

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 11693 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SAMIR J. DAVE

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

XYZ
 Versus
 STATE OF GUJARAT

Appearance:

MS.NIDHI P BAROT(6675) for the Applicant(s) No. 1
 NOTICE SERVED BY DS for the Respondent(s) No. 2,3
 MR H. K. PATEL, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 14/09/2023
ORAL JUDGMENT

RULE. Learned APP waives service of notice of rule on behalf of the respondents.

1. By way of this petition, the petitioner has prayed for the following reliefs;

“(A) The Hon’ble Court may be pleased to issue appropriate writ, order and/or direction to the respondent authority to terminate the pregnancy of presecutrix/ victim who is minor sister of the petitioner namely _____, at the earliest;

(B) The Hon’ble Court may be pleased to issue appropriate writ, order, direction and/ or guidelines for the police authorities of State of Gujarat to act in effective and speedy manner when rights of minor victims are concerned and also to inform such victims and their family members of their right regarding termination of unwanted pregnancy in a given case;

(C) The Hon’ble Court be pleased to grant such other and further relief and/or order in the interest of justice in favor of the petitioner.”

2. Pursuant to the order dated 08.09.2023 passed by this Court, today, learned APP Mr.H. K. Patel produced medical report of the victim girl dated 09.09.2023 prepared by the panel of Doctors of GEMRS Medical College & General Hospital, Vadnagar. The same is taken on record. For ready reference, the said report is reproduced hereunder:

“After carefully reviewing the case history, investigations and detailed examination of victim aged 16 years and 3 months residing at Kadi, Dist. Mahesana, we are of the following opinion.

- She is having pregnancy of about 18 weeks and 5 days as per the ultrasound report done on 08.09.2023.
- Termination of pregnancy can be done as per the MTP act with due risk of the procedure.
- She is a high risk patient looking towards her age if termination is ordered.
- If the medical management for termination fails, there will be an added risk of morbidity and mortality and also anesthesia risk if surgical intervention is required.
- As pregnancy is of about 18 weeks and 5 days so chances of survival of fetus is zero at present. ”

3. As per the opinion given by the panel of Doctors in the form of the report dated 09.09.2023, the victim girl is carrying pregnancy of 18 weeks and 5 days as on 08.09.2023 and no significant systemic abnormality has been detected. The victim also does not show signs of any associated pregnancy complications.

4. At this juncture, a reference to the judgment rendered by the Apex Court in case of **X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another reported in AIR 2022 SC 4917** would be apposite. In paragraphs-99 & 116, it has been observed as under;

“99. The right to reproductive autonomy is closely linked with the right to bodily autonomy. As the term itself suggests, bodily autonomy is the right to take decisions about one’s body. The consequences of an unwanted pregnancy on a woman’s body as well as her mind cannot be understated. The foetus relies on the pregnant woman’s body for sustenance and nourishment until it is born. The biological process of pregnancy transforms the woman’s body to permit this. The woman may experience swelling, body ache, contractions, morning sickness, and restricted mobility, to name a few of a host of side effects. Further, complications may arise which pose a risk to the life of the woman. A mere description of the side effects of a pregnancy cannot possibly do justice to the visceral image of forcing a woman to continue with an unwanted pregnancy. Therefore, **the decision to carry the pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman.**

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."

5. In a recent decision rendered by the Apex Court in **Criminal Appeal arising out of S.L.P. (Cri.) Dy. No.33790 of 2023** dated **21.08.2023**, by relying upon the judgment rendered in *X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another's* case (supra), the Apex Court ordered to conduct medical termination of pregnancy of the victim.

6. In this backdrop, it would be beneficial to refer to a recent decision of the Kerala High Court in the case **Aryamol Vs. Union of India and Ors.**, wherein in the facts and circumstances of the case, the High Court has gone to the extent of saying that the consent of the husband is not required in a case where the wife desires to terminate her pregnancy thereby giving respect to the desire of the woman and significance to her dignity.

7. If the victim does not want to continue with her pregnancy then this Court cannot compel her to continue her pregnancy.

8. In the result, the application is allowed. The respondent No.2 herein, GMERS Medical College and General Hospital, Vadnagar is directed to take necessary steps for undertaking the procedure of medical termination of pregnancy of the victim girl at

the earliest possible time and in any case, within a period of one week from today. The respondent No.3- Police Inspector, Kadi Police Station, Mahesana is directed to take necessary steps, on urgent basis, so that the procedure of medical termination of pregnancy of the victim girl could be undertaken and concluded within a period of one week from today. It is expected that the respondent-authorities concerned would take necessary care, sensitivity and caution so that the procedure of medical termination of pregnancy of the victim girl could be undertaken smoothly keeping in mind the age as well as mental and physical health of the victim girl.

9. The respondents nos.2 and 3 are directed to do the needful to preserve the subsequent DNA Test Report by drawing tissues from the foetus for the purpose of using it as a piece of evidence in the ensuing trial.

10. With the above directions, the petition stands disposed of. Rule is made absolute. **Direct service TODAY** is permitted. A copy of this order be provided to the learned APP for onward communication and necessary action. Liberty to apply in case of difficulty.

Sd/-
(SAMIR J. DAVE,J)

MEHUL B. TUVAR