IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 10th OF NOVEMBER, 2025

WRIT PETITION No. 43482 of 2025

PROSECUTRIX

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Sumit Raghuwanshi - Govt. Advocate for respondents/State.

ORDER

In pursuance to the order dated 07.11.2025, Dr. Arvind Ghanghoria, Dean MGM Medical College Indore and Dr. Pooja Gandhi, Assistant Professor, MGM Medical College, Indore are present in person.

2. Pursuant to the letter addressed to the Registrar General dated 31.10.2025 as per directions issued by the Division Bench of this Court in the case of In reference (suo moto) vs State of M.P. : Writ Petition No. 5184 of 2025 decided on 20.02.2025, cognizance was taken and the letter was treated as suo moto petition. Accordingly, this writ petition came up for consideration before this Court.

3. The facts of the case, in substance, are that the prosecutrix is a mentally retarded and physically handicapped girl aged around 22 years. It is alleged that she was sexually assaulted and raped by accused against which an FIR as Crime No. 244 of 2025 for the offences under Section 64(2)(h) and 64(2)(m) of the BNS has been registered at Police Station Padam Nagar District Khandwa (M.P.). During medical examination, the victim was found

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to be pregnant.

4. It is submitted that the prosecutrix 'X' being a rape victim, is having every right to get the termination of her pregnancy. The opinion of the Medical Board dated 27.10.2025 is produced before this Court, the relevant extracts thereof read as follows :

बोर्ड द्वारा रेफर ओपीनियन

पीडिंता का जिला चिकित्सालय संबद्ध मेडीकल कॉलेज के स्त्रीरोग विशेषज्ञ के द्वारा परीक्षण किया गया। पीडिता की उम्र 22 वर्ष हैं इसको 07 माह का गर्भ हैं उसका वनज 35 कि.ग्रा. हैं, बीपी 110/70 एमएमवाय हैं, पल्स 90 पर / मिनिट हैं। पीडिता हाथ एवं पैरों से विकलांग हैं तथा मानसिक रूप से बीमार हैं। उसके पेट की जाँच करने पर 28 से 30 सप्ताह का गर्भ था। एफएचआर 130 पर / मिनिट थी। एचवी 11.1 था। ब्लड ग्रुप बी पॉजिटिव, ब्लड यूनिया 20 था. आरबीएस 70 एवं बीटीआरएल नॉन रियेक्टिव था। पीडिता की गर्भशिशु ज्यादा सप्ताह होने की वजह से मेडीकल बोर्ड ओपीनियन एवं सोनोग्राफी एवं आगे के ईलाज हेतु टर्सरी केयर सेन्टर (ओल्ड मेडीकल कॉलेज) इंदौर एमटीएच महिला अस्पताल इंदौर रेफर किया जाना उचित हैं क्योंकि 24 सप्ताह से अधिक गर्भ समापन हेतु मेडीकल बोर्ड ओपीनियन की आवश्यकता होती जिसमें रेडियोलॉजिस्ट की आवश्यकता होती। जिला चिकित्सालय संबद्ध मेडीकल कॉलेज खण्डवा में वर्तमान में कोई रेडियोलॉजिस्ट पदस्थ नहीं हैं।"

5. The report of the Medical Board as per Form D dated 30.10.2025 is annexed along with the petition which reads as under :

"6. Opinion by Medical Board for termination of pregnancy :
Allowed looking at maternal, physical and physiological condition with high risk consent and due risks well explained."

6. From a perusal of the report so submitted, it appears that the examination has been conducted by the Medical Board including Department of Obstetrics and Gynecologists, Psychiatry, Pediatrician and Pathology. The report in terms of Form-D is taken on record. However, as

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there is a bar under the Medical Termination of Pregnancy Amendment Act, 2021. For terminating pregnancies exceeding 24 weeks, it is observed that termination can be performed with all the explained risk of the anticipated and unanticipated complications in relation to termination of Rh negative teenage pregnancy (high risk), provided risk of termination is same at this gestation and full term pregnancy. The report clearly indicates that the pregnancy can be terminated subject to certain risks. The risk factors will always be explained to the victim.

7. The relevant provisions under the Medical Termination of Pregnancy Act, 1971 which deal with the cases of termination of pregnancy are 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) ...*
> *(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) ...*
> *...*
> ***5. Sections 3 and 4 when not to apply*** *. - (1) The provisions of Section 4, and so much of the provisions of sub-section (2) of Section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such*

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pregnancy is immediately necessary to save the life of the pregnant woman.

8. In the case of A vs State of Maharashtra, reported in (2024) 6 SCC 327, the Hon'ble Supreme Court has held as under :

"25. From a perusal of the MTP Act, its Statement of Objects and Reasons as well as the recommendation of the Shah Committee which examined the issue of liberalising abortion laws in India, [Report of the Committee to Study the Question of Legalisation of Abortion, Ministry of Health and Family Planning, Government of India, dated December 1966.] two clear postulates emerge as to the legislative intent of the MTP Act. Firstly, the health of the woman is paramount. This includes the risk avoided from the woman not availing unsafe and illegal methods of abortion. Secondly, disallowing termination does not stop abortions, it only stops safe and accessible abortions. The opinion of the RMP and the Medical Board must balance the legislative mandate of the MTP Act and the fundamental right of the pregnant person seeking a termination of the pregnancy. However, as noticed above and by this Court in X v. State (NCT of Delhi) [X v. State (NCT of Delhi), (2023) 9 SCC 433] the fear of prosecution among RMPs acts as a barrier for pregnant people in accessing safe abortion. Further, since the MTP Act only allows abortion beyond twenty-four weeks if the foetus is diagnosed with substantial abnormalities, the Medical Board opines against termination of pregnancy merely by stating that the threshold under Section 3(2-B) of the MTP Act is not satisfied. The clarificatory report dated 3-4-2024 fell into this error by denying termination on the ground that the gestational age of the foetus is above twenty-four weeks and there are no congenital abnormalities in the foetus.

....

35. In Suchita Srivastava v. Chandigarh Admn. [Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570] , a three-Judge Bench of this Court has held that the right to make reproductive choices is a facet of Article 21 of the Constitution. ***Further, the consent of the pregnant person in matters of reproductive choices and abortion is paramount.*** *The purport of this Court's decision in Suchita Srivastava [Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570] was to protect the right to abortion on a firm footing as an intrinsic element of the fundamental rights to privacy, dignity and bodily integrity as well as to reaffirm that matters of sexual and reproductive choices belong to the individual alone. In rejecting the State's jurisdiction as the parens patriae of the pregnant person, this Court held that no entity, even if it is the State, can speak*

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> *on behalf of a pregnant person and usurp her consent. The choice to continue pregnancy to term, regardless of the court having allowed termination of the pregnancy, belongs to the individual alone.*

9. The Hon'ble Supreme Court in a series of judgments had an occasion to consider the aspect of termination of pregnancies exceeding 24 weeks and in the case of X vs Principal Secretary, Health and Family Welfare Department reported in AIR 2022 SC 4917, the Hon'ble Supreme Court has considered the aforesaid aspect of the matter including the choice of the woman to get the pregnancy terminated and other socio-economic factors including the physical health condition of the woman has permitted for terminating the pregnancy. The aforesaid judgment was again followed by the Hon'ble Supreme Court in the case of XYZ vs State of Gujarat and others, reported in 2023 SCC OnLine SC 1573, wherein the Hon'ble Supreme Court taking note of several aspects of the matter has permitted for termination of pregnancy. It has been held as under :

> *17. More recently, in the case of X v. The Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi, AIR 2022 SC 4917; this Court, in another three-judge Bench lead by Dr. D.Y. Chandrachud, J. (as the learned Chief Justice then was) 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.*
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> *18. In the context of abortion, the right of 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*

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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.

19. The whole object of preferring a Writ Petition under Article 226 of the Constitution of India is to engage with the extraordinary discretionary jurisdiction of the High Court in exercise of its constitutional power. Such a power is vested with the constitutional courts and 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.

20. In view of the above discussion and on perusal of the latest medical report we permit the appellant to terminate her pregnancy. We direct the appellant to remain present before the KMCRI Hospital, Bharuch, Gujarat during the course of the day, today (21.08.2023) or 09 : 00 A.M. tomorrow (22.08.2023) as she deems fit so that the termination of pregnancy could be carried out preferably during the course of the day today (21.08.2023) or tomorrow i.e. 22.08.2023.

21. Subsequently to the medical procedure to be carried out either today or tomorrow, in the event, the foetus is found to be alive, the hospital shall give all necessary medical assistance including incubation either in that hospital or any other hospital where incubation facility is available in order to ensure that the foetus survives. Further, in case the foetus survives, then State shall take steps for ensuring that the child could be adopted in accordance with law.

22. At this stage, learned Senior Counsel for the appellant sought a direction to the concerned doctors to preserve evidence for subsequent DNA Test Report by drawing tissues from the foetus in order to use it as a piece of evidence in the ensuing trial to be prosecuted by the appellant herein. We direct the concerned medical experts to have regard to the feasibility of such a procedure being done, in the event of the foetus being alive or in the event the foetus not being alive or is still born and accordingly take steps as sought for by the appellant herein.

23. It is needless to observe that in the event tissues are drawn for the purpose of DNA test the same shall be handed over to the investigating agency by the concerned hospital.

24. A copy of this order passed today be handed over to learned Senior Counsel for the appellant and learned Standing Counsel for the State of Gujarat.

25. The appeal is allowed in the aforesaid terms.

26. Pending application(s), if any, shall stand disposed of.

10. If the aforesaid proposition of law is applied to the facts of the present case, then it is seen that the choice to continue pregnancy to term,

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regardless of the court having allowed termination of the pregnancy, belongs to the individual alone. Further, the consent of the pregnant person in matters of reproductive choices and abortion is paramount. Even the MTP Act, particularly clause (4) of Section 3, speaks of the same. As already pointed out hereinabove that clause (4)(b) of Section 3 of the MTP Act clearly provides for that "... no pregnancy shall be terminated except with the consent of the pregnant woman".

11. In the present case, the petitioner is a rape victim who is mentally challenged and physically handicapped. She is carrying pregnancy of more than 28 weeks and has been caused on account of the girl being raped. The father and mother of the prosecutrix have given consent on 08.11.2025 for termination of pregnancy which reads thus :

सहमति पत्र

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हम **** उम्र 60 साल एवं ***** उम्र 48 साल दोनो निवासी पुरानी इंदौर लाईन, खण्डवा को हमारी पुत्री ***** जो कि मानसिक एवं शारीरिक रूप से अक्षम है, के गर्भपात के परिणाम के संबंध में वन स्टॉप सेंटर (सखी) खण्डवा के माध्यम से अवगत कराया गया है। **हम उक्त परिणामों से अवगत होने के उपरांत हमारी पुत्री ***** के मानसिक एवं शारीरिक रूप से अक्षम होने तथा शिशु के पालन-पोषण करने में पूर्णरूप से असमर्थ होने के कारण उसका गर्भपात कराये जाने की पुर्ण सहमति प्रदान करते है।**

12. The other family aspects are also required to be considered in such cases. Under these circumstances, as the parents of the prosecutrix have shown their willingness for termination of pregnancy coupled with the opinion of the Medical Board and following the judgments passed by the Hon'ble Supreme Court in the aforesaid cases, this Court deems it

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appropriate to permit the termination of pregnancy of the prosecutrix subject to the following directions :

(i) The prosecutrix-victim along with her parents to remain present before the Government Medical College Hospital Khandwa during the course of the day, today (10.11.2025) or tomorrow (11.11.2025) so that the termination of pregnancy can be carried out as expeditiously as possible. A specialised team of Doctors shall take a decision regarding termination of pregnancy.

(ii) The procedure of termination of pregnancy will be carried out in the presence of the expert team of doctors. The expert doctors will explain to the family members as well as the petitioner (prosecutrix) the risk of getting the termination of her pregnancy and also other factors.

(iii) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention and other medical facilities including that of a presence of a Pediatrician as well as a Radiologist and other required doctors will be made available to her.

(iv) The post operative care up to the extent required, will be extended to the petitioner. It will be the duty of the State Government to take care of the child, if born alive.

(v) The doctors will also ensure that a sample from the fetus is protected for DNA examination and as and when required will be handed over to the prosecution for using in the criminal case itself.

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(vi) All necessary care and caution be taken by the doctors while carrying out the procedure for termination of pregnancy.

(vii) The copy of the order be supplied to Dean, MGM Medical College, Indore as well as Dean, Government Medical College Khandwa for further action, State counsel and Special Judge, Khandwa for further action.

13. In above terms, the petition is **disposed of** finally. Let a copy of this order be forwarded to the counsel for the State, Special Judge, Khandwa and Superintendent of Police, Khandwa for further action.

(VISHAL MISHRA)
JUDGE

VV

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