IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. /2023
(@ SLP (Crl.) Dy. No. 33790/2023)

XYZ **APPELLANT(S)**

VERSUS

THE STATE OF GUJARAT & ORS. **RESPONDENT(S)**

O R D E R

Leave granted.

2. Learned Senior Counsel Mr. Sanjay Parikh submitted that Mr. Shashank Singh, learned counsel is filing his 'No Objection Vakalat' on behalf of the appellant and the same may be accepted.

3. His submission is accepted. The Vakalatnama filed by Mr. Shashank Singh is taken on record.

4. "To give birth to an unwanted child or not" is the question posed by the appellant in this appeal, being unsuccessful before the Gujarat High Court. The dilemma of the appellant is compounded by the fact that she has filed an FIR, *vide* FIR No.11199059230324 of 2023 PS Zaghadiya dated 02.08.2023, against the person who is accused under Section 376(2)(n) of the Indian Penal Code for having sexual intercourse on the false pretext of marriage. On realising that she was pregnant and was about 25 weeks, she filed the Writ petition before the High Court of Gujarat, through her mother, under Article 226 of the Constitution of India read with Section 482 of Cr.P.C, 1973 and Section 3 of the Medical Termination of

Pregnancy Act, 1971, seeking a direction to the respondent authority to terminate her pregnancy considering the grave injury that could result to her physical and mental health, from continuing with the pregnancy. The High Court issued a direction to the Medical Superintendent, Dr. Kiran C. Patel, Medical College & Research Institute, Bharuch, to submit a report regarding the health of the appellant as well as the status of her pregnancy.

5. On receipt of the said report on 10.08.2023, the same was taken on record on 11.08.2023. However, the High Court adjourned the matter, without assigning any reason at all, to 23.08.2023 but on 17.08.2023, the High Court rejected the petition. Being aggrieved, the appellant has approached this Court.

6. Pursuant to a sitting of this Bench on Saturday, 19.08.2023, the following order was passed:-

> **"Learned counsel for the petitioner further submitted that, as on today, the petitioner is pregnant for 27 weeks and two days and, shortly, would be approaching 28th week of pregnancy. Since valuable time has been already lost during the pendency of the matter before the High Court, a fresh report may be sought from the Medical Board at Bharuch.**
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> **In the circumstances, we direct the petitioner herein to appear before the KMCRI Hospital, Bharuch today for being examined once again and the latest Medical Report shall be submitted to this Court by tomorrow evening i.e. 20.08.2023 by 6.00 P.M. by electronic mode. The same shall be put up before this Court by Monday i.e. 21.08.2023 along with a copy of the impugned order, if available.**
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> **List the matter on 21.08.2023."**

7. We have heard learned Senior Counsel, Mr. Sanjay Parikh for the appellant and learned Solicitor General assisted by learned Standing Counsel for the State of Gujarat and perused the material on record.

8. In response of the directions in the aforesaid order, a copy of the impugned order of the High Court dated 17.08.2023 has been made available by the Registry of this Court. On perusal of the same, we find that the learned Single Judge of the High Court has recorded the submission on behalf of the appellant and has extracted a portion of the medical report submitted by the Medical Superintendent Dr. Kiran C. Patel, Medical College & Research Institute, Bharuch and has rejected the petition while passing the following order:

> **"4. Looking to the medical report and the age of fetus is almost 27 weeks as on today i.e. 17.08.2023 and considering the statements made by the learned advocate for the petitioner-victim and averments made in the application, present petition stands rejected and the medical termination of pregnancy, as prayed for by the petitioner in the present petition, is rejected.**
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> **5. Accordingly, present application stands rejected. Rule is made absolute to the aforesaid extent. Direct service is permitted."**

9. It is significant to note that the High Court has not taken into consideration the relevant facts that the appellant was pregnant for 25 weeks and 6 days +/- 2 weeks and the weight of foetus was around 914 grams as per ultra-sonography report dated 10.08.2023. The report further stated that although there is no congenital abnormality in the foetus, the medical termination of the pregnancy could be done only if the Court permits, after taking the consent of the appellant and explaining potential risk to maternal health. However, the following paragraphs of the report have not been noted by the High Court:

"5. At present the survivor is clinically fit for above mentioned procedure.

6. The Medical Termination of Pregnancy would not adversely affect child bearing capacity and General Health of the Survivor in future."

10. We find that in the absence of even noticing the aforesaid portion of the report, the High Court was not right in simply holding that "the age of the foetus is almost 27 weeks as on 17.08.2023 and considering the statements made by the learned advocate for the petitioner-victim and the averments made in the application the petition for medical termination of pregnancy stands rejected", which, in our view is *ex facie* contradictory. Being aggrieved by the said order the appellant has knocked the doors of this Court seeking expeditious relief.

11. At this stage, we restrain ourselves from observing anything on the order passed by the learned Single Judge of the High Court in a disposed of matter on 19.08.2023 pursuant to the order passed by us on the said date though we have to say that it was highly improper.

12. Pursuant to the order of this Court dated 19.08.2023 as extracted hereinabove, the report of the Medical Superintendent, Dr. Kiran C. Patel Medical College & Research Institute, Bharuch and Chief District Medical officer-cum-Civil surgeon General Hospital, Bharuch, Gujarat has been placed on record, which states that the petitioner's pregnancy is of 27 weeks 2 days +/- 2 weeks duration and the live intrauterine foetus weights around 1088 grams as per the ultra sonography done on 19.08.2023. Paragraphs 3 to 6 of the report reads as under:-

"3. There is no indication for termination of pregnancy as per Maternal Physical Health but as per history given by survivor this pregnancy is due to sexual assault with her, continuation of this pregnancy can affect her mental health and in addition survivor want to terminate pregnancy; Medical Termination of Pregnancy (MTP) at this stage of pregnancy can be done in this hospital if Honourable Court Permits.

4. In that case the Medical Termination of Pregnancy would be done first by induction of Labour and if indicated then by Hysterotomy procedure after taking consent of survivor & explaining due risks to maternal health and fetal outcome.

5. At present the survivor is clinically fit for above mentioned procedure.

6. The Medical Termination of Pregnancy would not adversely affect child bearing capacity and General Health of the survivor in future."

13. In Indian society, within the institution of marriage, generally pregnancy is a reason for joy and celebration and of great expectation, not only for the couple but also for their families and friends. By contrast, pregnancy outside marriage, in most cases, is injurious, particularly, after a sexual assault/abuse and is a cause for stress and trauma affecting both the physical and mental health of the pregnant woman the victim. Sexual assault or abuse of a woman is itself distressing and sexual abuse resulting in pregnancy compounds the injury. This is because such a pregnancy is not a voluntary or mindful pregnancy.

14. In *Suchita Srivastava v. State (UT of Chandigarh), (2009) 9 SCC 1,* this Court expressed that the right of a woman to have reproductive choice is an insegregable part of her personal liberty, as envisaged under Article 21 of the Constitution. She has a sacrosanct right to her bodily integrity.

15. In *Sarmishtha Chakrabortty and Another v. Union of India Secretary and Others, (2018) 13 SCC 339;* this Court, considered the medical report and held that unless the pregnancy was terminated, the life of the mother and that of the baby to be borne would be in great danger and, therefore, permitted termination of the pregnancy.

16. A three-Judge Bench of this Court in *Murugan Nayakkar v. Union of India & Ors., Writ Petition (Civil) No.749 of 2017*, disposed of on 06.09.2017, while considering the case of a minor petitioner-survivor of alleged rape and sexual abuse, held that it would be appropriate that termination of pregnancy be allowed in accordance with the opinion of the Medical Board constituted by an order of this Court, to the effect that termination of pregnancy should be carried out. A direction was issued that on a very next date i.e. 07.09.2017, the petitioner was to be present so that on 08.09.2017 the termination of pregnancy could be carried out.

17. More recently, in the case of *X vs. The Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Ors., 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.

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 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.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
AUGUST 21, 2023

ITEM NO.66 COURT NO.15 SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 33790/2023

(Arising out of impugned final judgment and order dated 17.08.2023 in R/SCA No.10206 of 2023 passed by the Hon'ble High Court of Gujarat at Ahmedabad)

XYZ **Petitioner(s)**

VERSUS

THE STATE OF GUJARAT & ORS. **Respondent(s)**

[TO BE TAKEN UP AS FIRST ITEM ON BOARD.]

Date : 21-08-2023 This petition was called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) **Mr. Sanjay Parikh, Sr. Adv.**
Mr. Shashank Singh, AOR
Ms. Yogyata Jhunjhunwala, Adv.
Mr. Akash Alex, Adv.
Mr. Sankalp Sharma, Adv.
Mr. Alok Tripathi, Adv.
Mr. Tej Pratap, Adv.

Mr. Vishal Arun Mishra, AOR

For Respondent(s) **Mr. Tushar Mehta, SG**
Ms. Swati Ghildiyal, AOR
Ms. Devyani Bhatt, Adv.
Mr. Raunak Arora, Adv.

UPON hearing the counsel the Court made the following
O R D E R

I.A. for exemption from filing certified copy, if any, is allowed.

Leave granted.

The Criminal Appeal is allowed in terms of the signed order.

In view of the disposal of the instant criminal appeal, defects raised by the Registry in the matter need not be cured now.

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

(RADHA SHARMA) **(MALEKAR NAGARAJ)**
COURT MASTER (SH) **COURT MASTER (NSH)**

(Signed order is placed on the file)