

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 2701 of 2025

**Petitioner :-** XXXXXX

**Respondent :-** State Of Uttar Pradesh And 2 Others

**Counsel for Petitioner :-** Man Mohan Mishra

**Counsel for Respondent :-** G.A.

**Hon'ble Mahesh Chandra Tripathi,J.**

**Hon'ble Prashant Kumar,J.**

1. Today urgency was mentioned in the instant matter, which was accepted by this Court and as such the file was summoned from the registry and taken up out of turn.

2. Learned counsel for the petitioner is directed to delete the name petitioner, who is minor, in the array of parties as well as in the writ petitioner only as XXXXXXXX is to be shown. Office is further directed to correct the same in the record also.

3. Heard Shri Man Mohan Mishra, learned counsel for the petitioner and Sri G.P. Singh, learned A.G.A.-I for the State respondents.

4. The petitioner, a minor, has approached this Court through her father under Article 226 of Constitution of India with following prayer:-

*"(A) Issue a necessary, Writ, Order or direction in the nature of mandamus directing the respondent authorities to ensure the medical termination of the pregnancy of the petitioner, who is victim of Case Crime No.136 of 2024 under Section 363, 366 IPC, P.S. Suriyawan, District Bhadohi under Medical Termination of Pregnancy Act, 1971, as amended in 2021 (hereinafter referred as MTP Act) forthwith.*

*(V) Issue any other Writ, Order or direction in the nature of mandamus directing the respondent authorities to conduct D.N.A. test of fetus for the purpose of evidence and the trial.*

*(B) Issue any other Writ, Order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the present case.*

*(D) To award cost of the petition to the petitioner."*

5. Facts and circumstances compelling the petitioner to file the instant petition are that the petitioner is a 17 years' minor girl, who was allured and eloped by one Adarsh @ Sahil s/o Pradeep Saroj and father of the petitioner had lodged FIR No136/2024 under Section 363, 366 IPC, P.S. Suriyawan, District Bhadohi. The

## VERDICTUM.IN

police conducted search and found the petitioner from Gopiganj, Gerai alongwith accused Adarsh @ Sahil. As per the educational certificate of the petitioner, her date of birth is 15.03.2007 and she is about 17 years old. On the date of incident i.e. 22.05.2024, the age of victim was 17 years 2 months and 7 days. The father of the petitioner is only bread earner of the family, who works as labourer at a steel plant in Raipur, Chhattisgarh. As the victim is minor, on 03.12.2024 the Child Welfare Committee, Bhadohi directed to handover the custody of the girl to the parents. On 03.01.2025, when there was acute pain in the stomach of the victim, an ultrasound was conducted wherein she was found pregnant of 3 months and 15 days. Learned counsel for the petitioner contends that the girl was subjected to rape and sexually assaulted multiple time by the accused Adarsh @ Sahil, on account of which, the girl got pregnant and at present the fetus is about 19 weeks. He submits that on 05.02.2025, petitioner has moved an application before the Sessions Court with the prayer to direct the Investigating Officer to conduct further investigation by medically examining the petitioner and same may be included in the investigation, wherein, the date is fixed for 14.02.2025.

6. In this backdrop, learned counsel for the petitioner submits that the pregnancy has caused grave anguish and injury to the mental health of the petitioner and she is undergoing trauma after kidnapping and rape. The petitioner, being a minor and having miserable condition of family, does not want to bore the child as the same would have serious impact on her life as well as to the parents, as such, she is before this Court through her guardian i.e. father with the aforesaid prayer.

7. In support of his submission, learned counsel for the petitioner has placed reliance upon the decision in ***Venkatalakshmi v. State of Karnanata Civil Appeal No.15378/2017*** dated 21.09.2017, wherein the Hon'ble Supreme Court had allowed the termination of pregnancy of rape victim beyond the gestational age of 24 weeks. The order is reproduced herein below:-

*"Leave granted.*

*The appellant calls in question the legal propriety of the order dated 31st August, 2017 passed in Writ Petition No.38015 of 2017 whereby the High Court of Karnataka at Bengaluru has declined to entertain the prayer of the petitioner seeking termination of pregnancy. When the matter before this Court was listed on 18th September, 2017, the following order came to be passed:*

*Let a copy of this special leave petition be served on Mr.V.N.Rathupathy, learned standing counsel for the State of Karnataka.*

## VERDICTUM.IN

Signature Not Verified Let a copy of the special leave petition be also provided to Mr.Ranjit Kumar, learned Digitally signed by ASHOK RAJ SINGH Date: 2017.09.21 19:21:32 IST Reason:

*Solicitor General who shall assist us in this matter.*

*In the meantime, Bangalore Medical College and Research Institute shall constitute a Medical Board to examine the victim as confirmed by Mr.Nikhil Nayyar. The victim shall appear before the Medical Board on Wednesday, 20th September, 2017 at 11.30 a.m. Mr.Ranjit Kumar, learned Solicitor General has assured this Court that he shall communicate the concerned competent authority about the order passed today.*

*Let the matter be listed again on Thursday, 21st September, 2017.? In pursuance of our order, the Medical Board of Bangalore Medical College and Research Institute has examined the appellant and eventually has come to the conclusion which reads as follows:*

*PSYCHIATRY EXAMINATION Patient Venkatalakshmi aged 17 years, (Psychiatry File Number 33350) was evaluated on 20/09/2017 between 12.30 pm and 3.30 pm. There were no reliable informants available for psychiatric evaluation. However, on examination, the child is intellectually within normal limits and is euthymic. She expressed remorse about her current state and wants to terminate the pregnancy. She is hopeful of continuing studies and is optimistic about future. No other psychopathology could be elicited on mental status examination.*

*BASED ON ALL THE ABOVE EXAMINATIONS AND INVESTIGATIONS, MS.VENKATALAKSHMI. V IS FOUND TO BE OF 26 WEEKS OF GESTATION WITH MILD ANAEMIA. WE ARE OF THE OPINION THAT THERE IS NO MEDICAL CONTRAINDICATION FOR HER TO UNDERGO TERMINATION OF PREGNANCY AFTER CORRECTION OF ANAEMIA? It is absolutely necessary to state here that the appellant is a victim of rape. Regard being had to the aforesaid conclusion in the report submitted by the Medical Board, Bangalore Medical College and Research Institute, we direct as follows:*

*(i) The appellant shall make herself available at 11.30 a.m. on 22nd September, 2017 before the competent authority of the hospital. The person in-charge of the appellant shall take her to the hospital.*

*(ii) Mr.V.N.Raghupathy, learned counsel for the State of Karnatake shall intimate the competent authority where she is residing at present about this order.*

*(iii) After she reports at the hospital, the Director, Bangalore Medical College and Research Institute shall admit the patient and see to it that proper steps are taken for termination of pregnancy.*

*We may hasten to add that we are passing this order keeping in view the medical report and we are sure that the doctors while carrying out the operation procedure for termination of pregnancy, shall keep every safety aspect in view.*

*The State shall bear all the expenses necessary for the operation, medicines, food etc. of the patient.*

*The Institute shall preserve the terminus fetus as that may be necessary for the purpose of DNA testing with reference to Crime Case No.0247/2017 subject to order of this Court.*

*The appeal is accordingly allowed and the order passed by the High Court is set aside."*

8. Learned counsel for the petitioner has further placed reliance on the judgements of High Court of Delhi at New Delhi in W.P. (CRL) 221/2023 (**Minor R The Mother vs. State of NCT of Delhi**

## VERDICTUM.IN

**& another)** decided on 25.01.2023 and W.P. (C) No.5112/2023 (GDN vs. Government of NCT of Delhi) decided on 28.04.2023.

9. At present, the issue before this Court is, whether under the facts and circumstances a rape victim of 17 years, carrying the pregnancy of near about 19-20 weeks, can be permitted to terminate the same.

10. In order to appreciate the contentions of the petitioner and decide the issue at hand, it would be apt to reproduce Section 3 of MTP Act 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 Digitally Signed By:ZEENAT PRAVEEN  
Signing Date:25.01.2023 21:42:30 NEUTRAL CITATION NO. 2023/DHC/000570*

*(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.*

*(2A) 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.*

*(2B) 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.*

*(2C) 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.*

## VERDICTUM.IN

*(2D) 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 a 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."*

11. Section 3 of MTP Act provides that termination of pregnancy of a woman where it exceeds 20 weeks but does not exceed 24 weeks can only be allowed in special categories, and where the medical practitioners are of the opinion that continuance of such pregnancy would either involve a risk to the life of the women or cause grave injury to her physical health or grave injury to her mental health. The categories, under which pregnancy can be terminated where pregnancy is between 20 to 24 weeks, has been prescribed by the Central Government under the Medical Termination of Pregnancy, Rules 2003 [as amended by Medical Termination of Pregnancy (Amendment) Rules, 2021], wherein seven categories have been provided which are as under: -

*"3B. Women eligible for termination of pregnancy up to twenty-four weeks.--*

*The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub- section (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely:-*

*(a) survivors of sexual assault or rape or incest;*

*(b) minors;*

*(c) change of marital status during the ongoing pregnancy (widowhood and divorce);*

*(d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];*

*(e) mentally ill women including mental retardation;*

*(f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and*

12. A perusal of the aforesaid Rule reveals that clause (a) relates to victims of sexual assault, rape or incest and clause (b) relates to minors. In the present case, the victim falls under both, i.e. clause (a) and (b) as she is a minor aged around 17 years, who is alleged to have been raped. Therefore, the victim would fall under the special categories as enumerated by the Central Government under the rules notified as per the mandate of section 3(2)(b) of MTP Act.

13. Furthermore, Explanation 2 to the aforesaid provision explicitly provides that where pregnancy is alleged to have been caused by an act of rape, the anguish caused by such a pregnancy shall be presumed to constitute grave injury to the mental health of pregnant woman as required under Section 3(2)(i) of MTP Act. Therefore, it is not in dispute that in case of a minor victim, who is alleged to be sexually assaulted or raped and as a consequence of which she has conceived, the injury that is caused to her mental health is presumed even statutorily.

14. The question before this Court now remains as to whether this Court, using its extraordinary powers under Article 226, should allow the termination of pregnancy of minor victim at the stage of around 19-20 weeks of pregnancy.

15. Under similar circumstances, the Hon'ble Apex Court in Venkatalakshmi v. State of Karnataka (supra), as well as the Division Benches of High Court of Delhi in Minor R The Mother vs. State of NCT of Delhi & another) (supra) and GDN vs. Government of NCT of Delh (supra) had also allowed termination of pregnancies of more than 24 weeks in cases of rape victims.

16. In the case of sexual assault, denying a women right to say no to medical termination of pregnancy and fasten her with responsibility of motherhood would amount to denying her human right to live with dignity as she has a right in relation to her body which includes saying Yes or No to being a mother. Section 3(2) of the MTP Act reiterates that right of a woman. To force the victim to give birth to child of a man who sexually assaulted would result in unexplainable miseries.

17. Considering the urgency in the matter and taking humanitarian view as the petitioner is a 17 years rape victim, we request the Chief Medical Officer, Bhadohi to constitute a Three-Members

## VERDICTUM.IN

Team headed by Department of Obs & Gynae; Department of Anaesthesia and Department of Radio Diagnosis to examine the petitioner today i.e. 10.02.2025 qua her health, status of fetus qua termination of pregnancy and submit a report before this Court in sealed cover on 11.02.2025 through Sri G.P. Singh, learned A.G.A.-I.

18. The District Magistrate, Bhadohi is directed to ensure that the victim alongwith her parents may appear before the Medical Board on 10.02.2025 at 5 PM.

19. Put up this matter again as fresh on 11.02.2025 at 11 AM.

20. Let a copy of the order be given to learned counsel for the petitioner; Sri G.P. Singh, learned A.G.A.-I free of cost today for compliance.

**Order Date :-** 10.2.2025

A. Pandey