will cause grave injury to the Petitioner's physical and mental health. It is also pointed out that the Petitioner is a student and is unmarried, without any source of income and that there will be social stigma and harassment associated with her continuing the pregnancy which would jeopardize her career and thereby her future.

5. The Petitioner has approached this Court with the following prayers:-

*“A. Allow the present writ petition and to pass appropriate writ, order and direction in the nature of writ of mandamus thereby directing Respondents to permit medical termination of ongoing unwanted pregnancy of the Petitioner under section 3(2)(b)(i) r/w 3 (3) & section 5 of the MTP Act r/w Rule 3B MTP Rules 2003 in AIIMS Hospital New Delhi immediately without disclosing her identity;*

*B. Direct Respondent No. 3 to terminate the ongoing pregnancy even through feticide as per the guidelines for late term abortions beyond 20 weeks framed by the Ministry of Health & Family Welfare, Government of India dated 14.08.2017;*

*C. Direct Respondent No.3 to constitute a medical board immediately & examine the Petitioner physically, mentally, psychologically and also state the survival chances of fetus after medical termination of pregnancy & file a complete medical report with an advance copy supplied to the Petitioner immediately.”*

6. The Medical Termination of Pregnancy Act and the Rules framed thereunder governs termination of pregnancy. Section 3 of the MTP Act spells out the situations wherein pregnancies may be terminated by registered medical practitioners. Section 3 of the MTP Act provides that



when the length of pregnancy is within 20 weeks it may be terminated by a registered medical practitioner if an opinion is reached in good faith that continuance of the same would involve a risk to the life of the pregnant women or cause grave injury to her physical or mental health or there is a risk to the child or that it will suffer from abnormalities. Section 3 of the MTP Act reads as under:-

***“3. When pregnancies may be terminated by registered medical practitioners.***

*—(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.*

*[(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.*

7. In case of a pregnancy which exceeds 20 weeks but is within 24 weeks, the same may be terminated if an opinion on the same parameter is produced by two registered medical practitioners. The cases of such category of women is prescribed under Rule 3(2)(b) of the MTP Act.

8. It is also to be noted that under Section 3(2)(b) of the MTP Act, a pregnancy may be terminated without record to the length of pregnancy as given in Section 3(1) of the MTP Act even beyond 24 weeks where such termination of such pregnancy is necessary due to any substantial foetal abnormality as diagnosed by a medical board. Section 3(2)(b)(i) of the MTP Act reads as under:-

*“3.(2)(b)(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;”*

9. Furthermore, as per Section 5 of the MTP Act, termination of



pregnancy of a duration exceeding 24 weeks can also be allowed only if an opinion is formed in good faith for the purpose of saving the life of the pregnant woman. The scheme of the Act has been explained by the Apex Court in X vs. Union of India and Another, **2023 SCC OnLine 1338**, which reads as under:-

*“21. The position of law can therefore be summarized as follows:*

| <i>Length of the pregnancy</i>              | <i>Requirements for termination</i>  |
|---|--|
| <i>Up to twenty weeks</i>                   | <i>Opinion of one RMP in terms of Section 3(2)</i>   |
| <i>Between twenty and twenty-four weeks</i> | <i>Opinion of two RMPs in terms of Section 3(2) read with Rule 3B.</i>   |
| <i>Beyond twenty-four weeks</i>             | <i>If the termination is required to save the life of the pregnant woman, the opinion of one RMP in terms of Section 5</i>                     |
|   | <i>If there are substantial foetal abnormalities, with the approval of the Medical Board in terms of Section 3(2B) read with Rule 3A(a)(i)</i> |

10. From a perusal of the Act and the Rules framed thereunder, as well as the Judgment of the Apex Court in X vs. Union of India and Another, **2023 SCC OnLine 1338**, it is amply clear that a pregnancy which is beyond 24 weeks can only be terminated if requirements provided under Section 5 of the MTP Act are satisfied and the decision has been made to save the life of



the pregnant woman or to the satisfaction of Section 3(2)(b) and Section 3(2)(a)(i) for substantial foetal abnormalities.

11. In the case at hand, the Petitioner is an unmarried woman carrying 28 weeks pregnancy. The ultrasound report conducted on 25.01.2024 reads as under:-

|                              |                  |
|------------------------------|------------------|
| NAME: MRS. S                 | AGE/ SEX: 20 Y/F |
| REF. BY: DR. ANAMIKA KAWATRA | DATE: 25/01/2024 |

LMP: 15/07/2023 (27 WKS 5 D)

**ANTENATAL ULTRASONOGRAPHY:**

The scan reveals a single live fetus in cephalic presentation at the time of examination. Cervix is normal with a length of 3.5 cm. The os is closed. The placenta is anterior, grade I & not low-lying. Liquor is adequate. AFI- 17.5 cm (Single largest vertical pocket measure 5.7 cm)

**Fetal growth parameters as are under: -**

|      |  |
|------|--|
| BPD  | 69.0 mm (27 WKS 5 D)                         |
| HC   | 252 mm (27 WKS 3 D)                          |
| FL   | 49.3 mm (26 WKS 4 D)                         |
| AC   | 222 mm (26 WKS 5 D)                          |
| EFBW | 982 Gms $\pm$ 12% (10 <sup>th</sup> centile) |

Average U/S age is 27 WKS 0 D  $\pm$  2 WK (AS PER ULTRASOUND).  
EDD BY U/S (AS PER FETAL SIZE): 25/04/2024

Fetal heart rate is 138/min.

**A tiny echogenic cardiac focus seen in the fetal left ventricle.**

Fetal tone and movements are normal.

Fetal brain is normal with septum in midline.

4-chamber view of heart is normal.

No obvious congenital anomaly seen in fetal spine, thorax, abdomen & fetal limbs.

3 vessel cord is normally seen.

**OPINION: - THE FINDINGS ARE CONSISTENT WITH SINGLE LIVE FETUS WITH AN AVERAGE U/S AGE OF 27 WKS 0 D  $\pm$  2 WKS.**

I, Dr. Rajender Batra (name of the person conducting ultrasonography / image scanning) declare that while conducting ultrasonography / image scanning on Mrs. Sonia (name of the pregnant woman), I have neither detected nor disclosed the sex of her foetus to any body in any manner)

Dr. Rajender Batra  
MBBS, DMRD RADIODIAGNOSIS  
DMC NO-25465  
Consultant Radiologist

Dr. Nipun Gumber  
MBBS, MD RADIODIAGNOSIS  
DMC NO-90272  
Consultant Radiologist

(This is a routine obstetrical ultrasound mainly done for estimation of gestational age, amount of liquor, placental position & general well being of the fetus and not for the evaluation of congenital anomalies. Moreover, the anomalies in relation to fetal heart and limbs are extremely difficult due to constantly changing position of the fetus and overlapping of its various parts).





12. A perusal of the report shows that there is no congenital abnormality in the foetus nor any danger to the mother to carry on with the pregnancy which will mandate termination of the foetus. Since the foetus is viable and normal, and there is no danger to the Petitioner to carry on with the pregnancy, foeticide would neither be ethical nor legally permissible. The Petitioner would have to be induced for delivering the child and such delivery could be detrimental to the mental and physical health of the newborn since it would be a pre-term delivery. It could also be detrimental to the mother for her future pregnancies.

13. The Petitioner's case is also not covered by the guidelines dated 06.08.2018 on which the Petitioner places reliance. According to these guidelines relied upon by the Petitioner, medical termination of pregnancy even beyond 24 weeks is permitted only in cases of minor girls who are rape victims or when there are congenital abnormalities in the foetus. Since the present case does not fall under any of the categories, this Court is not inclined to accept the prayer of the Petitioner of foeticide.

14. The Petitioner is already seven months pregnant with a healthy and viable foetus. The prayer sought for by the Petitioner for a direction to the All India Institute of Medical Sciences (AIIMS) for premature termination of pregnancy/delivery of the child cannot be acceded to by this Court since the case of the Petitioner does not fall within the four corners of the MTP Act and the Rules framed thereunder which hold the field.

15. If the Petitioner wants to approach AIIMS for delivery and the future course of action, it is always open for the Petitioner to approach the AIIMS and this Court is sure that AIIMS, being a premier institute, would render all facilities and advise the Petitioner with regard to her pregnancy.



16. If the Petitioner is inclined to give the new born child to adoption, then the Petitioner is at liberty to approach the Union of India and the Union of India is directed to ensure that the process of adoption takes place at the earliest and in a smooth fashion.

17. This Court is not inclined to grant any of the prayers as sought for by the Petitioner herein.

18. With these observations the writ petition is dismissed along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**FEBRUARY 05, 2024**

hsk/AM