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

+ **W.P.(C) 291/2023 & CM APPL.1161/2023**

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..... Petitioner

Through: Dr. Amit Mishra, Advocate (M:
9891592800).

versus

**THE PRINCIPAL SECRETARY HEALTH AND FAMILY
WELFARE DEPARTMENT & ORS.**

..... Respondents

Through: Ms. Hetu Arora Sethi, ASC with Mr.
Siddarth Agarwal, Advocate for R-1
(M: 9045513840).
Mr. Kirtiman Singh, CGSC for UOI.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **12.01.2023**

1. This hearing has been done through hybrid mode.
2. The present petition has been preferred by the Petitioner who is the mother of an unmarried minor girl aged fourteen years. The girl is pregnant with a gestational period of fifteen weeks and four days. The minor girl is stated to be studying in the ninth standard, and her family belongs to the lower income group.
3. The case of the Petitioner is that the said pregnancy is the consequence of an accidental consensual relationship. Upon learning about the pregnancy, the Petitioner along with her minor daughter approached hospitals seeking the termination of the pregnancy. However, the said hospitals refused to terminate the pregnancy without reporting the case to the local police, as mandated under Section 19(1) of The Protection of Children from Sexual Offences Act, 2012 (hereinafter, "*POCSO Act*").



4. Hence, the Petitioner has preferred the present petition seeking permission for the termination of her minor daughter's pregnancy. The reliefs prayed for in the present petition are set out below:

“That in view of the facts and grounds pleaded herein, it is humbly prayed that this Hon'ble Court may be pleased to:

A. Permit the Petitioner to get terminated the ongoing pregnancy of her unmarried minor daughter through registered medical practitioners at any Government Hospital specifically AIIMS Hospital New Delhi immediately as per section 3(2) (a) (i) r/w section 3(3), 3(4) & section 4 MTP Act without reporting the case to the local police as mandated under section 19 (1) POCSO Act in the light of recent Judgement passed by Hon'ble Supreme Court of India.

B. Direct Respondent No. 1 and 2 to pass a circular/notification for Government and Private Hospitals, Registered Centers and RMP's for providing their services of medical termination of pregnancy to minor girls approaching for termination of their unwanted pregnancy arising from consensual sexual activity under MTP Act without reporting the matter to the local police as mandated under section 19(1) POCSO Act in the light of recent Judgement passed by Hon'ble Supreme Court of India.

C. Order an immediate Interim Relief or stay during the course of proceedings.

D. Pass any other order and/or directions as this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.”



5. The matter was listed for the first time on 11th January, 2023. On the said date, Id. Counsel for the Petitioner and Id. Counsel for the GNCTD were heard in chamber. Considering the nature of the matter, the Petitioner and her minor daughter were directed to be present. Further, Ms. Zubeda Begum, Id. Counsel, was appointed as *Amicus Curiae* to assist the Court. Thereafter, the matter is listed today.

6. Today, Id. *Amicus Curiae* has interacted with the Petitioner - mother and her minor daughter. This Court has also interacted with them in the presence of a doctor. After the said interaction, this Court is convinced that due to a consensual, one-off act, the minor has conceived. On the basis of the interaction, it is also revealed that the minor was not even aware that she had conceived and it was only after three months, when the mother noticed that her menstrual cycle was disturbed, that they consulted a doctor who conducted a pregnancy test and an ultrasound which revealed the pregnancy.

7. The Court has also perused the record which reveals the prescription of the hospital, the ultrasound report duly certified by a Sonologist & Physician, as also, the images of the ultrasound scanning. Currently, the gestational period is over fifteen weeks.

8. The manner in which the events have transpired has clearly turned out to be traumatic for the minor and her mother. There are several apprehensions in the mother's mind due to which, the identity, in any case, would have to be kept undisclosed.

9. Recently, vide order dated 20th September, 2022 in ***W.P.(C) 13479/2022 titled "K v. The Principal Secretary, Health and Family Welfare]***, the Division Bench of this Court, while confronted with a very similar situation, has observed as under:



“5. A perusal of Section 3(2)(b)(i) of the MTP read with Section 3(4) of the MTP Act shows that the pregnancy of a woman who is under 18 years of age can be terminated only with the consent of a guardian if the length of pregnancy does not exceed 20 weeks provided that not less than two registered medical practitioners are of the opinion that the continuance of the pregnancy would involve a risk to the life or grave injury to the physical health and the mental health of the pregnant woman. However, Section 19 of the POCSO Act makes it mandatory for any person who apprehends that an offence under the POCSO Act is likely to be committed or has knowledge that such an offence has been committed, to report such incident to Special Juvenile Police Unit or local police. Therefore, as per the mandate of law, the medical practitioners are obliged to file a report regarding the pregnancy of a minor girl to the local police or to the Special Juvenile Police Unit.

6. This Court issued notice on 16.09.2022 and had requested Ms. Aishwarya Bhati, learned ASG, to appear in this matter and assist this Court. Accordingly, the case was adjourned to today.

7. It is submitted by Ms. Bhati that both the Acts must be read harmoniously and the welfare of the minor girl is paramount. **This Court is in complete agreement with the submission of Ms. Bhati that instead of entering into the debate regarding harmonizing between the MTP Act and the POCSO Act, at this juncture, it is necessary that the pregnancy of the Petitioner's daughter is terminated immediately so as to prevent the Petitioner's daughter, who is a minor, from undergoing the trauma of going ahead with an unwanted pregnancy which will inevitably subject her to grave physical and mental injury.**



8. *The Union of India is, therefore, directed to ensure that the pregnancy of the Petitioner's daughter is terminated at AIIMS, Delhi on the Government's expenses. The Respondents are free to proceed ahead in accordance with law, but any report, which is registered by the police, must be kept in a sealed cover and it will be subject to the final outcome of the instant Writ Petition. This Court is aware that the interim relief being granted amounts to the final relief that is being sought by way of the instant petition, however, in the facts of this case, this Court is of the opinion that the termination of the pregnancy of the unmarried minor daughter of the Petitioner needs to be conducted at the earliest so as to not render the instant petition infructuous."*

10. Thereafter, vide judgment dated 29th September, 2022 in ***X v. The Principal Secretary, Health and Family Welfare Dept., GNCTD & Anr. [2022 SCC Online SC 1321]***, the Supreme Court has also observed that the benefit of Rule 3B(b) of the Medical Termination of Pregnancy Rules, 2003, which stipulates the categories of women eligible for termination of pregnancy up to twenty-four weeks, has to be extended to minors. The relevant observations of the Supreme Court are as under:

"77. Rule 3B(b) includes minors within the category of women who may terminate their pregnancy up to twenty-four weeks. They have been included in the list of special categories of women because adolescents who engage in consensual sexual activity may be unaware that sexual intercourse often results in pregnancy or be unable to identify the signs of a pregnancy. The Protection of Children from Sexual Offences Act 2012 is gender neutral and criminalizes sexual activity by those below the age of eighteen. Under



the POCSO Act, factual consent in a relationship between minors is immaterial. The proscription contained in the POCSO Act does not - in actuality - prevent adolescents from engaging in consensual sexual activity. We cannot disregard the truth that such activity continues to take place and sometimes leads to consequences such as pregnancy. The legislature was no doubt alive to this fact when it included adolescents within the ambit of Rule 3B of the MTP Rules.

78. The absence of sexual health education in the country means that most adolescents are unaware of how the reproductive system functions as well as how contraceptive devices and methods may be deployed to prevent pregnancies. The taboos surrounding pre-marital sex prevent young adults from attempting to access contraceptives. The same taboos mean that young girls who have discovered the fact that they are pregnant are hesitant to reveal this to their parents or guardians, who play a crucial role in accessing medical assistance and intervention.

79. Furthermore, Section 19(1) of the POCSO Act requires that any person, including a child, who has knowledge of the commission of an offence punishable under the POCSO Act, or an apprehension that such an offence may be committed, is mandatorily required to provide information to the Special Juvenile Police Unit or the local police. Section 19(2) of the POCSO Act stipulates that every such report under Section 19(1) shall be ascribed an entry number and recorded in writing, read over to the informant, and entered in a block to be kept by the police unit. Failure to report, as mandated by Section 19, is a punishable offence under Section 21 of the POCSO Act. Neither the POCSO Act or the Protection of Children from Sexual Offences Rules 2012



prescribe a template or a format for the report mandated under Section 19(1).

80. When a minor approaches an RMP for a medical termination of pregnancy arising out of a consensual sexual activity, an RMP is obliged under Section 19(1) of the POCSO Act to provide information pertaining to the offence committed, to the concerned authorities. An adolescent and her guardian may be wary of the mandatory reporting requirement as they may not want to entangle themselves with the legal process. Minors and their guardians are likely faced with two options - one, approach an RMP and possibly be involved in criminal proceedings under the POCSO Act, or two, approach an unqualified doctor for a medical termination of the pregnancy. If there is an insistence on the disclosure of the name of the minor in the report under Section 19(1) of POCSO, minors may be less likely to seek out RMPs for safe termination of their pregnancies under the MTP Act.

81. **To ensure that the benefit of Rule 3B(b) is extended to all women under 18 years of age who engage in consensual sexual activity, it is necessary to harmoniously read both the POCSO Act and the MTP Act. For the limited purposes of providing medical termination of pregnancy in terms of the MTP Act, we clarify that the RMP, only on request of the minor and the guardian of the minor, need not disclose the identity and other personal details of the minor in the information provided under Section 19(1) of the POCSO Act. The RMP who has provided information under Section 19(1) of the POCSO Act (in reference to a minor seeking medical termination of a pregnancy under the MTP Act) is also exempt from disclosing the minor's identity in any criminal proceedings which may**



follow from The RMP's report under Section 19(1) of the POCSO Act. Such an interpretation would prevent any conflict between the statutory obligation of the RMP to mandatorily report the offence under the POCSO Act and the rights of privacy and reproductive autonomy of the minor under Article 21 of the Constitution. It could not possibly be the legislature's intent to deprive minors of safe abortions.

82 As opposed to consensual sexual activity among adolescents, minors are often subjected to sexual abuse by strangers or family members. In such cases, minor girls may (due to their tender age) be unaware of the nature of abuse the abuser or rapist is subjecting them to. In such cases, the guardian of minor girls may belatedly discover the fact of the pregnancy, necessitating the leeway granted by Rule 3B.”

11. In paragraph 81 of the judgment in *X v. The Principal Secretary (supra)*, extracted hereinabove, the Supreme Court has held that the Registered Medical Practitioner (“RMP”), who is obligated under Section 19(1) of the POCSO Act to provide information pertaining to the offence committed to the concerned authorities, can keep the identity and personal details of the minor undisclosed in such information. Further, it has been clarified that such exemption from disclosure of the identity of the minor would also extend to criminal proceedings which may follow.

12. This Court takes note of several issues which arise in the context of the present petition, in respect of the lack of sexual health education in schools, as also, consensual relationships amongst minors and unwanted or accidental pregnancies resulting therefrom. This Court is of the view that if the termination of pregnancy is not permitted in such cases, without



disclosing the identity of the minor, there is a real threat for the health and safety of such minors. Such minors or their guardians may be constrained to approach non-registered and unqualified medical practitioners, mid-wives, quacks, etc. which could also pose health risks for the minor. If the termination of pregnancy is not permitted in such cases, it would, in effect, result in the child being abandoned upon birth, young girls undergoing traumatic domestic conditions, as also, unfavourable social implications and suffering for their family. The minor girl, in the present case, is also studying and her education would also be jeopardised if the termination of pregnancy is not permitted. This Court is convinced that the interest of the minor girl is paramount at this stage, due to which the termination ought to be permitted. However, the same also cannot go unreported to the authorities. Thus, in the case of minors, the termination of any unwanted pregnancies ought to be allowed, if sought, without disclosure of the identity of the minor girl, with the guardians' consent, in terms of the provisions of the Medical Termination of Pregnancy Act, 1971 and the Rules framed thereunder. Thus, in terms of the judgment of the Supreme Court in ***X v. The Principal Secretary (supra)*** extracted hereinabove, the report in terms of Section 19(1) of the POCSO Act shall be lodged, however, the identity of the minor, her guardian, or family, including any other details by which the minor can be identified, shall not be disclosed in the said report. Steps need to be taken to circulate the decision of the Supreme Court in ***X v. The Principal Secretary (supra)*** and the fact that RMPs can report offences resulting in pregnancies in the case of minors by not disclosing the identity of the minors and their families.



13. As on today, this Court is clearly of the opinion that the pregnancy of the minor deserves to be terminated, as she is accompanied by the Petitioner who is her mother and has filed the present petition in view of the refusal of the doctors to terminate the pregnancy without reporting it to the police authorities.

14. Accordingly, at this stage, the following directions are issued:

- i. The minor daughter of the Petitioner is permitted to undergo the procedure for medical termination of pregnancy at the All India Institute of Medical Sciences (“AIIMS”), New Delhi, under the supervision of a properly constituted medical team. The expenses towards the same shall be borne by the Respondent No.2 - Union of India. The doctor deputed at the Medical Centre of the Delhi High Court shall assist the minor and her mother in this process;
- ii. In the course of performing the procedure for the termination of the pregnancy and thereafter, it shall be ensured that the foetus is duly preserved, in accordance with law, for the purposes of DNA sampling or evidence, as may be directed;
- iii. The Respondent No.2 - Union of India is directed to make arrangements and to facilitate the termination of the pregnancy at AIIMS, New Delhi, which shall take place at the earliest, and, in any case, on or before 16th January, 2023, after complying with the prescribed procedures;
- iv. The identity of the Petitioner, as also, her family shall not be disclosed in any of the hospital records by AIIMS, the medical team, the RMP or any of the concerned authorities;
- v. The report in terms of Section 19(1) of the POCSO Act, shall also not disclose the identity of the minor and her family or any other details by which she can be identified;



- vi. The report prepared in terms of Section 19(1) of the POCSO Act shall be maintained and placed before this Court in a sealed cover. The same shall await further orders of this Court. The said sealed cover shall be filed by Ms. Hetu Arora Sethi, Id. Counsel, at least three days before the next date of hearing;
 - vii. Status report as to the termination of the minor's pregnancy be also filed by the Respondent No.2 - Union of India by the next date of hearing;
15. It is made clear that the police authorities shall not enquire into the matter or make any visits to the Petitioner and her family, at her residence or elsewhere, till further orders of this Court.
16. Insofar as the relief, as sought in paragraph (B) of the prayer clause is concerned, as also the issues captured in paragraph 12 above, the Id. Counsels for the Respondents shall seek instructions and file their counter affidavits, within four weeks.
17. Copy of the present order be served upon the Medical Superintendent, AIIMS and Mr. Tanveer Oberoi, Id. Counsel for AIIMS [M: 9958935556].
18. List on 18th January, 2023, for receiving the status report of Respondent No.2.
19. Order *dasti* under signature of the Court Master.

PRATHIBA M. SINGH, J.

JANUARY 12, 2023/dk/ad