

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 23<sup>rd</sup> OF JUNE, 2023**

**WRIT PETITION No. 13893 of 2023**

**BETWEEN:-**

**.....PETITIONER**

***(BY SHRI AKASH SHARMA, ADVOCATE)***

**AND**

- THE STATE OF MADHYA PRADESH  
DEPARTMENT OF HEALTH AND FAMILY  
1. WELFARE THROUGH PRINCIPAL SECRETARY  
VALLABH BHAWAN, DISTRICT BHOPAL.  
(MADHYA PRADESH)  
DEAN MGM MEDICAL COLLEGE AND  
2. MAHARAJA YESHWANT RAO HOSPITAL  
INDORE (MADHYA PRADESH)  
3. CHIEF MEDICAL AND HEALTH OFFICER  
INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI VAIBHAV BHAGWAT, G.A.)***

*This petition coming on for admission this day, the court passed the  
following:*

**ORDER**

Petitioner is also present along with her mother.

- 1] This writ petition has been filed by the petitioner, aged 26

years, a married woman under Article 226 of the Constitution of India, for termination of her pregnancy on the ground that she has already lodged an FIR against her husband under Section 498-A, 294, 323 of I.P.C. and Section 3/4 of Dowry Prohibition Act, 1961 on 15/06/2023, alleging demand of dowry and assault by her husband. At the time of lodging of the said FIR, as the petitioner was already carrying a pregnancy of 16 weeks, and according to her, she cannot continue with her marriage any more, and wants to terminate her pregnancy which is well below 24 weeks as provided under the Medical Termination of Pregnancy Act, 1971 (for short “MTP Act”), she may be allowed to have her pregnancy terminated.

2] Shri Akash Sharma, learned counsel for the petitioner, in support of his submissions has also relied upon the decision rendered by the Supreme Court in the case of *X Vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and others reported as AIR 2022 SC 4917* in which, the Supreme Court has already laid down that a woman is entitled to get her pregnancy terminated on account of change in woman’s marital circumstances during the ongoing pregnancy. In the aforesaid decision, the Supreme Court has also taken note of the situation when a woman separates from or divorces her partner. Thus, it is submitted that since the difference between the petitioner and her husband and are irreconcilable, and she has already lodged a criminal case against her husband, if she continues with the pregnancy, it would have extreme adverse impact on her physical and mental health.

3] Counsel for the respondents/State has submitted that the appropriate orders be passed.

4] Heard counsel for the parties and perused the documents filed on record.

5] On the last date of hearing i.e. 21/06/2023, this Court had already directed the Medical Board, M. Y. Hospital, Indore to submit a report regarding the status of pregnancy of the petitioner and whether its termination is possible, and today, learned counsel for the State has placed on record a report of the Superintendent, M.Y. Hospital, Indore in which it is stated that the petitioner can be taken for medical termination of pregnancy. The aforesaid report is prepared by the Board comprising 6 doctors.

6] So far as the decision rendered by the Supreme Court in the case of *X Vs. Principal Secretary (supra)* is concerned, the relevant paras of the same read as under:-

“89. Rule 3B(c) states that a “change in the marital status during the ongoing pregnancy (widowhood and divorce)” renders women eligible for termination of their pregnancy under Section 3(2)(b). The impact of the continuance of an unwanted pregnancy on a woman’s physical or mental health should take into consideration various social, economic, and cultural factors operating in her actual or reasonably foreseeable environment, as provided in Section 3(3). The rationale behind Rule 3B(c) is comparable to the rationale for Rule 3B(g) i.e., a change in a woman’s material (*sic*) circumstances during the ongoing pregnancy.

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91. A change in material (*sic*) circumstance may also result when a woman is abandoned by her family or her partner. When a woman separates from or divorces her partner, it may be that she is in a different (and possibly less advantageous) position financially. She may no longer have the financial resources to raise a child. This is of special concern to women who have opted to be a homemaker thereby forgoing an income of their own. Moreover, a woman in this situation may not be prepared to raise a child as a single parent

or by coparenting with her former partner. Similar consequences may follow when a woman's partner dies.

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108. A woman can become pregnant by choice irrespective of her marital status. In case the pregnancy is wanted, it is equally shared by both the partners. However, in case of an unwanted or incidental pregnancy, the burden invariably falls on the pregnant woman affecting her mental and physical health. Article 21 of the Constitution recognizes and protects the right of a woman to undergo termination of pregnancy if her mental or physical health is at stake. Importantly, it is the woman alone who has the right over her body and is the ultimate decision-maker on the question of whether she wants to undergo an abortion.

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116. In the context of abortion, the right to dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the state. The right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being also injures the dignity of women.”

7] In the decision rendered by the High Court of Kerala in the case of *X Vs. Union of India and others passed in W.P.(C) No.29402 of 2022(A) dated 26/09/2022*, the Kerala High Court has also taken note of the fact that even in the MTP Act, there is no provision that before medical termination pregnancy is taken up by a woman, it is necessary for her to obtain her husband's permission.

8] In such facts and circumstances of the case, considering the fact that the petitioner has already filed an FIR against her husband as aforesaid, and also relying upon the decision rendered by the Supreme Court, this Court finds it expedient to allow this petition and permit the petitioner to have her pregnancy medically terminated.

9] Accordingly, the Superintendent, M.Y. Hospital, Indore is directed to do the needful and medically terminate the pregnancy of the petitioner at the earliest. For this purpose, the petitioner is also directed to remain present in the M.Y. Hospital, Indore tomorrow i.e. 24/06/2023 at 11 a.m.

10] With the aforesaid directions, the writ petition is *allowed* and *disposed of*.

Sd/-

**(SUBODH ABHYANKAR)**  
**JUDGE**

krjoshi