

\$~6

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

Date of Decision: 23rd January, 2023

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

N

..... 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 with Mr.
Waizw Ali Noor, Ms. Kunjala
Bhardwaj, Mr. Madhav Bajaj and Mr.
Yash Upadhyay, Advocates for R-2
(M: 9599935943).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner who is the mother of an unmarried minor girl aged fourteen years. At the time of filing of the Petition, the girl was 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 petition was filed seeking permission of the Court to terminate pregnancy of the minor girl which was stated to be the result of an accidental consensual relationship. The matter was considered by the Court on 11th January, 2023 and Ms. Zubeda Begum, Id. Counsel, was appointed

as *Amicus Curiae* to assist the Court. The Court had also directed the Petitioner and the minor girl to be present with her mother, to interact with them. On 12th January, 2023, the Court and the *Id. Amicus* interacted with the Petitioner and the minor girl in the presence of a doctor. Upon interacting, the Court was of the view that the conception was indeed a result of a consensual, one-off act and the interest of the minor girl would be best served by terminating the pregnancy. Therefore, vide order dated 12th January, 2023, the Court permitted the minor daughter of the Petitioner to undergo the procedure for medical termination of pregnancy at AIIMS, New Delhi. The relevant portion of the said order reads as under:

“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;*

4. Ld. Counsel for the Petitioner has informed the Court today that in terms of order dated 12th January, 2023, the procedure for termination of pregnancy is stated to have been undertaken at AIIMS, New Delhi on 20th January, 2023 and the minor girl has also been discharged.

5. A status report dated 20th January, 2023 issued by AIIMS, New Delhi has been filed on the record of the Court. The report states that in terms of the previous order dated 12th January, 2023, AIIMS had constituted a medical board consisting of -

- Two Professors from the Department of Obstetrics and Gynaecology, and Department of Radio-diagnosis.
- One Additional Professor from the Department of Paediatrics and One Assistant Professor from the Department of Obstetrics and Gynaecology.

- One Senior Scientist, JPNA Trauma Centre
- One member of the from the Department of Hospital Administration.

6. The Report further states that the foetus sample is has been collected. Let the foetus sample be preserved by AIIMS.

7. Thus, the termination of the Petitioner's minor daughter's pregnancy has taken place. However, there is an urgent and immediate cause of concern that this writ petition raises in respect of the termination of pregnancy in case of the unfortunate event of the pregnant person being a minor girl.

8. The current position as is revealed to the Court, is that, Registered Medical Practitioners (RMPs) are generally reluctant to carry out the termination of pregnancy without disclosing the identity of a minor girl and her family and without lodging a police report. This causes huge predicament to the minor child as also her family. In the opinion of this Court, this issue has been squarely dealt with by the decision of the Supreme Court in *X v. Principal Secretary, Health and Family Welfare Dept., GNCTD 2022 SCC Online SC 1321*, where after considering the Rule 3B of the Medical Termination Pregnancy Rules, 2003 the Court has observed 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 book 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.”

9. Moreover, as observed in the order dated 12th January, 2023, passed by this Court, minors and their families may be forced to approach non-registered unqualified medical practitioners, quacks, mid-wives, to terminate the pregnancies because of the fear of disclosure of their identity, which could also result in adverse impact on the physical and mental health of the minor.

10. Accordingly, in terms of the order passed by the Supreme Court extracted above and in order to avoid risks to pregnant minor girls, the GNCTD is directed to issue a circular to the effect that in case of any minor's guardian or family approaching any RMP for termination of pregnancy, the identity of the minor, guardian or the family, shall not be disclosed in the RMP's report to the police, if a request to that effect is made by the guardian or the family to the RMP. Moreover, the police shall also ensure that in such cases, the report, which is registered, does not publicly disclose the identity of the minor and her guardian or the family.

11. At this point, certain issues have been raised by Ms. Hetu Arora Sethi, Id. ASC in respect of consensual relationships especially when the male

counterpart involved is also a minor. Let the said concerns be brought on record in the counter affidavit to be filed in terms of paragraphs 12 & 16 of the order dated 12th January, 2023.

12. The medical report filed by the AIIMS is taken on record.

13. Let a Copy of this order be sent to Medical Superintendent, AIIMS hospital through counsel for compliance of the direction given in para 6 above.

14. List on 10th March, 2023.

15. Keeping in mind the circumstances surrounding the present case, the orders in this petition were earlier not uploaded by this Court. Let all the orders in this matter now be uploaded.

**PRATHIBA M. SINGH
JUDGE**

JANUARY 23, 2023/dk/sk

भारतमेव जयते