

(2025) 06 RAJ CK 0384

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 11932 Of 2025

Teeja Devi W/o Shri Hariram

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 19-06-2025

Acts Referred:

Citation : (2025) 06 RAJ CK 0384

Hon'ble Judges : Vinit Kumar Mathur, J

Bench : Single Bench

Advocate : Deepak Nehra, Shashank Sharma, Harish Purohit

Final Decision : Disposed of

Judgement

Chandra Prakash Shrimali, J

1. The instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner seeking direction to terminate the pregnancy of her minor daughter viz. Mst. "S" (Aged 17 years 5 months-minor), victim of rape, under Sections 3 and 5 of Medical Termination of Pregnancy Act, 1971 (hereinafter to be referred as 'the MTP Act').

2. Bereft of elaborate details, the brief facts necessary for disposal of the instant writ petition are as under :-

2.1. The petitioner/mother lodged a complaint stating that her minor daughter Mst. "S" left the house on 12.01.2025 without informing anyone with one Dinesh Kumar. Thereafter, the police lodged a complaint under Section 137 (2) of the BNS and after investigation the police secured both of them from Jodhpur.

2.2. Accused Dinesh Kumar was arrested and produced before the court. The petitioner's minor daughter was sent for medical examination and her UPT test report came positive. The petitioner alleged that her minor daughter was made pregnant on account of rape committed by accused Dinesh Kumar and therefore, it is requested to refer the petitioner's daughter to the government hospital

(Respondent no. 3) in order to get the pregnancy terminated. So this writ of mandamus has been filed.

3. On 13.06.2025, this Court has passed the following order:

"1.....

2. On perusal of the report it indicates that medical board have suggested that pregnancy can be terminated under usual risk of the procedure and teenage pregnancy risk.

3. After considering said medical report this court deems it appropriate to seek specific report from the medical board as to whether Ms. 'S' is physically fit to undertake the procedure of termination of pregnancy and other surgery."

3.1. In compliance of aforesaid order, the Medical Board submitted a report dated 14.06.2025, in which, it is mentioned that : "According to the ultrasound Obstetrics Ms. 'S' is having pregnancy of 22 weeks 3 days. As per USG, single live fetus of 22 weeks 3 days. The pregnancy can be terminated with usual risk of the procedure and teenage pregnancy." Thus, it is observed that the critical period of twenty weeks, before which alone there can be safe abortion was over.

3.2. According to the consent memo dated 05.06.2025 of minor victim (Annexure-8) enclosed with the petition, the minor girl has categorically stated that she is not willing to abort the fetus.

3.3. The victim Mst. 'S' in her statement to police has stated that the pregnancy resulted out of consensual intercourse between her and accused Dinesh Kumar and not out of coercion.

4. In continuation of the facts as averred in the writ petition, the contentions of learned counsel for the petitioner are as under :-

4.1. It is contended that the daughter of petitioner is minor and she is incapable of making informed decisions about her body and health and the continuance of the pregnancy would lead to various social, economic and cultural factors which would possibly the victim could not reasonably foresee.

4.2. It is also submitted by the learned counsel for the petitioner that consent of minor rape-victim is not mandatory for medical termination of pregnancy, the consent of guardian is sufficient. It is submitted that the Section 3(4) of the MTP Act clearly states that the pregnancy of a minor or a mentally ill person can be terminated with the consent in writing of her guardian and second "otherwise" the pregnancy can be terminated with the consent of pregnant women herself. Learned counsel for the petitioner has submitted that the case of Mst. 'S' falls under the first category i.e. Section 3(4)(a) of the MTP Act.

4.3. Learned counsel for the petitioner in her submission stated that the judgment dated 29.04.2024 relied upon by the respondent rendered by Hon'ble the Supreme Court in the case of

A (Mother of X) Vs. State of Maharashtra [Civil Appeal No.5194/2024], wherein it is stated that the consent of the pregnant women must be taken into consideration as an 'important factor'; however, such condition is not explicitly required. It is further contended that the above judgment also states that the court must apply their mind to the case and make a decision protect the physical and mental health of the pregnant women.

4.4. It is also submitted that the victim is currently admitted at the Umaid Hospital, Jodhpur and her condition is very critical as her hemoglobin was only 9 at the time of medical examination, therefore, she is not in a position, physically and mentally, to give birth to a child.

4.5. It is further contended that the Section 3(2)(i) of the MTP Act provides for medical termination of the pregnancy in case where the continuance of the pregnancy would involve a risk to the life of the pregnant women or of grave injury physical or mental health, which is the current condition of the victim.

4.6. It is further contended that in the case of Gopal Lal & Ors. Vs. State of Rajasthan & Ors. [S.B. Civil Writ Petition No.10687/2025], a Coordinate Bench of this Court while allowing for medical termination of pregnancy also mentioned that : "the further procedure has to be done in an expeditious manner as soon as possible and the committee shall consider the guardian since the victim is suffering from mental illness." When the condition of mentally ill person is considered then the condition of minor is also bound to be consider as per Section 3(4) of the MTP Act.

4.7. It is submitted that in the case of Kishan Lal Vs. State of Rajasthan & Ors [S.B. Civil Writ Petition No.17830/2024] as well as Nisha Vaishnav Vs. State of Rajasthan & Ors. [S.B. Civil Writ Petition No.1271/2019], the Coordinate Benches of this Court granted permission for termination of pregnancy on the request of the natural guardian of the victim and considering the risk associated with full term pregnancy and delivery.

4.8. Learned counsel for the petitioner has also submitted that if the medical termination of pregnancy is not allowed then the State shall ensure that all the hospital facilities are made available to the victim and a suitable amount of compensation shall be paid to the petitioner and her daughter under the provision of the Rajasthan Victim Compensation Scheme, 2011.

5. Per contra, AAG and Asst. to AAG appearing on behalf of the respondent authorities has submitted following arguments :-

5.1. It is contended that the minor girl has shown absolute unwillingness to abort the fetus being aware that she would be solely responsible for the upbringing of the child.

5.2. It is submitted that in the case of A (Mother of X) (supra), the Hon'ble Supreme Court has categorically stated that the MTP Act does not allow any interference by the partner or family with the personal choice of a pregnant

person and the view of the pregnant person must be considered as an important factor in case of divergence view of the minor and the parent/guardian while proceeding with the termination of the pregnancy.

6. After hearing learned counsel for the parties and after perusing the material available on record, the fundamental question arose before this Court are that :-

- Whether the consent of natural guardian for termination of pregnancy of minor daughter can be accepted when the pregnant minor daughter herself is not agreeable for such termination?;
- Whether the minor daughter's right to life under Article 21 of the Constitution of India includes the right to beget a life or create a life?

6.1. The minor daughter of the petitioner left her home on 12.01.2025 along with her relevant document and an amount of Rs.50,000/- without informing anyone with one Dinesh Kumar. While going through the factual report, it has come to this Court's notice that the victim and the accused knew each other since last 9 years and had thus voluntarily ran away in the year 2023. Subsequent to which, the present petitioner filed a case, wherein after 3 months, they were secured by the police and the accused was sent to jail; however, in January 2025, when the accused was out on bail, again they voluntarily ran away from Jodhpur and were having a conjugal relationship with each other since then.

6.2. Considering the written submission and arguments advanced by the learned counsel for the parties whether the consent of minor rape-victim is mandatory or not for termination of pregnancy and whether the consent of guardian is sufficient for the same, this Court is of the opinion that though the daughter of the petitioner is minor (17 years 5 months) but she is a sufficiently mature girl capable of taking decision and further capable of understanding the consequence of the decision taken.

6.3. Perused the material available on record the minor victim has showed her unwillingness that she doesn't want to abort the fetus and that she is willing to raise the child on her own, reflects that she clearly understands all the social and economical factors associated with raising a child.

6.4. This Court has relied on the judgment of Hon'ble Supreme Court rendered in A (Mother of X) (supra), wherein the Hon'ble Apex Court has stated that :-

"32. The MTP Act does not allow any interference with the

personal choice of a pregnant person in terms of proceeding with the termination. The Act or indeed the jurisprudence around abortion developed by the courts leave no scope for interference by the family or the partner of a pregnant person in matters of reproductive choice.

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35. In the present case the view of 'X' and her parents to take the pregnancy to term are in tandem. The right to choose and reproductive freedom is a fundamental right under Article 21 of the Constitution. Therefore, where the opinion of a minor pregnant person differs from the guardian, the court must regard the view of the pregnant person as an important factor while deciding the termination of the pregnancy."

6.5. This Court further perused the judgment dated 17.03.2020 rendered by the High Court of Chhattisgarh at Bilaspur in the case of Ram Avatar Vs. State of Chattisgarh & Ors. [Writ Petition (Cr.) No.164/2020], wherein the minor girl in her statement to the lady police officer had shown her unwillingness to abort the child the court stated that :-

"28. On a careful perusal of the above statement of the minor girl, it is quite vivid that though the minor (17 years 8 months 10 days), but is a sufficiently matured girl capable of taking decision and further capable of understanding the consequence of the decision taken, and taking her unwillingness and further considering the medical opinion that she is having the advanced stage of pregnancy exceeding 27 weeks and as per the medical advice termination may put girls health in danger due to excessive bleeding and risk of death, her right to beget a life and/or create a life, which is a facet of right to life guaranteed under Article 21 of the Constitution of India, this Court is not inclined to direct termination of her pregnancy, even otherwise such a direction for want of her consent would amount to forcible termination of pregnancy. As such, the request of the petitioner father to terminate the pregnancy of his daughter is hereby rejected and accordingly, the writ petition is dismissed...."

6.6. Accordingly, this Court is of the opinion that the minor victim has sufficient level of understanding the consequences of her actions and if her consent is ignored completely then this would lead to forceable termination of her pregnancy which would cause grave mental and physical trauma to her.

6.7. This Court is of the view that the Section 3(4)(a) of the MTP Act provides for taking consent of natural guardian for termination of pregnancy, however, the said act does not shed the light on a situation where there is a divergence in the view of minor and her guardian, therefore, this leaves plethora of gates open for interpretation by the Court as per the facts and circumstances of the case. Also, the provision of aforesaid section suitably applies to the situation where pregnant minor wants to terminate her pregnancy, it is provided that no termination of pregnancy can take place without the consent of natural guardian. 6.8. This Court is of further opinion that the minor victim has the right to beget a life and/or create a life, which is a facet of Right to Life guaranteed under Article 21 of the Constitution of India.

6.9. After taking into consideration the points raised regarding the condition of the minor victim that she is not in a condition to deliver the child, this Court is of the opinion that nowhere in the medical report it indicates that the minor victim

would suffer grave physical injury in case she keeps and deliver the child as per her free own will.

6.10. This Court while going through the judgments relied upon by the learned counsel for the petitioner, has formed an opinion that none of the cited judgments are on the similar footing from that of the present case. This Court relied on the judgment dated 28.08.2009 rendered by the Hon'ble Supreme Court in *Suchita Srivastava & Anr. Vs. Chandigarh Administration* [Civil

Appeal No.5845/2009 (Arising out of SLP (C) No.17985/2009)], wherein it is stated that the right to make reproductive choices is a facet of Article 21 of the Constitution, further the consent of the pregnant women in matter of reproductive choices and abortion is paramount and no entity, even if it is state, can speak on behalf of pregnant person and usurp her consent. The choice to continue the pregnancy to term, regardless of the Court having allowed termination of the pregnancy belongs to individual alone, has held as under :-

"11....There is no doubt that a woman's right to

make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a 'compelling state interest' in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices. 9. As evident from its literal description, the 'Best interests' test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of other stakeholders such as guardians or society in general. It is evident that the woman in question will need care and assistance which will in turn entail some costs. However, that cannot be a ground for denying the exercise of reproductive rights."

6.11. This Court further perused the judgment dated 19.09.2016 rendered by

the High Court of Madras at Madurai Bench in Marimuthu Vs. The Inspector of Police & Ors. [Writ Petition (MD) No.12212/2016], wherein the Court stated that pregnant women has the autonomy to decide what to do with their own bodies which also includes right to beget a life or to retain or terminate the pregnancy and has held as under :-

"39. The right to autonomy to the woman and to decide what to do with their own bodies, including whether or not to get pregnant, and if pregnant whether to retain the pregnancy and to delivery the child, i.e. the right to motherhood is towards their empowerment and it is in accordance with the International Covenant on Human Rights. Considering the right to life, which includes the right to beget a life and the right to dignity, the right to autonomy and bodily integrity, the foetus cannot be ordered to be aborted against the wishes of the victim girl.

40. Whether the foetus carried is a pain or pleasure is the subjective opinion of the minor girl and the girl has formed an opinion that it is the total delight, when India has ratified the conventions on the rights of the Child and when the consent of the victim girl cannot be dispensed with while aborting pregnancy, this Court has no option except to decline permission to terminate pregnancy, leaving it open the question, who is to bear the cross?

41. In the result, this Writ Petition is dismissed. No costs."

6.12. While considering the above mentioned judgments this Court is of the opinion that the pregnant woman has the autonomy over her body and it is only she who has right to choose whether or not to terminate the pregnancy. Subsequently, the Hon'ble Apex Court in the case of Suchita (supra) has not allowed to terminate the pregnancy while considering the willingness of a mentally retarded women to keep the child. Therefore, this Court is of the opinion that since the daughter of the present petitioner is unwilling to abort the child, therefore, the consent of the pregnant women prevails over the consent given by her guardian.

6.13. In the light of statement of the minor victim, above mentioned reasoning, the judgments of other High Courts as well as Hon'ble the Apex Court referred above, this Court deems it proper to disposed of the present writ of mandamus while upholding right of pregnant minor victim to retain her pregnancy.

7. With these observations, the instant writ petition is disposed of with the directions to the State Authorities that all the medical expenses of the minor pregnant victim shall be borne by the State government and she shall be provided with the proper medical facilities for her delivery. It is further directed to the Rajasthan State Legal Service Authority (RLSA) and the District Legal Service Authority (DLSA), Jodhpur to pay suitable amount of compensation to the daughter of the petitioner under the provision of Rajasthan Victim Compensation Scheme, 2011.

8. No order as to cost.