

**\* THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

**+ WRIT PETITION No.32872 of 2023**

**% Dated 06-12-2023**

Between:

# xyz

...Petitioner

and

\$ The State of Telangana and others

....Respondents

! Counsel for the Petitioner : Smt. Nandita Guha

^ Counsel for the respondents : Govt.Pleader for Women  
Development Child Welfare

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>HEAD NOTE : ---

? Cases referred: :

1. 2023 LiveLaw (SC) 680
2. xxx Vs. Union of India (W.P. No.24850 of 2021)

**THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR****W.P. No.32872 of 2023****ORDER:**

This writ petition has been filed seeking a writ of mandamus and thereby to direct the 3<sup>rd</sup> respondent to constitute a Medical Board as per Provisions of Section 3 Amendment Act, 2021 to conduct petitioner's minor daughter's medical examination and to submit a report within a period of 24 hours and consequently direct the 3<sup>rd</sup> respondent to terminate the pregnancy of the petitioner's minor daughter under the provisions of Section 3 (2) (b) of the Medical Termination of Pregnancy (Amendment) Act 2021 within the time frame fixed by the High Court.

2. The petitioner is representing her minor daughter. It is the case of the petitioner that the petitioner is a coolie and has three daughters and the second daughter (herein after referred to as victim), aged 15 years was forcibly raped by the petitioner's sister-in-law's son and a case under Section 376 (2) (n) IPC & Section 5 r/w Section 6 of POCSO Act, 2012 has been registered at Police Station, Thipparthi, *vide* FIR No.184 of 2023 dated 11.11.2023.

3. It is further submitted that when the victim suffered stomach pain continuously for three days, petitioner approached the Doctor on 16.11.2023 and after examination, the doctor confirmed that the victim is pregnant. Thereafter, the victim had undergone an Antenatal

Ultrasound wherein it was revealed that she was carrying a '*SINGLE LIVE INTRAUTERINE FETUS OF AVERAGE GESTATIONAL AGE OF 27 WEEKS 00 DAYS*'.

4. While so, for termination of the victim's pregnancy, the petitioner approached the office of the respondent No.3 where she was orally informed that 'permission from the High Court is required for termination.' Thereafter, the petitioner approached the High Court Legal Service Committee and the Committee *vide* ROC. No.2428/HCLSC/2023 dated 28.11.2023, referred the petitioner's case to the learned counsel, Smt. Nandita Guha, appearing for the petitioner for filling a writ petition before this Court. Hence, the present writ petition.

5. The learned counsel Smt. Nandita Guha appearing for the petitioner submits that the victim is a minor girl, who is studying 10<sup>th</sup> Class in ZPHS (Girls), Thipparthi, Nalgonda and the victim's pregnancy was the result of rape and such pregnancy is totally unwanted and unwarranted and the same will cause grave injury to the mental health of the victim as well as it will ruin the victim's future.

6. To substantiate the case of the petitioner, the learned counsel for the petitioner placed reliance on the orders passed by the Hon'ble Supreme Court as well by this Court in the cases of **XYZ Vs. The**

**State of Gujarat & others<sup>1</sup> and xxx Vs. Union of India**

(W.P. No.24850 of 2021) passed by the learned Single Judge of High Court for the State of Telangana.

7. On the other hand, the learned Government Pleader appearing for respondent No.3, on instructions, submits that the petitioner has not approached the office of the respondent No.3. It is further submitted that as per the interim direction dated 04.12.2023 passed in I.A. No.1 of 2023 in W.P. No.32872 by this Court, the 3<sup>rd</sup> respondent constituted a Medical Board consisting of (6) Six members of Doctors and after conducting the medical examination of the victim had submitted the Medical Board Report dated 05.12.2023 as per which, the termination of the victim's pregnancy is not advisable and sought to pass appropriate orders.

8. Heard the learned counsel for the petitioner and the learned Government Pleader and perused the material made available on record.

9. This Court on 04.12.2023 in I.A. No.1 of 2023 passed the following interim order, which reads as under;

“This application is filed seeking direction “to the 3<sup>rd</sup> respondent to constitute a Medical Board as per the provisions as enunciated in terms of Section 3 of Amended Act, 2021 (Section 3 (Explanation 2) and also

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<sup>1</sup> 2023 LiveLaw (SC) 680

Sec 3 (2C) and 3 (2D) of the Medical Termination of Pregnancy (Amended) Act 2021 to conduct the petitioner's minor daughter's medical examination and to submit a report within a period of 24 Hrs with regard to the fact that whether the minor rape victim would be in a fit condition to undergo the termination of pregnancy procedure."

This writ petition is filed by the petitioner representing her minor daughter.

Learned counsel for the petitioner submits that the petitioner is a coolie and has three daughters and the second daughter (herein after referred to as victim), aged 15 years was raped by the petitioner's sister-in-law's son and a case under Section 376 (2) (n) IPC & Sec 5 r/w Sec 6 of POCSO Act, 2012 has been registered at Police Station, Thipparthi, *vide* FIR No. 184 of 2023 dated 11.11.2023.

The case of the petitioner is that when the victim suffered stomach pain continuously for three days, petitioner approached the doctor on 16.11.2023 and after examination, the doctor confirmed that the victim is pregnant. Thereafter, the victim undergone an Antenatal Ultrasound wherein it was revealed that she was carrying a 'SINGLE LIVE INTRAUTERINE FETUS OF AVERAGE GESTATIONAL AGE OF 27 WEEKS 00 DAYS'.

Learned counsel for the petitioner submits that the petitioner for termination of the victim's pregnancy approached the office of respondent No.3, where the petitioner was orally informed that 'permission from the Hon'ble High Court is required for termination.' Thereafter, petitioner approached The High Court Legal Service Committee and the Committee *vide* ROC.

No.2428/HCLSC/2023 dated 28.11.2023, referred the petitioner's to the learned counsel appearing for the petitioner for filling a writ of mandamus before the Hon'ble High Court. Hence, the present writ petition.

Learned counsel for the petitioner submits that the victim is a minor girl, who is studying 10<sup>th</sup> Class in ZPHS (Girls), Thipparthi, Nalgonda and the victim's pregnancy was the result of rape and such pregnancy is totally unwanted and unwarranted and the same will cause grave injury to the mental health of the victim as well as it will ruined the victim's future.

Learned counsel for the petitioner has drawn attention of this Court to the Rule 3A of Medical Termination of Pregnancy (Amendment) Rules, 2021, which reads as under:-

*"3A. Powers and function of Medical Board- For the purpose of Section 3,-*

*(a) The powers of the Medical Board shall be the following, namely:-*

*(i) To allow or deny termination of pregnancy beyond twenty-four weeks of gestation period under sub-section (2B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped;*

*(ii) co-opt other specialists in the Board and ask for any additional investigations if required, for deciding on termination of pregnancy;"*

In view of the above learned counsel for the petitioner prays this Court to direct the respondent No.3 to constitute a Medical Board as per the provisions as enunciated in terms of Section 3 of Amended Act, 2021 (Section 3 (Explanation 2) and also Sec 3 (2C) and 3 (2D) of the Medical Termination of Pregnancy (Amended) Act 2021 and conduct the victim's medical examination and submit a report within a period of 24 Hrs with regard to the fact that whether the minor rape victim would be in a fit condition to undergo the termination of pregnancy procedure.

Learned Government Pleader appearing for respondent No.3 on instructions submits that the petitioner has not approached the office of respondent No.3.

Taking into consideration the above facts and circumstances and condition of the victim, this application is ordered and the respondent No.3 is directed to constitute a Medical Board as per the provisions as enunciated in terms of Section 3 of Amended Act, 2021 (Section 3 (Explanation 2) and also Sec 3 (2C) and 3 (2D) of the Medical Termination of Pregnancy (Amended) Act 2021 and conduct the Victim's medical examination and submit a report, whether the minor rape victim would be in a fit condition to undergo the termination of pregnancy procedure. The said report shall be submitted within a period of 24 Hrs from today.

Registry is directed to communicate this order to petitioner and respondent No.3."

10. In pursuance to the said interim order, the Superintendent, Government General Hospital, Nalgonda, constituted a Medical Board comprising the following six members of Doctors vide Rc.No.Spl/Estt./GGH/ NLG/2023, dated 05.12.2023.

Sl.No.	Name of the Department	Name of the doctor with contact numbers	Designation	Signatures
1	Obstetrics & Genecology	Dr.A.Swaroop Rani -441089078	Professor & HOD	Sd/-
2	Obstetrics & Genecology	Dr.S.Himabindu 9912048438	Associate professor	Sd/-
3	Radiology	Dr.Ayesha – 9849015917	Profeessor & HOD	Sd/-
4	Anaesthesia	Dr.Badrinarayana 9849155579	Professor & HOD	Sd/-
5	General Medicine	Dr.P.S.V.Ramana Murthy – 9494787184	Professor & HOD	Sd/-
6	Paediatrics	Dr.Vandana Usha Sree – 9000676655	Professor & HOD	Sd/-

The aforesaid Medical Board, after conducting medical examination of the victim girl, through the Superintendent, Government General Hospital, Nalgonda, submitted a report dated 05.12.2023, which has been placed before this Court today, which reads as under:

“The victim by name xyz 15 yrs old Resident of Thipparthi is presented with 28 weeks amenorrhea who is directed by the Hon'ble High Court Telangana State is admitted on 05/12/2023 at 10:36am.

On history the victim revealed sexual intercourse with a known person since December 2022. On 11/11/2023 she was brought to MCH unit of Govt General Hospital Nalgonda by WHC No.2964 PS Thipparthi for medical examination of the victim and



was found to be pregnant with 24 weeks Gestational period on clinical examination in MCH unit at Govt General Hospital Nalgonda. Further victim was advised for Antenatal profile, TIFFA Scan and review with the reports, but the patient did not turn up.

On 16/11/2023 victim developed pain abdomen for which she was taken to a local doctor and was done ultrasound scanning of the abdomen and was found a single live intrauterine fetus of 27 weeks Gestational age.

Today i.e on 05/12/2023 at about 10:36am she was brought to MCH unit of Govt General Hospital Nalgonda along with WHC No.2964 PS Thipparthi, mother Janamma for medical examinations and opinion regarding her Gestational period. On examination victim is conscious, coherent and well oriented in time, place and person. Victim is found to be anemic, tongue is pallor, pulse rate 80/per minute, Blood Pressure 120/70 systolic diastolic, heart and lungs no abnormality detected. On Ultrasonography of Uterus is corresponding to 28 to 30 weeks of gestational period, fetal heart sounds found to be good, estimation of fetal weight is about 1.4 kg.

Based on history, clinical examinations and investigations (ultrasound scanning) report dated 05/12/2023 we are with opinion that the victim is pregnant with 28 to 30 weeks of gestational period, with estimated fetal weight is about 1.37kg, with salvageable fetus.

Termination of pregnancy is not advisable at this junction because there will be a chance of survival of baby with the following sequelae of prematurity,

preterm like neurological disabilities, developmental delay of all the systems like respiratory, gastrointestinal, exaggerated jaundices as well. In view of above all untoward effects on the baby, therefore termination is not advisable to avoid birth of disabled baby who will become burden to the single parent and society.”

11. As noted in the Medical Board report, it is clear that termination of pregnancy is not advisable at this junction because there will be a chance of survival of baby with abnormalities which will become a burden to the single parent and society.

12. During the course of arguments, the learned counsel for the petitioner vehemently argued that the 3<sup>rd</sup> respondent did not submit the said report as directed by this Court whether the victim girl would be in a fit condition to undergo the termination of pregnancy procedure however, submitted that there will be a chance of survival of baby with certain ailments, which this Court did not call for and therefore, sought a direction to the 3<sup>rd</sup> respondent to terminate the unwanted pregnancy of the victim girl, which will become burden to the single parent and society.

13. Before proceeding with the matter, it is relevant to note the relevant provisions of the Medical Termination of Pregnancy Act, 1971 (for short ‘the Act’).

Section 3 of the Act, 2021 reads as under:

“ 3. In section 3 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

“(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 twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are,

of the 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 to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

*Explanation 1.*—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

*Explanation 2.*—For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant

woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:— (a) a Gynaecologist; (b) a Paediatrician; (c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be."

14. Learned counsel for the petitioner has drawn the attention of this Court to the Rule 3A of Medical Termination of Pregnancy (Amendment) Rules, 2021 (for short 'the Rules').

15. For better appreciation of the case, it is necessary to extract the Rule 3A of the Medical Termination of Pregnancy (Amendment Rules, 2021, which reads as under:

“3A. Powers and function of Medical Board-  
For the purpose of Section 3(a) The powers of the Medical Board shall be the following, namely:-

(i) To allow or deny termination of pregnancy beyond twenty-four weeks of gestation period under sub-section (2B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; (emphasis supplied)

(ii) co-opt other specialists in the Board and ask for any additional investigations if required, for deciding on termination of pregnancy;”

16. From the above report, it could be discerned that Medical Board has not clarified anywhere in the report that the victim is stable/fit to undergo the pregnancy termination procedure. Admittedly the victim is pregnant with 28 to 30 weeks of gestational period. Rule 3A (i) of the Rules prescribes allowing or denying termination of pregnancy beyond **Twenty Four Weeks** of gestation period and further under Sub-Section 2(b) of the said Rules only after due consideration and ensuring that the procedure would be safe for the woman at that

gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped (emphasis supplied).

17. Considering the above Rule position, it is to be noted that after conducting medical examination of the victim girl, the Medical Board opined that there will be a chance of survival of baby with the sequelae of prematurity, preterm like neurological disabilities, developmental delay of all the systems like respiratory, gastrointestinal, exaggerated jaundices as well and in view of above all untoward effects on the baby, termination of pregnancy of the victim is not advised to avoid birth of disabled baby, who will become burden to the single parent and society. In the light of the said opinion, it cannot be held that the 3<sup>rd</sup> respondent did not submit the report as directed by this Court. On a perusal, it is clear that the report submitted by the 3<sup>rd</sup> respondent is in consonance with the Rule 3A(i) of the Rules.

18. In the case of **State of Gujarat** (one supra), as per the report submitted in the said case, the age of fetus was almost 27 weeks as on the date and weight of fetus was around 1088 grams and the victim therein was found to be clinically fit for the medical termination of pregnancy which would not adversely affect child bearing capacity and general health of the survivor in future. As such, on the medical

report, there was no indication for termination of pregnancy as per maternal physical health. Thereby, the Hon'ble Supreme Court permitted the victim therein to terminate her pregnancy and accordingly directions were given.

19. In the case of **Union of India and others** passed in W.P. No.24850 of 2021 by this Court, as per the report of the Medical Board, the gestational age of fetus therein was 26 to 27 weeks and it was certified by the Medical Board that the petitioner therein was fit for termination of pregnancy.

20. In the case on hand, as per the report of the Medical Board there is no finding/observation that there is a risk to the life of the victim, if pregnancy is continued. In the report, it is opined that the victim is pregnant 28-30 weeks of gestational period with estimated fetal weight is about 1.37 kg., with salvageable fetus. But the report also suggests that the termination of pregnancy is not advisable at this junction because there will be a chance of survival of baby with certain abnormalities and in view of such untoward affects on the baby, the termination is not advisable to avoid birth of the disabled baby who will become burden to the single parent and society, which means that if the pregnancy is terminated and if a baby is born with abnormalities, the victim would be compelled to suffer throughout the life.

21. It is also to be born in mind that the element of time is extremely significant in cases of pregnancy as every day matters and in the present case on hand pregnancy of the victim is at an advanced stage, which is beyond the period prescribed in terms of Rule 3A of the Rules.

22. Having regard to the facts and circumstances of the case and the submissions made by the learned counsel on either side and taking into consideration the report of the 3<sup>rd</sup> respondent Medical Board Report dated 05.12.2023 comprising of (6) Six doctors and in the interest of justice and in the interest of the victim and fetus/prospective child, this Court is not inclined to pass any orders against the medical advise/opinion given by the Medical Board and thereby finds no reason to exercise the jurisdiction under Article 226 of the Constitution of India for directing the pregnancy of the victim to be terminated as prayed for by the petitioner which is in an advanced stage at 28-30 weeks of gestational period as per the medical report and the prayer sought for in the writ petition is hereby rejected.

23. The respondent No.3 is directed to get the victim medically examined every month or so and provide medical facilities to the victim required for carrying on pregnancy its full term. It is also made clear that the name of the victim is being withheld with her privacy.

24. However, the observations made in this writ petition is only for the purpose of disposing of this writ petition filed by the petitioner



seeking termination of her minor daughter's pregnancy, it will not bear on the criminal case instituted against the accused person and it will be decided strictly in accordance with the material and evidence made available in that case.

25. Accordingly, this writ petition is disposed of. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

The Registry is directed communicate the Certified Copy of this order forthwith to the petitioner and to the 3<sup>rd</sup> respondent, Medical Superintendent, Government Hospital, Nalgonda.

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**JUSTICE N.V. SHRAVAN KUMAR**

**Date: 06.12.2023**

**Note: L.R. copy to be marked.**

**B/o.**

**LSK**