

# Ms. X vs The Principal Secretary Health And ... on 15 July, 2022

**Author: Satish Chandra Sharma**

**Bench: Chief Justice, Subramonium Prasad**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
W.P.(C) 10602/2022  
MS. X

Through: Dr. Amit Mishra, Ad

versus

THE PRINCIPAL SECRETARY HEALTH AND FAMILY  
WELFARE DEPARTMENT GOVT OF NCT OF DELHI

..... Resp

Through: Ms. Hetu Arora Sethi, ASC for  
GNCTD with MR.Arjun Basra,  
Advocate for R-1  
Mr. Kirtiman Singh, CGSC with  
Mr.Waize Ali Noor, Ms.Kunjala  
Bhardwaj, Advocates for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% 15.07.2022 CM APPL. 30709/2022 (Exemption) Allowed, subject to all just exceptions.

W.P.(C) 10602/2022

1. The instant writ petition under Article 226 of the Constitution of India has been filed with the following prayers:-

"A. Permit the Petitioner to terminate her ongoing pregnancy through registered medical practitioners at any approved private or government center or Hospital before 15.07.2022 as her relief will be infructuous after that as the pregnancy will be of around 24 Weeks by that time;

B. Restrain the Respondent from taking any coercive action or criminal proceedings against the Petitioner or any Registered Medical Practitioner terminating the pregnancy of the petitioner at any approved private center or hospital registered by Govt NCT of Delhi;

C. Direct the Respondent to include unmarried woman also within the ambit of the Rule 3B of the Medical Termination of Pregnancy Rules 2003 (as amended on 21.10.2021) for termination of pregnancy under clause

(b) of sub-section (2) Section 3 of the MTP Act, for a period of up to twenty-four weeks;

D. Order an immediate Interim Relief of Stay during the course of proceedings."

2. Issue notice, restricted only to Prayer C of the writ petition.

3. Reply be filed before the next date of hearing.

4. List on 26.08.2022.

1. This is an application filed by the Petitioner for grant of interim relief during the pendency of the writ petition.

2. The Petitioner seeks interim relief for permission to terminate her pregnancy. The interim relief, if granted, at this stage, could amount to granting relief sought for in Prayer A of the writ petition.

3. The facts of the case reveal that the Petitioner, who is 25 years of age, is an unmarried woman and is carrying a single intrauterine pregnancy corresponding to gestation age of 23 weeks 5 days as on date. The 24 weeks' period of pregnancy, as stipulated under the Medical Termination of Pregnancy Act, 1971, shall be completing on 18.07.2022.

4. It is stated that the Petitioner is a permanent resident of Manipur, but she is currently residing in New Delhi. It is stated that her pregnancy arises out of a consensual relationship and she cannot give birth to the child as she is an unmarried woman and her partner has refused to marry her. It is stated giving birth out of wedlock will entail in her ostracisation and cause her mental agony. Further, as she is solely a B.A. graduate who is non-working, she will not be able to raise and handle the child. It is stated that she is not mentally prepared to be a mother and continuing with the pregnancy will lead to grave physical and mental injury for her. It is further stated that if she continues with the pregnancy, it will not be possible for her to get married in the future because of her child and ensuing social stigma.

5. Termination of certain pregnancies by a registered Medical Practitioners is governed by the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the Act'). Section 3 of the Act provides for circumstances where pregnancies can be terminated by registered Medical Practitioners. The relevant portion of the said the Act 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 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.] (3) In determining whether the continuance of a 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 reasonably 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 1 [mentally ill person], shall be terminated except with the consent in writing of her guardian.]

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman." (emphasis supplied)

6. A perusal of Section 3(2) (a) of the Act provides that the Medical Practitioner can terminate the pregnancy, provided, the pregnancy does not exceed 20 weeks. Section 3(2) (b) of the Act provides for termination in circumstances where the pregnancy exceeds 20 weeks but does not exceed 24 weeks.

7. A perusal of Section 3 (2) (b) of the Act provides that the said sub- Section is applicable only to those women who are covered under the Medical Termination of Pregnancy Rules, 2003. Rule 3B of the Medical Termination of Pregnancy Rules, 2003, which permits termination of pregnancy up to 24 weeks, reads as under:-

"3-B. Women eligible for termination of pregnancy up to twenty-four weeks.- The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub-section(2) section 3 of the Act, for a period of up to twenty-four weeks, namely:-

(a) survivors of sexual assault or rape or incest;

(b) minors;

(c) change of marital status during the ongoing pregnancy (widowhood and divorce);

(d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];

(e) mentally ill women including mental retardation;

(f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and

(g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.]"

8. The Petitioner, who is an unmarried woman and whose pregnancy arises out of a consensual relationship, is clearly not covered by any of the Clauses under the Medical Termination of Pregnancy Rules, 2003. Therefore, Section 3(2)(b) of the Act is not applicable to the facts of this case.

9. Learned counsel for the Petitioner states that Rule 3B of the Medical Termination of Pregnancy Rules, 2003 is violative of Article 14 of the Constitution of India, 1950, inasmuch as it excludes an unmarried woman. Whether such rule is valid or not can be decided only after the said rule is held ultra vires, for which purpose, notice has to be issued in the writ petition and has been done so by this Court.

10. As of today, Rule 3B of the Medical Termination of Pregnancy Rules, 2003, stands, and this Court, while exercising its power under Article 226 of the Constitution of India, 1950, cannot go beyond the Statute. Granting interim relief now would amount to allowing the writ petition itself.

11. In view of the above, this Court is not inclined to entertain the interim application at this stage.

12. The application is dismissed.

13. Order dasti.

SATISH CHANDRA SHARMA, CJ SUBRAMONIUM PRASAD, J JULY 15, 2022 hsk