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

+ W.P.(CRL) 1653/2023

MINOR K THROUGH BROTHER D Petitioner

Through: Mr. Anwesh Madhukar, Advocate (DHCLSC) with Ms. Prachi Nirwan and Mr. Yaseen Siddiqui, Advocates with petitioner in-person alongwith her brother.

versus

STATE & ANR. Respondents

Through: Mr. Yasir Rauf Ansari, Additional Standing Counsel with Mr. Adeeb-ul-Hasan, Advocate for R-1 with SI Bhawna, P.S.: Gandhi Nagar.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **01.06.2023**

Considering the nature of the matter, the hearing has been conducted in-chambers.

2. Pursuant to last order dated 31.05.2023, the petitioner was produced before the Medical Board for medical termination of pregnancy at the Ram Manohar Lohia Hospital, New Delhi. The Medical Board has rendered report dated 01.06.2023. The report has been placed before the court by the Investigating Officer ('I.O.'). Let the same be filed on record.
3. The report records that as per the physical examination and ultrasound report, the pregnancy is of about 26-27 weeks of gestation. It further states that the petitioner was counselled regarding the medical implications of a second trimester termination of pregnancy including the possibility of hysterectomy.

4. Most significantly, the report records that the petitioner has communicated her wish to continue pregnancy till term and to give-up the baby thereafter for adoption. The petitioner's brother 'D' was also present at the time of the proceedings before the Medical Board. The report also records that he has also expressed the desire that the pregnancy be continued¹. In the circumstances, the Medical Board records that the issue of *feasibility* and *advisability* of medical termination does not arise.
5. The petitioner and her brother 'D' are both present in court. The court has interacted with them, yet again.
6. The petitioner has unequivocally said that she does not wish to terminate the pregnancy and wants to carry it to term. Her brother has responded to the same effect.
7. Though Mr. Anwesh Madhukar, learned counsel appearing for the petitioner has urged the court to summons the accused in the matter in order to ascertain his wishes in light of the fact that the petitioner has expressed the desire to marry him, considering the overall circumstances of the case, and the limited prayers made in the present petition, this court is not inclined to enlarge the scope of the petition.
8. The clear position of law in relation to medical termination of pregnancy is that it only requires the consent of the 'woman'. In the present case, since the 'woman' is in fact a child of about 14 years of age, the law requires that consent be taken from the 'guardian' of the woman within the meaning of section 2(a) of the Medical Termination

¹ section 3(4)(a) of the Medical Termination of Pregnancy Act, 1971; *X vs Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Anr.*, 2022 SCC OnLine SC 1321 at para 24

of Pregnancy Act, 1971. In the present case, it appears that the only guardian available, in whose care and custody the petitioner is presently, is her brother 'D', who is about 22 years old, who has also expressed both before the Medical Board as also before this court that they do not consent to medical termination of the pregnancy.

9. Mr. Yasir Rauf Ansari, learned ASC (Crl.) appearing for the State submits, that considering the scope of the present petition and the fact that whether or not the accused is willing to marry the petitioner, is not within the scope of such prayers, there is no reason to summons the accused in the present proceedings. Mr. Ansari points-out that a decision on whether or not the petitioner is to be put through medical termination of pregnancy cannot proceed on what the accused agrees to, especially in view of the categorical refusal by the petitioner to undergo medical termination of pregnancy.
10. This court also notices that in the Follow-up Order dated 31.05.2023 made by the Child Welfare Committee, District, Shahdara & North East, Dilshad Garden, Delhi ('CWC') in relation to the petitioner, the CWC has suggested that the petitioner be placed in the Home for Pregnant and Lactating Mothers in case medical termination of pregnancy is not advised, being the Childrens Home for Girls-IV, Nirmal Chayya, New Delhi in order to ensure proper antenatal care to the child and proper assistance for a safe delivery subsequently.
11. In the circumstances, the present petition is disposed-of with the following direction:
 - 11.1 The petitioner be shifted *forthwith* from 'Sakhi One-Stop Centre', IHBAS Hospital Complex, Shahdara, Delhi to

Childrens Home for Girls-IV, Nirmal Chayya, New Delhi in terms of the Follow-up Order dated 31.05.2023 made by the CWC for being put under necessary care and protection, in accordance with the mandate of the Juvenile Justice (Care and Protection of Children) Act 2015, as per their norms and procedure.

12. The present petition stands disposed-of in the above terms.
13. Pending applications, if any, also stand disposed-of.
14. Copy of the order be given *dasti* under signatures of the Court Master.

ANUP JAIRAM BHAMBHANI, J

JUNE 1, 2023

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