

W.P.No.2237 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:27.01.2025

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CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.2237 of 2025

~~Jxxxxxx~~

... Petitioner

Vs.

1.The Inspector of Police,
AWPS, Ranipet,
Ranipet District,
Tamil Nadu.

2.Department of Obstetrics and Gynecology,
Government Vellore Medical College,
Vellore, Tamil Nadu – 632 -11.

3.The State
Rep by Secretary,
Health Department,
Secretariat, Fort St.George,
Chennai – 600 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent to medically terminate the pregnancy of the petitioner's daughter S in accordance with Section 5 of the Medical Termination of Pregnancy Act, 1971, expeditiously.



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For Petitioner

:M/s.Deepika Murali

For Respondents

: Mr.L.Baskaran
Government Advocate
(Crl.side)
for R1
M/s.Sneha
Standing counsel
for R2 and R3

ORDER

The writ petition is filed seeking issue of Writ of Mandamus directing the second respondent to medically terminate the pregnancy of petitioner's daughter “S” (the name of the girl is not mentioned in order to protect privacy) in accordance with Medical Termination of Pregnancy Act, 1971.

2. It is the case of the petitioner that she is the mother of minor girl “S” aged about 16 years. On 07.01.2025, the petitioner acquired knowledge about the pregnancy of the girl. On enquiry, the petitioner came to know that she had an affair with one Dhillip and as a result of intimacy with him, she got pregnant. It is stated by the



petitioner that her daughter is a minor girl and in the interest of the child and also upon her wish, she decided to terminate the pregnancy. It

is also stated that a criminal case was registered against the above mentioned person in Crime No.1 of 2025 on the file of the first respondent police under Sections 5(1), 5(j) (ii) r/w Section 6 of the Protection of Children from Sexual Offences Act, 2012. Since the daughter of the petitioner was anemic, blood transfusion was done to her in Primary Health Centre, Wallajah on 16.01.2025. Since the incharge of the Primary Health Centre expressed inability to carry out Medical Termination of Pregnancy (hereinafter called as MTP for brevity), due to the lack of facility, the petitioner admitted her daughter in second respondent hospital.

3. It is asserted by the petitioner that her daughter is a minor undergoing 12th standard school education. It is asserted that she wants to terminate the pregnancy and continue her studies. It is also stated that the petitioner's daughter has to attend the board examination for 12th standard and therefore, there is an urgency for termination of the

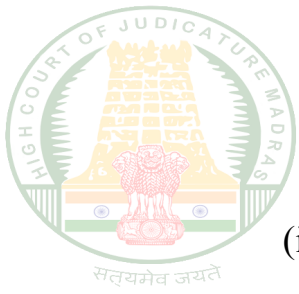


pregnancy. Since authority in the second respondent hospital informed the petitioner that duration of pregnancy was more than 24 weeks and they would perform MTP only on specific orders from the Court, the petitioner was constrained to approach this Court, seeking above mentioned direction.

4. The learned counsel appearing for the petitioner submitted that the unwanted pregnancy was imposed on her minor girl due to sexual exploitation by taking advantage of her inability to understand the consequences. It is further stated that in the best interest of the minor girl, the pregnancy shall be terminated. In support of her contention, the learned counsel appearing for the petitioner relied on the following judgments:

(i) **Githa Hariharan and another Vs. Reserve Bank of India and another** reported in **(1999) 2 SCC 228**;

(ii) **A (Mother of X) Vs. State of Maharashtra and another** reported in **(2024) 6 SCC 327**;



(iii) *N Vs State of NCT of Delhi and others*, reported in

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5. When the writ petition came up for hearing on 23.01.2025, Mr.L.Baskaran, learned Government Advocate (Crl. Side) had taken notice for first respondent and Ms.M.Sneha, learned Standing counsel had taken notice for the respondents 2 and 3.

6. Taking into consideration that the duration of the pregnancy is already more than 24 weeks and the urgency, this Court by an order dated 23.01.2025 directed the learned counsel appearing for the respondents 2 and 3 to get a report from second respondent with regard to the feasibility and advisability of MTP at this stage. Since the petition has been filed by mother of minor girl, this Court wanted to ascertain the wish of the victim/minor girl with regard to her willingness to go for termination of pregnancy. Hence, the Jurisdictional Judicial Magistrate (Judicial Magistrate - II, Vellore) was directed to visit the victim girl, who was admitted in the second



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respondent hospital and ascertain her wish to undergo MTP and file a report before this Court along with her statement. The learned counsel for the first respondent was also directed to file a status report.

7. Pursuant to the direction issued on 23.01.2025, the learned counsel for the respondents 2 and 3 filed a medical report of the Head of the Department, Department of Obstetrics and Gynaecology, Government Vellore Medical College and Hospital, Vellore (who is also member of the Medical Board Constituted under relevant Act) dated 24.01.2025 before this Court.

8. A perusal of the report would suggest that the duration of the pregnancy as assessed by the second respondent is twenty eight weeks. The report also says, there is no significant contra indication to proceed with MTP at second respondent hospital. The relevant portion of the report is extracted below:

“Regarding this case “S”, 17 years child unmarried Pocso case planned for termination there are no significant contra indication to proceed at GVMCH,



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Vellore Medical College. If any complications arise during the procedure that can be managed here itself sir.”

9. Pursuant to the directions issued earlier, the Judicial Magistrate - I, Vellore, (Judicial Magistrate – II, Vellore (Full Additional Charge) has forwarded the statement of the minor girl recorded by him. A perusal of the same would indicate that the minor girl is pursuing her 12th standard. She has expressed her desire to terminate the pregnancy and she has also expressed her desire to appear for the forthcoming 12th standard board examination and requested MTP even before the exams. Therefore, it is clear that minor girl is willing to undergo medical termination of pregnancy and she is not willing to continue the pregnancy. A perusal of her statement further indicates that minor girl is capable of forming rational judgment as to the consequences of existing situation.

10. In the status report filed by the first respondent, it is stated that criminal case is filed against the above mentioned person in



Crime No.1 of 2025 under Sections 5(1), 5(j) (ii) r/w Section 6 of the Protection of Children from Sexual Offences Act, 2012 and the same is under investigation.

11. The writ petition has been filed by the mother of the minor girl seeking termination of pregnancy. Section 3(4) of MTP Act reads as follows:

“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.”

12. The word 'guardian' is defined under Section 2(a) of the Act, which reads as follows:

“2(a) “Guardian” means a person having the care of the person of a minor or a [mentally ill person].”



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13. A perusal of the above provision would make it clear that in case of MTP concerning minor girl, the consent in writing of her guardian is essential. As per the definition in the Act, 'guardian' means a person having the care of the person of a minor or a mentally ill person. In the additional affidavit filed by the petitioner, it is stated by the petitioner that she is a sole breadwinner of the family who is responsible for up-keeping of the children. It is stated that she has been taking care of her children single handedly and her husband is incapable of understanding the situation as he is not of sound mind. From the averments found in the writ affidavit and the additional affidavit filed by the petitioner and also the fact that the petitioner only has rushed to this Court seeking necessary order to terminate the pregnancy as per the wish of the minor girl, there may not be any difficulty in coming to the conclusion that she is taking care of minor girl and the petitioner can very well be treated as guardian of minor person for the purpose of Medical Termination of Pregnancy Act, in view of the definition of the word 'guardian' under Section 2(a) of the



said Act.

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14. It is settled law, whenever a particular meaning is given to the word employed in the statute by a specific definition in the Act itself, there is no need to go to the dictionary meaning or definition of the word in the other Acts. Therefore, this Court has no hesitation in holding that the petitioner can be treated as a guardian for the purpose of Medical Termination of Pregnancy Act and definition of the word “guardian” as found in other Acts including Hindu Minority and Guardianship Act need not be considered for the purpose of MTP Act.

15. In the case on hand, the victim girl is a minor aged about 16 years. As per the birth certificate included in the typed set of papers, the girl was born on 10.07.2008. Therefore, she is 16 years plus as on today.

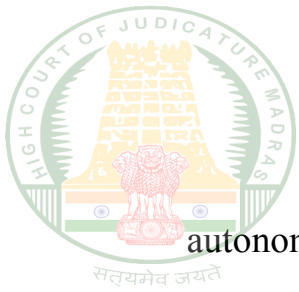
16. It is alleged, she got pregnant due to sexual assault by a person and this Court need not go into the guilt or otherwise of the person as the same is under investigation and this Court considering the



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tender age of the girl and also the fact that she has to face 12th standard board examination within a short time, feels termination of the pregnancy is the best option in the interest of the minor girl. Moreover, minor girl in her statement to the Magistrate clearly expressed her desire to go for medical termination of pregnancy. The petitioner, in her capacity as guardian of the minor within the meaning of the MTP Act filed an affidavit seeking MTP. In these circumstances, this Court feels, there is no impediment to grant the prayer of the petitioner.

17. While deciding the case like this, paramount consideration shall be the interest of the minor. Further, medical termination of pregnancy is a procedure which is concerned with the body of the minor girl. Therefore, primacy shall be given to the wish of the girl. The minor girl has got domain over her body and also got autonomy in taking a decision with regard to the continuance or otherwise of the pregnancy. The said right is the essential part of the right to life under Article 21 of the Constitution of India. It has been categorically held by the Apex Court that right to re-productive

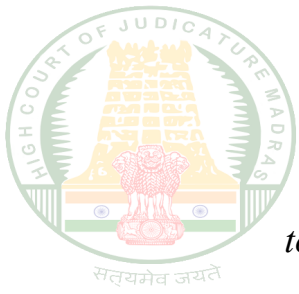


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autonomy is the essential facet of right to life and hence, this Court has no hesitation in giving primacy to the wish of the minor girl and permit her to go for the MTP. In this regard, it would be appropriate to refer to certain observations of the Apex Court in *A (Mother of 'X') V. State of Maharashtra and another* reported in (2024) 6 SCC 327, which reads as follows:

“35. In Suchita Srivastava v. Chandigarh 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 (supra) 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. (emphasis supplied)

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



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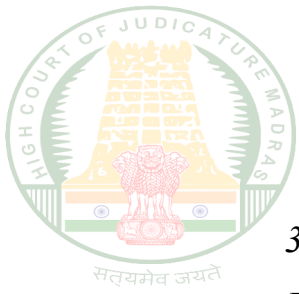
to term, regardless of the court having allowed termination of the pregnancy, belongs to the individual alone.

36. In the present case the view of 'X' and her parents to take the pregnancy to term are in tandem. The right to choose and reproductive freedom is a fundamental right under Article 21 of the Constitution. Therefore, where the opinion of a minor pregnant person differs from the guardian, the court must regard the view of the pregnant person as an important factor while deciding the termination of the pregnancy."

38. In light of the issues which arose before this Court we record our conclusions as follows:

38.1 The MTP Act protects the RMP and the Medical Boards when they form an opinion in good faith as to the termination of pregnancy;

38.2 The Medical Board, in forming its opinion on the termination of pregnancies must not restrict itself to the criteria under Section 3(2-B) of the MTP Act but must also evaluate the physical and emotional well being of the pregnant person in terms of the judgment;



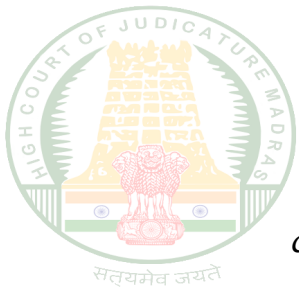
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38.3 *When issuing a clarificatory opinion the Medical Board must provide sound and cogent reasons for any change in opinion and circumstances; and*

38.4 *The consent of a pregnant person in decisions of reproductive autonomy and termination of pregnancy is paramount. In case there is a divergence in the opinion of a pregnant person and her guardian, the opinion of the minor or mentally ill pregnant person must be taken into consideration as an important aspect in enabling the court to arrive at a just conclusion. (Emphasis supplied by this Court)."*

18. While considering the bodily autonomy of woman in ***Mrs.C Vs. The Principal Secretary Health and Family Welfare Department, Government of NCT of Delhi and others*** reported in ***2024:DHC:6201***, the High Court of Delhi observed as follows:

"The petitioner's plea is also rooted in her fundamental rights under Article 21 of the Indian Constitution, which guarantees personal liberty. This liberty encompasses the right to make reproductive



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choices, including the termination of pregnancy under conditions that pose a risk to the woman's mental health and well-being. The Supreme Court of India has affirmed these rights, emphasizing the importance of considering the woman's current health, her life's conditions, and her future well-being while making such decisions. Therefore, it is clear that a pregnant woman's bodily autonomy and right of self-determination is an intrinsic part of her fundamental rights enshrined under Article 21 of the Constitution.

19. In ***X (Minor Victim) Vs. State of Uttar Pradesh and others*** reported in ***2024 Live law AB 447***, a Division Bench of Allahabad High Court, emphasized the primacy attached to the opinion of woman in cases of MTP in following words:

“..... This Court is also of the opinion that a woman's decision in whether or not to go ahead with the termination of her pregnancy is a decision that is to be taken by no one but herself. This is primarily based on the widely acknowledged idea of bodily autonomy. Here, her consent reigns supreme.”



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20. In the case on hand, the victim girl categorically made a statement to the Magistrate that she is willing to go for MTP. Further, the head of the second respondent Department opined that there is no contra indication to proceed with MTP at their Medical College and any complication arising out of the procedure can be managed in their institution. Therefore, it is clear, there is no risk involved in allowing the prayer of the petitioner.

21. In view of the discussions made earlier, this Court is inclined to issue following directions:

(a) The Dean of the second respondent Medical College is directed to arrange for medical termination of the pregnancy of the petitioner's daughter "S" and complete the procedure as expeditiously as possible, by taking into consideration the best interest of the minor girl;

(b) In view of the fact that the criminal case is pending investigation in Crime No.1 of 2025 under the provisions of POCSO



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Act, the second respondent shall preserve the fetus for carrying out DNA/medical test, if any, for the purpose of criminal case. The first respondent is entitled to utilise the fetus preserved by the second respondent for the purpose of investigation.

22. With these directions, the writ petition stands disposed of.

23. The statement recorded by the Judicial Magistrate No.I, Vellore, [Judicial Magistrate – II (Full Additional Charge) Vellore, shall be kept in a sealed cover. The same shall be in the custody of the Registrar (Judicial) for a period of one year and thereafter, the same shall be preserved along with the case records. No costs.

27.01.2025

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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Note: Issue order copy on 27.01.2025.



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To

1.The Inspector of Police,
AWPS, Ranipet,
Ranipet District,
Tamil Nadu.

2.Department of Obstetrics and Gynecology,
Government Vellore Medical College,
Vellore, Tamil Nadu – 632 -11.

3.The State
Rep by Secretary,
Health Department,
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4. The Judicial Magistrate No.I,
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25.10.2024