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

Date of decision: 03rd MAY, 2024

IN THE MATTER OF:

+ **W.P.(C) 5825/2024, CM APPL. 24114/2024**

H

..... Petitioner

Through: Dr. Amit Mishra, Advocate.

versus

THE UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Arunima Dwivedi, CGSC with
Ms. Pinky Pawar, GP and Mr. Aakash
Pathak, Advocate for UoI.
Ms. Aditi Kapoor, Advocate for Ms.
Mehak Nakra, ASC.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner, who is an unmarried female student aged 20 years and is a permanent resident of Mewat, Haryana and is residing in a PG in Preet Vihar, Delhi and is preparing for NEET Examination, has approached this Court seeking directions for permitting medical termination of her ongoing pregnancy of 27 weeks under the provisions of the Medical Termination of Pregnancy Act and the Rules framed thereunder.
2. It is stated that on feeling heaviness and discomfort in abdomen, the Petitioner got an ultrasound scan done on 16.04.2024 and it was found that the Petitioner is 27 weeks pregnant.
3. The ultrasound report conducted on 16.04.2024 reads as under:-



NABH ACCREDITED DIAGNOSTIC CENTRE
MIS-2015-0016

Patient ID:-2404161004
Name:- [REDACTED]
Ref By:- DR. PRAGYA CONSUL

NABL ACCREDITED PATH LAB
M-0884

Reg. Date:- 16-04-2024; 01:01PM
Age/Sex: 20Y/F
Report Date:- 16-04-2024; 01:31PM

ULTRASOUND- OBST

The study reveals a single live intrauterine fetus in breech presentation at the time of examination.

Fetal heart rate is 137 beats/ min and is regular.

Fetal parameters:-

BPD 73.3 mm = 29 weeks 3 days.
HC 261.3 mm = 28 weeks 3 days.
AC 212.0 mm = 25 weeks 5 days.
FL 51.4 mm = 27 weeks 3 days.

EFW 987 +/- 144grams.

EDD (AUA) :- 11.07.2024

Mean gestation age by USG 27 weeks 5 days.

Placenta is anterior in location, grade I maturity, away from os.

Liquor is adequate.

Internal os is closed.

I, the undersigned declare that while conducting the ultrasound on Mrs. HARSHITA, I have neither detected nor disclosed the sex of the fetus to anyone in any manner.

DR. GEETAANAND
MD, DNB (RADIODIAGNOSIS)

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 any Government Hospital New Delhi immediately without disclosing her identity;

B. Direct any Government Hospital 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.1 to amend/modify its Notifications/Guidelines dated 14.08.2017 for late term abortions beyond 20 weeks framed by the Ministry of Health & Family Welfare Government of India & also include unmarried girls/divorcee/widow along with rape victims or if there are abnormalities in foetus during pregnancy as the said notifications/guidelines are arbitrary, discriminatory & violative of Article 14, 19 & 21 of the Constitution of India.

D. Direct any Government Hospital to constitute a medical board immediately & examine the Petitioner physically & mentally & also state the psychological impact on the mind and health of the Petitioner in case of continuing the unwanted pregnancy & also file a complete medical report with an advance report supplied to the Petitioner.”

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. This Court on 25.04.2024 had directed the AIIMS to constitute a



Board to ascertain the condition of the fetus and the Petitioner. Report of the Medical Board constituted by the Doctors of AIIMS reads as under:

Details of the woman seeking termination of pregnancy:

1. Name of the woman: Ms. H
2. Age: 20 Years.
3. Registration/ Case Number: UHID – 107483744.
4. Additional review done at AIIMS:

S. No.	Investigations done	Key Finding.
1.	Ultrasound done at AIIMS on 29.04.2024.	Ultrasonography suggest: <ul style="list-style-type: none"> • Single live intra uterine fetus of 28 weeks 06 days POG. Estimated Fetal Weight -1231 grams • No c/o gross congenital anomaly.

5. Opinion by Medical Board for termination of pregnancy:
 - a) Allowed ().
 - b) Denied ().

Justification for the decision: The medical board reviewed the case. A review USG and a psychiatry consultation was also performed. The pregnancy is currently of 28 weeks and 6 days, and the fetus has no gross congenital malformation and is currently viable (reasonable chance of survival even at the present time). Preterm induction of labour carries a higher chance of caesarean section which could be detrimental for the lady in her future reproductive life. The medical board feels that the baby born later at term will have a better outcome (at least six weeks later). She has also been given option of admission and work up in the hospital in the meantime to optimize her condition for delivery.

Physical fitness of the woman for the termination of pregnancy:

- a. Yes ().
- b. No ().

12. A perusal of the report shows that there is no congenital abnormality in the foetus nor is there 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 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

MAY 03, 2024

Rahul