

(2024) 02 MP CK 0036

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3463 Of 2024

Victim X (Madhya Pradesh)

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 12-02-2024

Acts Referred:

Medical Termination Of Pregnancy Act, 1971 — Section 3, 392), 4, 5(1)

Citation : (2024) 02 MP CK 0036

Hon'ble Judges : Pranay Verma, J

Bench : Single Bench

Advocate : Priyesh Bhawsar, Anendra Singh Parihar

Final Decision : Allowed

Judgement

Pranay Verma, J

1. The petitioner 'X' who is a minor and victim of rape through legal guardian (father) has filed the present petition for termination of pregnancy keeping in view the Medical Termination of Pregnancy Act 1971.

2 . A report was called from the Medical Board and the Medical Board has opined that pregnancy can be terminated though the fetus is of five weeks and five days pregnancy with missed abortion, with the permission of the Court.

3. Section 3 and 5(1) of the Medical Termination of Pregnancy Act, 1971 reads as under:-

" 3 . When Pregnancies may be terminated by registered medical practitioners.-
(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner-

(a) where the length of the pregnancy does not exceed twelve weeks' if such medical practitioner is, or (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of opinion, formed in good faith, that,-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health ; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in C1.(a), no pregnancy shall be terminated except with the consent of the pregnant woman. 5. Sections 3 and 4 when not to apply.- (1) The provisions of Sec.4 and so much of the provisions of sub-section (2) of Sec. 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman."

4 . This Court keeping in view the statutory provisions as contained in The Medical Termination of Pregnancy (MTP) Act, 1971 is of the opinion that in the peculiar facts and circumstance of the case, the pregnancy can be terminated and it is ordered accordingly.

5 . The Civil Surgeon, District Hospital, Jhabua is directed to carryout the termination of pregnancy. The petitioner 'X' shall appear before the District Hospital/Civil Surgeon, Jhabua, on 15.02.2024 at 11.00 A.M. The Head of Department of Gynecologist, Head of Department of Anesthesia and all other specialist will remain present at the time of termination of pregnancy, as the petitioner 'X' is of tender age. Not only this, after termination of pregnancy is

carried out, the State of Madhya Pradesh shall ensure post operative care of the petitioner 'X'. The entire expenditure in respect of termination of pregnancy shall be borne by the State of M.P. through Collector, Jhabua and the DNA of fetus shall also be preserved for DNA analysis.

6. With the aforesaid, the present writ petition stands allowed.

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