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

\+ W.P.(C) 4469/2026

Date of Decision: **13.04.2026**

IN THE MATTER OF:

MS. X[1]

.....Petitioner

Through: Mr. Arjeet Gaur, Mr. Atul Yadav, Mr. Jasbir Singh Balhara, Mr. Sidarth Yadav, Mr. Prince Sharma, Mr. Subhan Singh Sejwal, Mr. Saurabh Bharti, Mr. Mayank Dev, Mr. Pawan Yadav, Ms. Kiran , Ms. Himanshi, Mr. Himanshu Dutt, Ms. Deepshikha, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondent

Through: Mr. Ayush Gaur, SPC with Ms. Riddhi Kapoor, Advocate and Mr. Harshit Joshi- Government Pleader.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

कर्मणा दैवनेत्रेण जन्तुर्देहोपपत्तये[2]

[1] Anonymised.
[2] Śrīmad Bhāgavatam 3.31.1. Translation – "*A living being obtains a body under the supervision of Daiva*".

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1. The Registry is directed to mask/anonymise the name of the petitioner in the judgement and interim orders concerning the present case.

2. The petition is for the following reliefs:

> "*a) Issue an appropriate writ, order or direction in the nature of Mandamus, directing the Respondents to constitute an independent and specialized Medical Board comprising experts in Neurology, Critical Care, Urology/Andrology and Reproductive Medicine (IVF specialist) for evaluation of the medical condition of the husband of the Petitioner and to examine the feasibility of retrieval and preservation (cryopreservation) of his genetic material (sperm) And*
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> *b) Issue an appropriate writ, order or direction directing the Respondents to permit retrieval and preservation (cryopreservation) of sperm of the husband of the Petitioner, who is presently in persistent vegetative state (coma), so as to enable the Petitioner to undergo Assisted Reproductive Technology (IVF) in furtherance of the mutual marital decision of the couple to conceive a child And;*
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> *c) Issue an appropriate writ, order or direction declaring that the prior consent given by the husband of the Petitioner for undergoing IVF procedure before the unfortunate accident constitutes valid consent in the peculiar facts and circumstances of the present case, as the husband of the Petitioner is presently medically incapacitated and incapable of providing fresh written consent And*"

3. The petitioner, the wife of Mr. XX Kumar,[3] a soldier (Lance Naik) in the Indian Army, has filed this petition seeking the extraction and cryopreservation of her husband's genetic material. The case of the petitioner-wife rests on the provisions, object and purpose of the Assisted Reproductive Technology (Regulation) Act, 2021 ("**ART Act**"), as well as the constitutional guarantees flowing from Article 21 of the Constitution of India, including the right to motherhood, dignity, and reproductive autonomy.

4. The facts of the case would indicate that the soldier Mr. Kumar, who

[3] Anonymised.

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is the petitioner's husband, had joined the Indian Army in the year 2014 and had been serving in the force for more than a decade. There does not appear to have been any adverse remark in relation to his commitment. His career has been unblemished and merits respect to his record.

5. The petitioner married Mr. Kumar on 04.03.2017. The couple, thereafter, desired to expand their family, and in June, 2023, they opted to conceive a child through Assisted Reproductive Technology In-Vitro Fertilization ("**IVF**").

6. Thereafter, on 07.07.2025, Mr. Kumar while being posted at Dhoodhganga, Jammu & Kashmir, fell from a considerable height, while patrolling in the operational area, resulting in severe traumatic brain injury. After undergoing certain surgeries and operations, presently, he is in a persistent vegetative state. It is contended that there is presently no reasonable likelihood or foreseeable scope of neurological recovery in the near future.

7. It appears that on 17.02.2026, while he was undergoing the treatment, the concerned Authority i.e., Colonel, Commandment, had granted permission to continue IVF treatment. However, thereafter, the IVF treatment of the petitioner and her husband was stopped. The present petition, then came to be filed, which was taken up for consideration on 06.04.2026, whereupon the Court directed for issuance of notice.

8. The matter was, thereafter, called out for hearing on 09.04.2026, and the Court on the said date passed the following order:

> "*1. Learned counsel appearing for the respondents has presented a written instruction from the department which suggests for constitution of the medical board comprising neurology, neurosurgery, critical care and reproductive medicine specialists for comprehensive evaluation and final opinion for sperm retrieval.*

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2. Let the respondent to go ahead with the proposed plan and to apprise the Court regarding further examination and the opinion of the specially constituted medical board.

3. List on 13.04.2026."

9. Today, when the matter was called out, learned counsel for respondents has placed on record the proceedings of the Board of Officers of the Army Hospital (R&R), Delhi Cantt. The opinion of the Board of Officers is extracted as under:

"***Opinion of the Board***

He sustained traumatic brain injury on 07 July 2025 and has undergone multiple surgeries hence. He is presently admitted at Base Hospital Delhi Cantt. He is on tracheostomy for breathing, percutaneous endoscopic gastrostomy (PEG) for feeding, and per-urethral Foleys catheter. He is bedridden, unable to communicate because of severe head injury, and requires constant, round the clock nursing case. Presently, due to Severe Traumatic Brain Injury the patient lacks decision-making capacity and the ability to give Informed Consent, which is a mandatory requirement for any ART procedure as per the ART Act 2021 (as on Oct 2025) [Para 22(1)]

Surgical Retrieval of Sperm from the individual is feasible teachnically. However chances of retrieval of viable sperm are meagre."

10. A perusal of the aforesaid opinion would reveal that while the surgical retrieval of sperm of petitioner's husband is technically feasible, however, the chances of retrieval of viable sperm are suggested to be meagre.

11. During the course of hearing, learned counsel appearing for the respondents has draws the attention of the Court to the provisions of Section 22(1)(a) of the ART Act. It is his submission that in the instant case there is no explicit written consent of the petitioner's husband. Section 22 of the ART Act, is extracted as under:

*"22. **Written informed consent.***

(1) The clinic shall not perform any treatment or procedure without—

(a) the written informed consent of all the parties seeking assisted

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reproductive technology;
(b) an insurance coverage of such amount as may be prescribed for a period of twelve months in favour of the oocyte donor by the commissioning couple or woman from an insurance company or an agent recognised by the Insurance Regulatory and Development Authority established under the provisions of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).
(2) The clinics and banks shall not cryo-preserve any human embryos or gamete, without specific instructions and consent in writing from all the parties seeking assisted reproductive technology, in case of death or incapacity of any of the parties."

12. It be noted that in the instant case, the petitioner and her husband both had volunteered for the IVF treatment. Procedures in furtherance of the said treatment admittedly had been undertaken by them. A conclusion can, therefore, be safely drawn that the petitioner's husband consented for undergoing the IVF treatment. There is no material on record, or any indication, to the contrary.

13. The parties, at the relevant point of time, may not have visualised/foreseen the unfortunate incident which had occurred in the month of July, 2025. While the learned counsel for the respondent is correct in contending that as on date there is no express indication of consent from the petitioner's husband, however, under the facts and circumstances of the present case, it is found to be fair, reasonable, and just for the respondents to undertake the necessary procedure/steps which are required to take the IVF treatment to its logical conclusion. But for this, the original consent given by the petitioner's husband shall stand vitiated, and the very purpose for acceding to the IVF treatment shall be rendered otiose.

14. It may also be noted that the ART Act had been legislated "*for addressing the issues of reproductive health where assisted reproductive technology is required for becoming a parent or for freezing gametes,*

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embryos, embryonic tissues for further use due to infertility, disease or social or medical concerns and for regulation and supervision of research and development and for matters connected therewith or incidental thereto".[4] Section 22 of the ART Act, thus, provides the mere procedure, to address the broader more fundamental problem, which is being faced by the citizens. It is trite law, that procedure is indeed the handmaiden of justice. Non-compliance with the bare, strict, text of a procedural provision, destroying the substantive intent of the legislation ought not to be countenanced. The right to reproductive autonomy, it must be remembered, is a fundamental right. The ART Act must be so interpreted which furthers the said right, and not derogates from it.[5]

15. At the bar, and also in the "*Opinion of the Board*" it has been contended by the respondents that the possibility of retrieving viable sperm is meagre. Whether or not the petitioner herein, and her husband, Mr. Kumar, are to beget a child, is not in human hands. It is destiny that determines whether or not the fortune of parenthood shall get bestowed upon persons. This Court ought not to interdict the fate of the petitioner by insisting from Mr. Kumar, that which is physically impossible and impracticable.

16. A matter with respect to a similar issue had arisen before the Kerala High Court in the case of ***Simi Rajan v. Union of India and Ors***.[6] In paragraph nos. 2 to 5 of the said order, the Kerala High Court noted that the petitioner's husband therein was in a brain dead condition and was being

[4] Preamble to the ART Act.
[5] ***X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi***, (2023) 9 SCC 433.
[6] W. P. (C) No. 9271/2026, order dated 09.03.2026.

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kept alive with ventilator support. While granting interim relief in favour of the petitioner the Court allowed the extraction and cryopreservation of the gametes. The material portion of the said decision reads as under:

> "*2. The petitioner who is the wife of Mr. Arun Kumar M.V has filed this writ petition stating that her husband is undergoing treatment at the 5th respondent-hospital. Her case is that according to the Doctors of the hospital, her husband suffers from extensive cerebral venous thrombosis post 2 weeks of chicken pox which has now resulted in his brain death and he is currently kept alive with ventilator support. In support of the same, she has produced Ext.P2 certificate issued by the 5th respondent. Petitioner's case is that she is desirous of extracting and cryopreserving gametes of her husband who is unable to grant consent to the same as contemplated under Section 22 of the Assisted Reproductive Technology ("ART") Act due to his present medical condition for future use by the petitioner to undergo ART services.*
>
> *3. The case of the petitioner is that in view of the critical condition of her husband namely Mr. Arun Kumar M.V, there is no possibility of obtaining written informed consent from him, and if the matter is delayed any further, irreparable hardship may be caused in view of his health condition and the impending chance of paternity. It is also submitted by the learned counsel for the petitioner that the 5th respondent-hospital is having licence under the ART (Regulation) Act for extracting and preserving the gametes.*
>
> *4. Having heard the learned counsel for the petitioner, the learned DSGI and the learned Government Pleader.*
>
> *5. Interim relief is granted directing the 5th respondent-hospital to allow the extraction and cryopreservation of the gametes of Mr.Arun Kumar M.V by allowing the services of the 6th respondent or other recognized ART clinics. It is also made clear that, other than the extraction and preservation of the gametes, no further procedure under the Assisted Reproductive Technology (Regulation) Act shall be carried out without the permission of this Court.*"

17. Reference can also be made to the order passed by this Court in ***Gurvinder Singh Vs. State (NCT of Delhi)***[7]**.** The paragraph nos. 143 and 144 of which reads as under:

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"*143. Thus, in the opinion of this Court, under the prevailing Indian law, there is no prohibition against posthumous reproduction if the consent of the sperm owner or egg owner can be demonstrated. If the deceased had been married and had a spouse, the issues would not have been as complex. In the absence of a spouse, the question arises : is there any prohibition on posthumous reproduction under the existing law? The answer is clearly in the negative. In the absence of any such prohibition, this Court is unable to read a restriction where none exists.*
144. Given the settled position, as per the medical records produced by the Gangaram Hospital, the sperm constitutes property and the parents are the legal heirs of their deceased son. With no prohibition on posthumous reproduction, and consent having been given by the Petitioner's son prior to his death, the Court is of the opinion that this is a suitable case for the release of the sperm sample to the Petitioners."

18. Learned counsel for the has also placed reliance on a decision in the case of ***Y vs. A Healthcare NHS Trust***,[8] passed by the England and Wales Court of Protection Decisions. Paragraph 23 to 27 of the order passed in ***Y vs. A Healthcare NHS Trust,*** are extracted as under:

"*23. Before Z's accident, I am satisfied about the following facts and so find that:*

a. Z and Y had a settled intention to have a brother or sister for their little boy;

b. Z. and Y had been unable to conceive a second child naturally and, as a result, had sought a referral for fertility treatment;

c. Z and Y were under the care of a consultant obstetrician and gynaecologist in order to receive IVF treatment and had an appointment on 16 July 2018 to progress that treatment; and

d. Z had discussed with Y the posthumous use of his sperm and had agreed to posthumous use.

24. In reaching my decision, I have taken those factors into account as well as Y's wishes as to what would be in Z's best interests, she being a person presently caring for Z by reason of her presence by his bedside and a person concerned with and interested in his welfare. I have also taken account of what Z would choose to do about this issue if he knew that he was catastrophically injured, was being kept alive by means of life-support and was on the point of that medical treatment being withdrawn

[7] 2024 SCC OnLine Del 6902.
[8] Case No. COP13280890 ([2018] EWCOP 18).

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resulting in his death. It seems to me that Z would have chosen to allow clinicians to retrieve his sperm so that it might be stored and then used after his death so that his little boy might be able to have a brother or sister. That choice was entirely consistent with the evidence before me and consistent with what I had learned about Z's hopes and dreams for a family life with Y and children of their own. I was also satisfied that Z had contemplated what might happen if he died and that family life might not include him in person but might, however, include a child conceived by Y after his death using his sperm. Standing back and applying the law to the facts of this case, I am in no doubt that the decisions I have taken on Z's behalf were in his best interests even though his death was imminent.

25. I have already referred to the terms of the draft order which I was invited to approve. In discussion with counsel, I queried why I was only being asked to approve authority for the consent of the storage of Z's sperm and not also consent for the use of that material and any embryos formed from that material. Given my findings of fact, it seemed to me that Z would want his sperm not only to be stored but also to be used. Storage and then use were essential parts of a process which Z had embarked upon in the hope of providing his son with a brother or sister. Furthermore, if the consent to use was not executed before Z died, I was told by counsel that, given the strict provisions of sub-paragraph 1(2) of Schedule 3 of the HFE Act, there might be real obstacles to the use of Z's stored sperm after death in the absence of a valid pre-death consent. Further legal proceedings might well be required. It seemed to me that the last thing Z would have wanted for Y was that the fertility treatment they both had embarked upon might be put at risk or delayed by the outcome of further legal proceedings.

26. I indicated to counsel that it would be undesirable and inconsistent with the facts of this case for the court not to authorise the execution of consents for use as well as storage prior to Z's death. Mr Mylonas QC on behalf of Y agreed as did the hospital trust. The Official Solicitor had not considered this matter prior to it being raised by me and, having had no time to investigate this issue, adopted a neutral position on the authorisation of consent for the use of Z's sperm. Notwithstanding the position of the Official Solicitor, I was satisfied that I should exercise my powers to direct the execution of a consent for both the storage and the use of Z's sperm.

27. My order declared that, by reason of his traumatic brain injury, Z lacked capacity to provide his written consent for fertility treatment for the purposes of 27. of the HFE Act, such written consent being required for the storage and use (but not for the retrieval) of his gametes. Notwithstanding that Z lacked capacity, I declared that it was lawful for a doctor to retrieve his gametes and lawful for those gametes to be stored both before and after his death on the signing of the relevant consents

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> *storage and use and that it was lawful for his gametes and any embryos formed from his gametes to be used after his death. I also declared that the court was satisfied that the requirements of Schedule 3 to the HFE Act in relation to consent were met in those circumstances. My order provided for a relative to sign the relevant consent in accordance with the provisions of sub-paragraph 1(2) of Schedule 3 to the HFE Act.*"

19. Having considered the overall prospectus of facts and situation, it is directed that the petitioner's husband action and his consent of joining the IVF treatment be treated to be sufficient compliance for the purposes of Section 22 of the ART Act.

20. It is further directed that the petitioner's consent be considered as valid consent for her husband for the purposes of IVF procedure, if the same is required for any other step/procedure. The respondents shall not disentitle the petitioner on the sole ground that the petitioner's husband's written consent is absent.

21. The same shall, however, be subject to other statutory compliances and the medical condition of the petitioner's husband.

22. Ordered accordingly.

23. Accordingly, with the aforesaid directions, the petition stands disposed of.

24. *Dasti.*

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

APRIL 13, 2026
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