

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO.  
5898 of 2024**

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ABC  
Versus  
STATE OF GUJARAT & ORS.  
=====

**Appearance:**

MR PV PATADIYA(5924) for the Applicant(s) No. 1  
DS AFF.NOT FILED (N) for the Respondent(s) No. 2,3  
PUBLIC PROSECUTOR for the Respondent(s) No. 1  
=====

**CORAM:HONOURABLE MS. JUSTICE NISHA M. THAKORE**  
**Date : 17/05/2024**  
**ORAL ORDER**

1. The petitioner herein is the rape victim aged 19 years six months has invoked writ jurisdiction of this Court seeking permission to terminate her pregnancy before completion of 24 weeks viz. 7th July, 2024. For the sake of convenience, reliefs sought for by the petitioner are reproduced herein under:

*“A. Your Lordships may be pleased to admit and allow the present petition;*

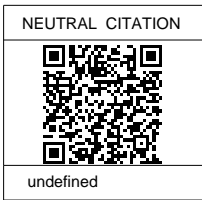
*B. Your Lordships may be pleased to issue appropriate writ, order or direction to the respondent authority to terminate the pregnancy of the petitioner, at the earliest, as the same being in the best interest of the petitioner-victim, considering her very young age, physical health and incident of rape causing grave injury to her mental health and further be pleased to direct the respondent no.3 to hand over, in scientific manner, the tissues drawn from the fetus for DNA identification to the Police Inspector, Ranip Police Station,*



*Ahmedabad City for onward transmission of the same to the concerned Forensic Science Laboratory, interest of justice;  
C. Pending admission hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondents to conduct medical termination of pregnancy of the petitioner - victim by constituting Team for undertaking the termination of pregnancy in presence of qualified physician with due care and precaution after carrying out necessary medical check-up, so as to avoid any likelihood of untoward harm to the physical or mental health of the petitioner -victim, in the interest of justice. ”*

2. The petitioner has averred in the petition that she is residing with her mother with three siblings in the family. The eldest sister has married and is residing with her husband at Gandhidham- Kutch. Before 8 years, the petitioner mother had got divorced and thereafter the petitioner is residing with her mother in rented premises in the city of Ahmedabad. It is further submitted that due to poor financial condition the petitioner could not complete her study and in order to help the family, she is doing a job in a call center situated at Ashram Road, Ahmedabad. She has a younger sister who is aged 16 years.

2.1. It is the case of the petitioner that she used to travel through public transport service i.e. AMTS bus to attend her job. During such frequent use of transport, the

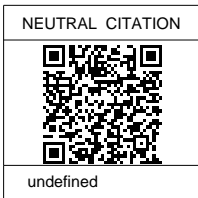


petitioner came in contact with the conductor of the said AMTS bus viz. Mitesh Himmatbhai Thakor which gradually developed into a relationship culminated into a love affair.

2.2. The mother of the petitioner was made aware about such a relationship and initially the family of the petitioner and boy had agreed for engagement. On a few occasions taking disadvantage of the loneliness of the petitioner, the said Mitesh Himmatbhai Thakor had developed physical relations with the petitioner against her wish. The aforesaid circumstances were appraised by the petitioner to her mother.

2.3. On 24.4.2024 the petitioner did not feel better and she has appraised the aforesaid fact to the said Mitesh Himmatbhai Thakor wherein, he had denied to accompany and returned back to his native place Bayad, Aravali. The said Mitesh Himmatbhai Thakor had withdrawn from the relationship. The petitioner had visited Puja Hospital at Ranip with her mother wherein she was diagnosed with her pregnancy. The necessary medical reports were carried out and it was confirmed that the petitioner was carrying three months pregnancy.

2.4. On 03.05.2024 the petitioner approached the Ranip Police Station at Ahmedabad City by lodging the FIR

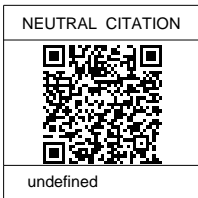


against the said Mitesh Himmatbhai Thakor for the offense punishable under Sections 376(2)(f) and 376(2)(n) of the IPC, which was registered as FIR being CR No. 11191002240173 of 2024. The said accused was arrested and is in judicial custody.

2.5. In background of the aforesaid facts, it is submitted that the petitioner is victim of rape and she has sought permission to terminate unwanted pregnancy which has been conceived on account of rape. It is submitted that at the stage of filing of petition on 14.5.2024, the petitioner was carrying 16 weeks pregnancy. Looking at the age of the petitioner of 19 years and six months, the continuation of the pregnancy would cause grave adverse effects not only on her mental but her physical health as well. It was therefore submitted that it would be unsafe and dangerous to continue with the pregnancy and had therefore urged this Court to permit her to terminate the pregnancy.

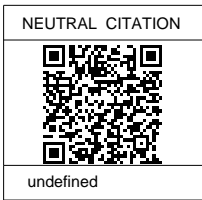
2.6. In support of the aforesaid submission, the medical case papers have been placed on record. The reliance was placed on the various decisions of this Court as well as Hon'ble Supreme Court to grant permission for termination of pregnancy.

3. The petitioner had urgently moved before this Court



before a vacation bench 13.05.2024. Considering the urgency prayed, for this Court by order dated 13.05.2024 upon hearing the learned advocate for the petitioner and considering the averments made, had issued notice upon the respondent authorities. In the meantime, the victim was directed to appear before the panel of senior Doctors of Gynecologist and Obstetrician, at Sola Civil Hospital on 14.5.2024 for her medical examination. The respondent no.3 board was also requested to submit a detail report as to whether the termination of pregnancy is medically feasible or not considering the fact that she was alleged victim of rape and has expressed not to continue with her pregnancy. The only document which has been placed on record to justify the age of the deceased was Aadhar Card. The Investigating Officer was directed to remain present on the next date of hearing with the report of medical examination of the victim.

4. In compliance with the aforesaid order dated 13.05.2024 passed by this Court the respondent no.3, the committee headed by associate Professor, GMERS Medical College had carefully reviewed the case history of the petitioner and after detailed examination, has placed opinion dated 14.5.2024 on record. The report mentioned that the USG was conducted on 14.5.2024 in the Department of Radiology, GMERS. It was reported that the patient was currently having a single live



intrauterine fetus of 16 weeks 2 days with no gross congenital fetal anomaly on 2D USG. Upon appreciation of the aforesaid report and after taking fitness from all concerned departments, it was opined that the patient is fit for termination of pregnancy with due risks associated, under the Medical Termination of Pregnancy (Amendment) Act, 2021 as patient as she is alleged victim of rape. The relevant observation and the opinion of the Committee is reproduced hereunder:

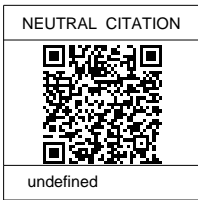
*“As per MTP act amendment 25th March 2021, termination of pregnancy can be done upto 24 weeks.*

*- Patient's LMP is 29/01/2024, as per USG done on 14/05/2024 in Department of Radiology, G.M.E.R.S. Sola, patient is currently having single live intrauterine fetus of 16 weeks 2 days with no gross congenital fetal anomaly.*

*- Also allied fitness of Medicine, Psychiatry and Anaesthesia departments has been obtained.*

*- As pregnancy is below 24 weeks and patient is alleged victim of rape, pregnancy can be terminated with due risks associated with these conditions.*

*- Medical termination (Mifepristone + Misoprostol)*

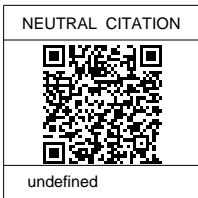


*employed for termination of pregnancy at this maturity of fetus may result in failure in more than 40-50% of cases, in which case caesarean delivery (hysterotomy) will be required, which is associated with its own morbidity and mortality and anaesthetic risks.*

*- Informed consent of the patient and her guardian will be required for performing MTP after explaining the entire likely outcome.*

*- Also, appropriate guidelines need to be provided and provisions made for testing of abortus for paternity.”*

5. Upon receiving the aforesaid opinion submitted by the Committee, the petitioner was requested to appear in person to ascertain her consent. The matter was taken up in the chamber on 16.5.2024. The victim had appeared in person accompanied by her mother. The family history was shared by the victim. She had also submitted that there is a younger sister in the family and she is an unmarried woman, she had expressed to terminate the pregnancy. Considering the very social stigma and harassment attached to unmarried single parents, especially women, it would be difficult for her to raise and nurture the child as an unmarried mother. The victim had also expressed the financial instability in the family in absence of a permanent source of livelihood. The FIR has

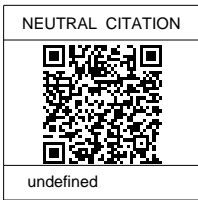


been lodged by her before the Ranip Police Station against the accused. It was therefore submitted that continuation of unwanted pregnancy would amount to immense injury to her mental health. The mother of the victim had also appeared before this Court and had prayed for termination of pregnancy looking to the circumstances prevailing.

6. Learned Additional Public Prosecutor Mr. Utkarsh Sharma had appeared on behalf of the respondent State authorities and had under the instruction of the investigating officer confirmed the age of the victim. It was submitted that as per the birth certificate of the petitioner- victim, her date of birth is 03.12.2004.

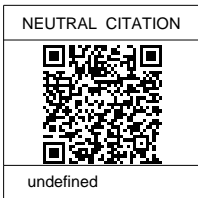
6. Learned advocate Mr. P.V. Patadiya had appeared through legal aid service authority who has been authorized to represent the petitioner. The attention of this Court was invited to landmark decisions of the Hon'ble Supreme Court in the case of X vs. State ( NCT of Delhi ), reported in (2023) 9 SCC 433, where the question arose for consideration as to whether Rule 3B includes unmarried women, single women, or women without a partner under its ambit. Reliance is also placed on the decision of Hon'ble supreme Court in the case of XYZ vs. The State off Gujarat, reported in 2023 Live Law (SC) 680, as well as of this Court in the case of ABC vs. State





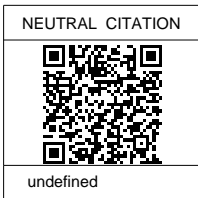
of Gujarat order dated 101.10.2023 passed in Special criminal application no. 13310 of 2023.

7. The glance of the relevant observations of the decisions relied upon, the Hon'ble Supreme Court has examined the object and purpose of the MTP Act and the Rules, 2003 framed thereunder. The Hon'ble court had closely analysed the relevant provisions in light of the object of the Act by adopting purposive interpretation. The Court noticed that Section 3 provides for termination of pregnancy by registered medical practitioners subject to conditions laid down thereunder. The pregnancy can be terminated where it does not exceed 20 weeks and for certain categories of women where it does not exceed 24 weeks. Sub-section 4 of section 3 stipulates that the pregnancy shall not be terminated except with the consent of the pregnant woman and if the woman is below 18 years of age or is mentally ill, with the consent of her guardian. Section 3(2)(a) of the Act permits the termination of a pregnancy where the length of the pregnancy does not exceed twenty weeks. Section 3(2)(b) of MTP Act permits the termination of a pregnancy, where the length of the pregnancy is between twenty and twenty-four weeks, of such categories of women "as may be prescribed by Rules." Rule 3B of the amendment by Medical Termination of Pregnancy (Amendment) Rules, 2021 which otherwise governs categories of women



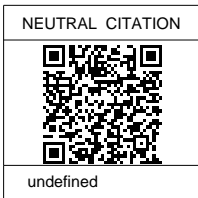
under clause (b) of sub-section 2 of Section 3 who may have their pregnancy terminated if the length of their pregnancy exceeds twenty weeks but does not exceed twenty-four weeks. Before MTP Act Amendment was enacted, the termination of pregnancy between twelve and twenty weeks was permissible when two RMPs opined that the request for termination of pregnancy meets either of the four grounds mentioned in Section 3(2). In other words, there was no legal requirement to refer cases within the legal limit of twenty weeks to the courts. The Hon'ble Supreme Court has thus examined Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 and Rule 3B (c) of the Medical Termination Rules, 2003 as amended on 12.10.2021.

8. The Hon'ble Supreme Court upon purposive interpretation of Rule 3B, held that MTP Act recognises the reproductive autonomy of every pregnant woman to choose medical intervention to terminate her pregnancy irrespective of her status of being unmarried woman. The Court held that Article 16 of the Convention urges State Parties to eliminate all forms of discrimination against women and to ensure that their right to decide freely and responsibly on the number and spacing of children and access the relevant information to effectively exercise these rights. The court further observed that Article 51 of the Constitution requires the state to foster respect for



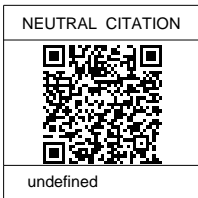
international law and treaty obligations in the dealings of organised people with one another. The Hon'ble Supreme Court observed that a woman can become pregnant by choice irrespective of her marital status. In case the pregnancy is warranted, it is equally shared by both the partners. However, in case of an unwanted or incidental pregnancy, the burden invariably falls on the pregnant woman affecting her mental and physical health. Article 21 of the Constitution recognizes and protects the right of a woman to undergo termination of pregnancy if her mental or physical health is at stake. Importantly, it is the woman alone who has the right over her body and is the ultimate decision-maker on the question of whether she wants to undergo an abortion.

9. The aforesaid decision was followed in the case of XYZ vs. The State Of Gujarat & Ors. reported in (2023) livelaw (SC) 680. The Hon'ble Supreme court observed that forcing a woman to have a child conceived as a result of rape is against the constitutional philosophy. The Supreme Court observed, while allowing a plea for termination of pregnancy by a 25-year-old rape survivor, noted that such pregnancy affected the physical and mental health of the woman; the court set aside an order of the High Court refusing termination of pregnancy. The Hon'ble Supreme Court also held that the whole object of preferring a Writ Petition under Article 226 of the



Constitution of India was to engage with the extraordinary discretionary jurisdiction of the High Court in exercise of its constitutional power. Such a power once vested with the constitutional courts, discretion has to be exercised judiciously and having regard to the facts of the case and by taking into consideration the relevant facts while leaving out irrelevant considerations and not vice versa.

10. In light of the aforesaid legal position as well as considering the relevant provisions of the Act and Rules framed thereunder, since the pregnancy is less than 24 weeks, I am of the view that the petition requires consideration. The petitioner is a young lady aged about 19 years and six months and is victim of rape as alleged in the FIR. The petitioner has expressed her free consent for termination of pregnancy, which appears to be without any fear or under any pressure. Her mother has similarly expressed and supported her decision. Even the medical opinion does not indicate any adverse remarks against the termination of her pregnancy. Considering the circumstances prevailing in the family, it would be difficult for her to raise and nurture the child. By giving birth to the child may lead to the risk of her physical health. At the same time, raising the child born out of incident of rape may cause grave injury to her mental health. Considering her tender age and the trauma and



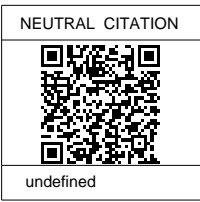
mental agony and the possibility of social ostracism due to pregnancy of an unmarried woman, this Court deems it fit to permit the petitioner to terminate her pregnancy. As evident from the opinion submitted by the Committee. The pregnancy is below 24 weeks i.e. 16 weeks and 2 days as on the date of opinion dated 14.5.2024, which is less than 24 weeks.

11. In view of the above discussion and on perusal of the medical report, following directions are issued :

(1) The petitioner- victim is permitted to terminate her pregnancy.

(2) The petitioner to remain present before the GMERS Hospital, Sola, Ahmedabad, on 20.05.2024 around 09:00 A.M. or as she deems fit, so that the termination of pregnancy could be carried out earliest on the date as may be fixed by the Hospital and with the consent of the petitioner. The petitioner shall file her undertaking expressing her free consent for such termination before the Hospital.

(3) The respondent no.3 is directed to terminate the pregnancy of the petitioner at the earliest. The respondent no.3 is directed to conduct medical termination of pregnancy of the petitioner by constituting a team for undertaking the termination of pregnancy.



Needless to clarify that such termination shall be conducted in presence of a qualified physician with due care and precaution and after carrying out necessary medical examination so as to avoid any harm to the physical or mental health of the victim.

(4) The respondent no.3 is further directed to extract the tissue from the fetus for DNA Identification in Scientific manner and to handover the same to the Police Inspector, Ranip Police Station, Ahmedabad City for forwarding such sample for analysis by the FSL at Gandhinagar.

With these observations, the present petition stands disposed of. Direct service is permitted.

Copy of this order also be provided to learned APP for onward transmission to the concerned Civil Hospital for taking necessary action.

RATHOD KAUSHIKSINH

**(NISHA M. THAKORE,J)**