IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 25th OF AUGUST, 2025

WRIT PETITION No. 34145 of 2025

PROSECUTRIX X

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Alok Agnihotri - Govt. Advocate for State and its functionaries.

ORDER

In pursuance to the letter addressed to the Principal Registrar (Judicial) dated 23.08.2025, cognizance was taken and the letter was treated as suo moto petition. Accordingly, this writ petition came up for consideration before this Court.

2. The facts of the case, in substance, are that the prosecutrix is minor aged around 17 years. It is alleged that she was sexually assaulted and raped by accused against which an FIR as Crime No. 74 of 2025 registered at Police Station [redacted] District Maihar for the offences under Sections 137(2), 87, 64(2)(m), 64(2)(h) & 332(b) of the BNS and Sections 5(l)/6, 5(q)/6 of the POCSO Act has been registered. During medical examination, the victim was found to be pregnant.

3. The medical report dated 22.08.2025 reads as under :

> *[redacted] examined in presence of medical board and found to be ANC 28 weeks with mild anemia. As the gestational age is more than 28 weeks, fetus has crossed the age of viability. Pregnancy can be terminated/or continued as per the consent*

of victim/guardians."

4. The order sheet of the trial Court dated 22.08.2025 reads as under :

> *"...*
> *उपस्थित पीड़िता एवं उसकी मां द्वारा व्यक्त किया गया कि वह गर्भपात नहीं करना चाहती है तथा पीड़िता ने व्यक्त किया कि उसने अभियुक्त से शादी कर ली है और वह अभियुक्त को जेल से छुड़ाना चाहती है*
> *..."*

5. Despite the fact that the consent has not been given by the prosecutrix as well as her mother regarding termination of pregnancy, Second Additional Sessions Judge, Amarpatan has referred the matter to this Court in reference. The consent of a pregnant woman in decisions of reproductive autonomy and termination of pregnancy is paramount. Once there is no consent, no order regarding termination of pregnancy can be passed. The order sheet of the trial Court dated 22.08.2025 further reflects that the prosecutrix has solemnized marriage with the accused and she wants that the accused should be released from jail.

6. In the case of A vs State of Maharashtra, reported in (2024) 6 SCC 327, the Hon'ble Supreme Court has held as under :

> *"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, [Report of the Committee to Study the Question of Legalisation of Abortion, Ministry of Health and Family Planning, Government of India, dated December 1966.] 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) [X v. State (NCT of Delhi), (2023) 9 SCC 433] 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.

....

3 5 . In Suchita Srivastava v. Chandigarh Admn. [Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570] , a three-Judge Bench of this Court has held that the right to make reproductive choices is a facet of Article 21 of the Constitution. ***Further, the consent of the pregnant person in matters of reproductive choices and abortion is paramount.*** *The purport of this Court's decision in Suchita Srivastava [Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570] was to protect the right to abortion on a firm footing as an intrinsic element of the fundamental rights to privacy, dignity and bodily integrity as well as to reaffirm that matters of sexual and reproductive choices belong to the individual alone. In rejecting the State's jurisdiction as the parens patriae of the pregnant person, this Court held that no entity, even if it is the State, can speak on behalf of a pregnant person and usurp her consent. The choice to continue pregnancy to term, regardless of the court having allowed termination of the pregnancy, belongs to the individual alone.*

7. The relevant provisions under the Medical Termination of Pregnancy Act, 1971 which deal with the cases of termination of pregnancy are 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.

(2-A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2-B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2-C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2-D) The Medical Board shall consist of the following, namely—

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.]

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

8. In the present case, the age of the fetus is exceeding 24 weeks; therefore, the SOPs in terms of the order passed by the Division Bench of

this Court in the case of In reference (suo moto) vs State of M.P. : Writ Petition No. 5184 of 2025 decided on 20.02.2025 are required to be followed in the present case. They are as under :

> ***(b) SOPs to be followed in case where the age of foetus/pregnancy of survivor of sexual assault or rape or incest is exceeding 24 Weeks:-***
> *Whenever a case of rape is registered at any police station, the following procedure shall be adopted:-*
> *(i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant and the pregnancy is more than 24 weeks, shall forthwith forward the victim to the concerned District Court, preferably Special Judge/POCSO;*
> *(ii) The learned Judge of the District Court preferably Special Judge/POCSO), regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the victim to the concerned medical officer/Board to expeditiously submit its report, if the pregnancy of the victim can be terminated;*
> *(iii) The District Court, preferably Special Judge/POCSO, after obtaining the said medical report, under intimation to the victim and her parents, directly refer such case and report to the nearest Registry of the High Court;*
> *(iv) The Registry of High Court, in turn, shall register such reference as a Writ Petition under Article 226 of the Constitution, Suo Motu, and list the matter immediately before the concerned Bench having the roster, so that appropriate orders regarding termination of pregnancy can be passed by the High Court without any undue delay;*
> *(v) If directed by the High Court that termination of pregnancy is required then, the procedure of termination of pregnancy will be carried out in the presence of the expert team of doctors. The expert doctors will explain to the family members as well as the petitioner the risk of getting the termination of her pregnancy and also other factors;*
> *(vi) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention and other medical facilities including that of a presence of a Pediatrician as well as a Radiologist and other required doctors will be made available to the victim;*
> *(vii) The post operative care, upto the extent required, will be extended to the victim;*
> *(viii) The doctors will ensure that a sample from the fetus is protected for DNA examination and will be handed over to the prosecution for using in the criminal case.*

9. If the aforesaid proposition of law is applied to the facts of the present case, then it is seen that the consent of pregnant woman will be of paramount consideration. A three-Judge Bench of the Hon'ble Supreme Court in the case of Suchita Srivastava (supra) has considered the aforesaid aspect. It was held

that the choice to continue pregnancy to term, regardless of the court having allowed termination of the pregnancy, belongs to the individual alone. Further, the consent of the pregnant person in matters of reproductive choices and abortion is paramount. Even the MTP Act, particularly clause (4) of Section 3, speaks of the same. As already pointed out hereinabove that clause (4)(b) of Section 3 of the MTP Act clearly provides for that "... no pregnancy shall be terminated except with the consent of the pregnant woman".

10. In the instant case, the consent was not given for termination of pregnancy. The age of prosecutrix to be 17 years and the medical report dated 22.08.2025 shows that she was carrying pregnancy of more than 28 weeks; however, she wants to continue the pregnancy, therefore, there was no occasion for the Second Additional Sessions Judge, Amarpatan District Satna (M.P.) to have referred the matter to this Court for passing an order with respect to termination of pregnancy.

11. It is generally seen that in cases under the Medical Termination of Pregnancy Act, 1971 (MTP Act), the references are made to this Court in a casual manner. The Division Bench of this Court in the case of In Reference (Suo Motu) vs State of M.P. and others : WP No. 5184 of 2025 decided on 20.02.2025 had an occasion to deal with the similar situation relating to termination of pregnancy under the MTP Act and after considering the relevant provisions of the MTP Act has prepared SOP to be followed in cases of termination of pregnancy. The SOP are required to be followed in such cases.

12. Another aspect which is generally seen is that each and every case dealing with the MTP Act, 1971 has referred to this Court. The fact remains that Section 3 of the MTP Act is very clear and specifically provides that the pregnancy can be terminated where the length of the pregnancy does not exceed 20 weeks based upon the opinion of a registered medical practitioner and the consent given by the guardian or the victim in case where she is minor or major respectively. In case the pregnancy exceeds 20 weeks but does not exceed 24 weeks, the MTP Act provides for the opinion to be given by two registered medical practitioners as well as the consent of either guardian or the victim as the case may be. The SOP which is formed in WP No. 5184 of 2025 has clearly held that in case of survivor of sexual assault or rape or incest whether the pregnancy exceeds 24 weeks, permission from this Court is required for termination of pregnancy. The relevant extracts of the order passed in WP No. 5184 of 2025 are as under :

> *12. This Court is of the considered opinion that in case of survivors of sexual assault or rape or incest, where the pregnancy exceeds 24 weeks, permission from the High Court is required and termination of such pregnancy is not permissible under Medical Termination of Pregnancy Act, 1971. In such cases, High Court may exercise its jurisdiction under Article 226 of the Constitution of India for passing orders for termination of pregnancy;*

13. In view whereof, if the pregnancy does not exceed 24 weeks, learned trial Courts/Sessions Courts are having jurisdiction to pass orders with respect to termination of pregnancy in terms of Section 3 of the MTP Act based upon the consent of the guardian or the pregnant woman, as the case may be, taking into consideration the opinion given by a registered medical practitioner where the length of the pregnancy is upto 20 weeks and in case it exceeds 20 weeks but does not exceed 24 weeks, by two registered medical

practitioners. Such cases are not required to be referred to this Court for termination of pregnancy.

14. It is also seen that the opinions of the medical board placed before this Court for consideration are not giving complete information as required under the MTP Act. There should be specific observations and clear opinion in terms of the requirements under Section 3 of the MTP Act to the effect that (i) the opinion formed is in good faith (ii) 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 and (iii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

15. Generally the reports which are sent to this Court for perusal are silent about the aforesaid. Under these circumstances, the Medical Board duly constituted in terms of Section 3 of the MTP Act is directed to provide complete, cogent and clear opinions with respect to the cases falling under the MTP Act, 1971.

16. With these observations, the petition stands **disposed of** finally.

17. The Registrar General of this Court is directed to circulate the copy of this order to all the Principal District & Sessions Judges of the State and the State Medical Board for doing the needful.

(VISHAL MISHRA)
JUDGE

VV