

**A (Mother of X)**  
**v.**  
**State of Maharashtra & Anr.**  
(Civil Appeal No. 5194 of 2024)

29 April 2024

**[Dr. Dhananjaya Y. Chandrachud,\* CJI, J.B. Pardiwala and  
Manoj Misra, JJ.]**

**Issue for Consideration**

Matter pertains to the opinion of the medical board constituted under the MTP Act to reflect the effect of the pregnancy on the pregnant person's physical and mental health; that the MTP Act and the reproductive right of a pregnant person giving primacy to their consent; and the usage of term 'pregnant person' instead of term 'pregnant woman'.

**Headnotes**

**Medical Termination of Pregnancy Act, 1971 – Termination of pregnancy – 14 year old girl subjected to sexual assault, sought permission to terminate her pregnancy – Denied by the High Court on the ground that the pregnancy exceeded the statutory period of twenty-four weeks – In appeal, this Court on basis of the fresh report of the medical Board, allowed termination of pregnancy – When the said order passed, the minor was in the thirtieth week of her pregnancy – Thereafter, minor girl's parents changing their statements, and matter again before this Court:**

**Held:** Sole and only consideration which must weigh with the Court at this stage is the safety and welfare of the minor – In view thereof, the earlier order passed by this Court is recalled – Said decision made in light of the decisional and bodily autonomy of the pregnant person and her parents – Performing a procedure for termination of an advanced pregnancy, gestational age of the fetus nearing end of thirty first week, is subject to risks involving the well-being and safety of the minor as explained by the medical team at the hospital – Guardians of the girl, namely her parents, also consented for taking the pregnancy to term, as permissible u/s. 3(4)(a) – View of the minor girl and her parents to take the pregnancy to term in tandem of the MTP Act – Furthermore, the

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MTP Act does not allow any interference with the personal choice of a pregnant person in terms of proceeding with the termination – Act or indeed the jurisprudence around abortion developed by the courts leave no scope for interference by family or partner of a pregnant person in matters of reproductive choice – Role of the registered medical practitioners-RMPs and the medical board must be in a manner which allows the pregnant person to freely exercise their choice – In view thereof, the hospital directed to bear all the expenses in regard to the hospitalization of the minor over the past week and in respect of her readmission to the hospital for delivery – In the event that the minor and her parents desire to give the child in adoption after the delivery, the State Government to take all necessary steps. [Paras 19, 32, 33, 35, 36]

**Medical Termination of Pregnancy Act, 1971 – ss. 3(1), 3(2-B) – Role of the registered medical practitioners-RMP and medical board under the MTP Act:**

**Held:** The Act protects the registered medical practitioners-RMP and the medical boards when they form an opinion in good faith as to the termination of pregnancy – Fear of prosecution among registered medical practitioners is a barrier for pregnant persons to access safe and legal abortions – Opinion of the RMP is decisive in matters of termination of pregnancy under the MTP Act – Purpose of the opinion of the RMP borrows from the legislative intent of the MTP Act which is to protect the health of a pregnant person and facilitate safe, hygienic, and legal abortion – It is therefore imperative that the fundamental right of a pregnant person is not compromised for reasons other than to protect the physical and mental health of the pregnant person – Medical board, in forming its opinion on the termination of pregnancies must not restrict itself to the criteria u/s. 3(2-B) but must also evaluate the physical and emotional well being of the pregnant person – When issuing a clarificatory opinion the medical board must provide sound and cogent reasons for any change in opinion and circumstances. [Paras 37, 29]

**Constitution of India – Art. 21 – Right to reproductive autonomy – Right to abortion – Fundamental right:**

**Held:** Right to abortion is a concomitant right of dignity, autonomy and reproductive choice – This right is guaranteed u/Art. 21 – Decision to terminate pregnancy is deeply personal for any person – Choice exercised by a pregnant person is not merely about their reproductive freedom – Thus, it is imperative that the fundamental

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right of a pregnant person is not compromised for reasons other than to protect the physical and mental health of the pregnant person – Opinion of the pregnant person must be given primacy in evaluating the foreseeable environment of the person u/s. 3(3) of the MTP Act – Medical board and the courts need for giving primacy to the fundamental rights to reproductive autonomy, dignity and privacy of the pregnant person by the – Delays caused by a change in the opinion of the medical board or the procedures of the court must not frustrate the fundamental rights of pregnant people – Thus, the medical board evaluating a pregnant person with a gestational age above twenty-four weeks must opine on the physical and mental health of the person by furnishing full details to the court. [Paras 21, 30, 31]

**Constitution of India – Art. 21 – Right to reproductive autonomy – Right to abortion – Pregnant person’s consent in abortion – Primacy of – Importance of minor’s view in termination of pregnancy:**

**Held:** Right to choose and reproductive freedom is a fundamental right u/ Art. 21 – Consent of the pregnant person in matters of reproductive choices and abortion is paramount – Where the opinion of a minor pregnant person differs from the guardian, the court must regard the view of the pregnant person as an important factor while deciding the termination of the pregnancy. [Paras 34, 35]

**Gender Identities – Ambit of pregnancy – Enlargement of – Usage of term ‘pregnant person’ instead of term ‘pregnant woman’:**

**Held:** Term ‘pregnant person’ used and recognized that in addition to cisgender women, pregnancy can also be experienced by some non-binary people and transgender men among other gender identities. [Para 21]

**Medical Termination of Pregnancy Act, 1971 – s. 3(1) – When pregnancies may be terminated by registered medical practitioners – Protection u/s. 3(1):**

**Held:** s. 3(1) protects the registered medical practitioner from penal provisions against abortion, under IPC, if it is carried out as per the MTP Act – Moreover, no penalty may be attracted to a RMP merely for forming an opinion, in good faith, on whether a pregnancy may be terminated – This is because the MTP Act requires and empowers the RMP to form such an opinion – Its bona fide assured, no aspersions may be cast on the RMP – Same applies to medical

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boards constituted u/s. 3(2-C) and 3(2-D) – Opinion of the RMP or the medical board, is indispensable under the scheme of the MTP Act – This inadvertently gives the power to the RMP or the medical board to stand in the way of a pregnant person exercising their choice to terminate the pregnancy – When there is fear or apprehension in the mind of the RMP or the medical board it directly jeopardises the fundamental freedoms of pregnant persons guaranteed under the Constitution – However, the scheme of the MTP Act and the steady line of application of the law by the courts has made it clear that the RMP or the medical board cannot be prosecuted for any act done under the MTP Act in good faith – 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. [Paras 22, 23, 25]

**Medical Termination of Pregnancy Act, 1971 – s. 3(1) – Permission to terminate the pregnancy – Powers vested in the Courts:**

**Held:** Fundamental rights guaranteed under Part III of the Constitution can be enforced – The courts apply their mind to the case and make a decision to protect the physical and mental health of the pregnant person – In doing so the court relies on the opinion of the medical board constituted under the MTP Act for their medical expertise – Court would thereafter apply their judicial mind to the opinion of the medical board – Thus, the medical board cannot merely state that the grounds u/s. 3(2-B) are not met – Exercise of the jurisdiction of the courts would be affected if they did not have the advantage of the medical opinion of the board as to the risk involved to the physical and mental health of the pregnant person – Thus, a medical board must examine the pregnant person and opine on the aspect of the risk to their physical and mental health. [Para 27]

**Medical Termination of Pregnancy Act, 1971 – ss. 5, 3(2-B) – Restriction on the length of the pregnancy for termination – Removal of:**

**Held:** Restriction on the length of the pregnancy for termination is removed, in two instances, firstly u/s. 5 prescribing that a pregnancy may be terminated, regardless of the gestational age, if the medical practitioner is of the opinion formed in good faith that the termination is immediately necessary to save the life of the pregnant person; and secondly u/s. 3(2-B) stipulating that no limit shall apply on the length of the pregnancy for terminating a fetus with substantial

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abnormalities – Legislation has made a value judgment in s.3(2-B), that a substantially abnormal fetus would be more injurious to the mental and physical health of a woman than any other circumstance – To deny the same enabling provision of the law would appear prima facie unreasonable and arbitrary – Value judgment of the legislation does not appear to be based on scientific parameters but rather on a notion that a substantially abnormal fetus would inflict the most aggravated form of injury to the pregnant person. [Para 28]

### Case Law Cited

*X v. State (NCT of Delhi)* [\[2022\] 7 SCR 686](#) : (2023) 9 SCC 433; *XYZ v. State of Gujarat* 2023 SCC OnLine SC 1573; *Z v. State of Bihar* [\[2017\] 8 SCR 212](#) : (2018) 11 SCC 572; *Suchita Srivastava v. Chandigarh Admn.* [\[2009\] 13 SCR 989](#) : (2009) 9 SCC 1 – relied on.

### List of Acts

Medical Termination of Pregnancy Act, 1971; Constitution of India.

### List of Keywords

Termination of pregnancy; Sexual assault; Order recalled by the Supreme Court; Termination of an advanced pregnancy; Gestational age of the fetus; Well-being and safety of the minor; Reproductive choice; Role of the registered medical practitioners; Role of the medical board; Giving the child in adoption after the delivery; Opinion in good faith; Fear of prosecution among registered medical practitioners; Safe and legal abortions; Fundamental right of a pregnant person; Physical and mental health of the pregnant person; Change in the opinion of the medical board; Right to reproductive autonomy; Right to abortion; Gestational age above twenty-four weeks; Minor's view in termination of pregnancy; Use of term 'pregnant person' instead of term 'pregnant woman'; Cisgender women; Non-binary people; Transgender men; Gender identities; Restriction on the length of the pregnancy for termination; Terminating fetus with substantial abnormalities; Abnormal fetus.

### Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5194 of 2024

From the Judgment and Order dated 04.04.2024 of the High Court of Judicature at Bombay in WPL No. 11208 of 2024

**A (Mother of X) v. State of Maharashtra & Anr.****Appearances for Parties**

Shantanu M. Adkar, Ms. Bharti Tyagi, Mustafa A. Khan, Advs. for the Appellant.

Ms. Aishwarya Bhati, ASG, Akshaja Singh, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Ms. Yamini Singh, Advs. for the Respondents.

**Judgment / Order of the Supreme Court****Judgment**

**Dr Dhananjaya Y Chandrachud, CJI**

**Background**

1. This appeal emanates from a judgment of a Division Bench of the High Court of Judicature at Bombay dated 4 April 2024 which denied the minor daughter of the Appellant (hereinafter referred to as 'X') permission to terminate her pregnancy. 'X' is a minor, about fourteen years of age and is alleged to have been subjected to sexual assault in September 2023. The incident did not come to the fore till 'X' revealed the incident on 20 March 2024 by which time she was about 25 weeks into her pregnancy. 'X', it has been averred, always had irregular periods and could not have assessed her pregnancy earlier.
2. An FIR was registered with Turbhe MIDC Police Station against the alleged perpetrator on 20 March 2024 for offences punishable under Section 376 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act 2012. 'X' was taken to a hospital on 21 March 2024 for medical examination and then transferred to the JJ Group of Hospitals, Mumbai for termination of her pregnancy. On 28 March 2024 the medical board of the Grant Government Medical College & Sir JJ Group of Hospitals, Mumbai constituted under the Medical Termination of Pregnancy Act 1971<sup>1</sup> opined that 'X' was physically and mentally fit for termination of her pregnancy subject to the permission of the High Court.

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3. The Appellant moved the High Court of Judicature at Bombay under Article 226 of the Constitution seeking the termination of pregnancy of her daughter. On 3 April 2024, the medical board issued a 'clarificatory' opinion, without re-examining 'X'. The report denied the termination of pregnancy on the ground that the gestational age of the fetus was twenty-seven to twenty-eight weeks and that there were no congenital abnormalities in the fetus.<sup>2</sup> By the impugned judgment the High Court dismissed the writ petition on the ground that the pregnancy exceeded the statutory period of twenty-four weeks.
4. The Appellant moved this court under Article 136 of the Constitution. The Special Leave Petition was mentioned for urgent orders after the Court had risen on the conclusion of normal working hours at 5:15 pm on 19 April 2024. The Bench reassembled immediately thereafter and had the benefit of hearing the counsel for the Appellant, the Standing Counsel for the State of Maharashtra and Ms Aishwarya Bhati, Additional Solicitor General. While issuing notice, this Court took note of the fact that the report of the Medical Board dated 3 April 2024, which was relied upon by the High Court had not dealt with the impact of the pregnancy on the physical and emotional well-being of 'X'. Accordingly, a fresh Medical Board was directed to be constituted under the Lokmanya Tilak Municipal General Hospital and Lokmanya Tilak Municipal Medical College, Sion, Mumbai.<sup>3</sup> This Court directed that:
  - "5. From the material which has been placed on the record, a striking feature which has emerged before this Court, *prima facie*, is that the medical report does not contain an evaluation of the physical and mental status of the minor, particularly having regard to the background leading up to the pregnancy, including the alleged sexual assault. Moreover, it would be necessary that this Court is apprised whether the carrying of the pregnancy to the full term would impact upon the physical and mental well being of the minor who is barely fourteen years old. The Medical Board

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<sup>2</sup> There is an inexplicable inconsistency on the gestational age in the report of the medical board of the Grant Government Medical College & Sir JJ Group of Hospitals, Mumbai dated 28 March 2024. Point 5 and 6 of the report mention the gestational age as 27 weeks, but the opinion of the board in point 7 mentions the gestational age to be 28 weeks.

<sup>3</sup> Sion Hospital

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shall also opine on whether a termination of the pregnancy can be carried out at this stage without any threat to the life of the minor.

6. In this view of the matter, we are of the view that the petitioner's daughter should be examined afresh by a Medical Board to be constituted at the Lokmanya Tilak Municipal General Hospital and Lokmanya Tilak Municipal Medical College, Sion, Mumbai tomorrow (20 April 2024). We request the Medical Superintendent of the hospital to constitute a Medical Board for that purpose."
5. A report has been submitted by the Sion Hospital. The minor was examined by a team of six doctors constituted by the Dean. The composition of the team was as follows:
  - (i) Dr Rajesh Dere, Prof. & Head Dept. of Forensic Medicine;
  - (ii) Dr Anagha Joshi, Prof. & Head Dept. of Radiology;
  - (iii) Dr Amarjitsingh Bawa, Additional Prof. Of Dept. of Gynecology & acting Head of Department;
  - (iv) Dr Nilesh Shah, Prof. & Head Dept. of Psychiatry; and
  - (v) Dr Swati Manerkar, Prof. & Head Dept. of Neonatology;
6. After examining 'X', the medical board of the Sion Hospital opined that the gestational age of the fetus was 29.6 weeks and continuation of pregnancy will negatively impact the physical and mental well-being of 'X'. Further, it opined that the pregnancy can be terminated with a degree of risk not higher than if the pregnancy was taken to term. The medical board reported as follows:
  - "1. Whether carrying of the pregnancy to the full term would impact upon the physical and mental well being of the minor who is barely 14 years?  
  
Ans. Yes, continuation of pregnancy against her will may impact negatively on physical and mental well being of the minor who is barely 14 year old.
  2. The medical board shall also opine whether termination of pregnancy can be carried out at this stage without any threat to the life of the minor?



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Ans. Yes, termination can be carried out at this stage. The threat of life to the patient if termination of pregnancy carried out at this stage is not higher than the risk of delivery at full term of pregnancy. Also in view of minor being barely 14 years, the chances of surgical intervention (Abdominal Surgery) at term or now may be there.”

7. While forwarding the report of the Medical Board, the Dean of Sion Hospital has noted the opinion of the Board in the following terms:

“The opinion of the committee is forwarded herewith for your perusal. The committee has opined that the medical termination of the pregnancy can be done with due risk and with appropriate counseling of the patient and the relatives. The Psychiatrist also contributed in evaluation of patient and assessing the psychological state of the patient. According to the committee report continuation of pregnancy could cause psychological trauma to the patient.”

8. On 22 April 2024, this Court granted leave and pronounced its operative order to set aside the judgment of the High Court of Judicature at Bombay. In view of the urgency involved, while reserving judgment, this Court allowed ‘X’ to terminate her pregnancy forthwith. This Court noted as follows:

“10 The following circumstances have been borne in mind, at this stage:

- (i) The medical termination of pregnancy is sought in respect of a minor who is 14 years old;
- (ii) The pregnancy is alleged to be an emanation from a sexual assault which has resulted in the registration of a First Information Report. The FIR was recorded on 20 March 2024 beyond the period of 24 weeks envisaged in the MTP Act;
- (iii) The minor was unaware of the fact that she was pregnant until a very late stage;
- (iv) The Medical Board at Sion Hospital has clearly opined that the continuation of the pregnancy against the will of the minor “may impact negatively on physical

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and mental well being of the minor who is barely 14 years old”; and

- (v) While a certain degree of risk is involved in every procedure for medical termination, the Medical Board has opined that the threat to life of the patient if termination of pregnancy is carried out at this stage is not higher than the risk of delivery at full term of pregnancy.

11. We will further elaborate on the guiding parameters in a reasoned order which will be delivered separately. However, bearing in mind the exigencies of the situation, the welfare of the minor, which is of paramount importance and her safety, we pass the following order:

- (i) The judgment and order of the High Court of Judicature at Bombay dated 4 April 2024 shall stand set aside for reasons to follow;
- (ii) The Dean at Sion Hospital is requested to immediately constitute a team for undertaking the medical termination of pregnancy of the minor in respect of whom the Medical Board has submitted its report dated 20 April 2024;
- (iii) Arrangements shall be made by the State for transportation of the minor to the Hospital and for her return home after the completion of the procedure;
- (iv) The State has agreed to bear all the expenses in connection with the procedure and all medical expenses required in the interest of the safety and welfare of the minor; and
- (v) Post-termination if any further medical care is required, this may be ensured in the interest of the minor.”

- 9. The above direction requesting the Dean at Sion hospital to constitute a team of doctors for undertaking the medical termination of pregnancy of ‘X’ was based on the specific request of the appellant who is her mother.
- 10. Subsequently, a communication dated 26 April 2024 was addressed by the Dean at Sion hospital to Ms Aishwarya Bhati, Additional Solicitor General. The communication reads thus:

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**“Sub:-Guidance regarding Case No.9163/2024 order dated 22.04.2024.**

**Ref:- Case No.9163/2024.**

Respected Madam,

Order was given by Hon. Supreme Court of India to Dean at LTMMC & LTMGH, Sion to immediately constitute a team for undertaking the Medical termination of pregnancy of the minor in respect of whom the Medical Board has submitted its report dated 20.04.2024. On the basis of the order the patient has been admitted at LTMMC & LTMGH, Sion on 23.04.2024 under the expert care of Dr. Amarjitsingh Bawa, Associate Professor & Unit Chief Department of Gynecology.

The Team for undertaking the termination of pregnancy is formed as below:-

1. Dr. Arun Nayak, Prof & Head, Department of Obst & Gynecology.
2. Dr. Rahul Mayekar, Prof & Unit Chief, Department of Obst & Gynecology.
3. Dr. Amarjitsingh Bawa, Asso. Prof & Unit Chief, Department of Obst & Gynecology.
4. Dr. Swati Manerkar, Adhoc Prof & Head (I/C), Department of Neonatology.
5. Dr. Nilesh Shah, Prof & Head, Department of Psychiatry.

We request guidance of Hon. Supreme Court of India before proceeding for termination of pregnancy in the said case of minor girl in view of.

1. We would like to humbly bring to the attention of the Honorable Supreme Court of India that the minor girl's mother is changing her statements. On 24.04.2024 father and mother of the minor girl gave in writing that they gave permission to stop the baby's heart in utero by injecting medicine in the heart. They also gave permission for attempting

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normal delivery of the minor girl by giving medicine. During this, if the pregnant minor girl suffers any problem, under such circumstances cesarean section operation may be needed, and they gave permission for the same. If even after giving injection baby is born alive, then they would like to give the baby for adoption.

2. On 25.04.2024 minor girl's mother said that she wanted alive baby & she wanted to give live baby to her relative for adoption. Thus we noticed that the mother of the said girl was changing her statements.
3. On 26.04.2024 the mother of the girl said in front of Medical team that she wants termination of pregnancy after the baby's heart is stopped by injecting medicine in the heart.
4. Hence, due to the changing statements made by the girl's parents and the fact that the sonography done at our hospital on 25.04.2024 reveled 30.2 weeks with baby weight of 1593grams, we humbly request Hon. Supreme Court of India to guide us whether
  - (1) The baby should be delivered alive.

OR

  - (2) After injecting intracardiac injection KCL to end the life of the fetus in utero as per
    - a. The Government of India guidelines MOHFW D.O No. M. 12015/58/2017- MCH dated 14.08.2017, vide section Ve (Copy attached).
    - b. जा.क्र. राकुक्का/पीसीपीएनडीटी/कक्ष ८ ड/नस्ती क्र. ५०७/२० आठवडयापलिकडील वैद्यकीय गर्भपात/मा. उच्च न्यायालय आदेश / स्थायी वैद्यकीय मंडळ व मान्यता प्राप्त वैद्यकीय गर्भपात केंद्रांनी अनुसरावयाची कार्यमार्गदर्शक तत्वे (SOPs) / दिनांक ०:- १८.०१.२०२०. vide section IVc (Copy attached)
5. We are ready to do the termination of pregnancy as per the directives of the Hon. Supreme Court of India. If the baby is born alive, we are ready to keep the

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baby in the Neonatal Intensive Care Unit if required under the care of neonatologist.”

11. On the communication being drawn to the attention of the Registrar (Judicial – I), the proceedings were listed before the Court on 29 April 2024, which was the first available working day.
12. In view of the communication of the Dean at Sion hospital, we had the benefit of hearing submissions of counsel again. We considered it appropriate to thereafter interact with the parents of ‘X’ as well as with the medical team at Sion hospital. We have had an elaborate discussion with the medical team consisting of Dr Arun H Nayak, Professor and Head of the Department of Obstetrics and Gynecology and Dr Amarjeet Kaur Bava, Associate Professor and Unit Chief, Department of Obstetrics and Gynecology, over the video conferencing platform.
13. Dr Arun H Nayak has indicated that after the order of this Court dated 22 April 2024, the medical team followed requisite procedures by carrying out medical investigations and seeking the consent of the parents. According to the medical team, while initially the parents were agreeable to the stoppage of the fetal heart on 24 April 2024, on 25 April 2024 the appellant stated that she desires that the pregnancy be taken to term and that she would thereafter give the child in adoption. Subsequently, on 26 April 2024, the appellant stated that she desired a termination of pregnancy.
14. The doctors stated that in view of the changing views of the appellant and her spouse and the above background, they had moved the Additional Solicitor General with a communication dated 26 April 2024 of the Dean of the Sion hospital, as extracted above. Dr Nayak and Dr Bava have stated that in terms of the guidelines of the Union Government dated 14 August 2017, medical steps would have to be taken by giving an intracardiac injection, KCL, to end the life of the fetus in utero. An SOP has also been issued by the State Government on 18 January 2020. The doctors have stated that the pregnancy of the minor is at an advanced stage. In terms of the applicable guidelines, an intracardiac injection of KCL has to be administered and if the fetal heart is not detected to have stopped after sonography following the administration of the injection, the procedure would have to be repeated. Both the doctors have indicated that this may involve a certain degree of

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risk to the minor which cannot be ruled out bearing in mind the late stage of the pregnancy.

15. The parents of 'X' have conversed with the doctors and with the Court on the video conferencing platform in Hindi. Their primary concern was that they should have been apprised a week ago by the medical team after the order of this Court was passed of the inherent dangers in carrying out the procedure in an advanced pregnancy. We appreciate the concerns of the parents and their anguish, particularly having regard to the backdrop in which the pregnancy is stated to have arisen. The issue is about the way forward at the present stage.
16. During the course of the conversation online, the doctors have deliberated on whether a delivery can be induced at this stage. However, both the doctors ruled out such a course of action bearing in mind that inducing a delivery at this stage may have real risks of a deformed child as a result of the premature birth. The situation has been duly explained to the parents of the minor.
17. It has emerged during the course of the discussion that both the parents of 'X' are averse to undertaking any risk to the life and well-being of their daughter at this stage and would prefer to take her home and to readmit her to the Sion hospital in time for her due date of delivery. During the course of the discussion, Dr Bava indicated to the parents that Sion hospital is ready and willing to let 'X' be in the care of the hospital from now until the date of the delivery. However, the father of the minor has specifically stated that he would prefer to take the minor home where she would be in more congenial surroundings with the members of her family. The doctors have indicated to the father and the mother that they should bring the minor back to the hospital for regular antenatal checkups.
18. This Court by its earlier order had authorized the medical team at the Sion hospital to carry out the termination of pregnancy. The reasons on the basis of which such a course was adopted have been elaborated upon in the earlier order, which is extracted above. Even when the Court passed the order on the previous occasion, the minor was in the thirtieth week of her pregnancy. She is now nearing the end of the thirty first week of pregnancy.

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19. The sole and only consideration which must weigh with the Court at this stage is the safety and welfare of the minor. We are conscious of the trauma which the minor will face in having to continue the pregnancy for approximately five weeks, if the course of action which has been suggested by her parents is accepted. The Court has been informed that the minor is ready and willing to accept the decision of her parents which is in her best interest. Performing a procedure for termination of an advanced pregnancy at this stage is subject to risks involving the well-being and safety of the minor as explained by the medical team at Sion hospital. Bearing in mind the detailed discussion which took place, the parents of the minor have chosen not to press ahead with the termination of the advanced pregnancy at the present point of time. This decision, should, in our view, be accepted bearing in mind all that has been set out in the earlier part of this order. As a consequence, the earlier order of this Court dated 22 April 2024 shall stand recalled.
20. Before parting with this judgment we would like to shed light on two issues which have caught our attention in these proceedings. First, the opinion of the medical board constituted under the MTP Act must reflect the effect of the pregnancy on the pregnant person's physical and mental health. Second, the MTP Act and the reproductive right of a pregnant person gives primacy to their consent.

#### **Role of the RMP and medical board under the MTP Act**

21. In [X v. State \(NCT of Delhi\)](#),<sup>4</sup> a three-judge bench of this Court had recognised that the fear of prosecution among registered medical practitioners<sup>5</sup> is a barrier for pregnant persons<sup>6</sup> to access safe and legal abortions. The opinion of the RMP is decisive in matters of termination of pregnancy under the MTP Act. The purpose of the opinion of the RMP borrows from the legislative intent of the MTP Act which is to protect the health of a pregnant person and facilitate safe, hygienic, and legal abortion. The right to abortion is a concomitant right of dignity, autonomy and reproductive choice. This right is guaranteed under Article 21 of the Constitution. The

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<sup>4</sup> [\[2022\] 7 SCR 686](#) : (2023) 9 SCC 433

<sup>5</sup> "RMP"

<sup>6</sup> We use the term 'pregnant person' and recognize that in addition to cisgender women, pregnancy can also be experienced by some non-binary people and transgender men among other gender identities.

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decision to terminate pregnancy is deeply personal for any person. The choice exercised by a pregnant person is not merely about their reproductive freedom but also about their agency as recognised by this court in [X v. State \(NCT of Delhi\)](#).<sup>7</sup> It is therefore imperative that the fundamental right of a pregnant person is not compromised for reasons other than to protect the physical and mental health of the pregnant person.

22. Section 3(1) of the MTP Act protects the registered medical practitioner from penal provisions against abortion, under the Indian Penal Code,<sup>8</sup> if it is carried out as per the MTP Act. Moreover, no penalty may be attracted to a RMP merely for forming an opinion, in good faith, on whether a pregnancy may be terminated. This is because the MTP Act requires and empowers the RMP to form such an opinion. Its *bona fide* assured, no aspersions may be cast on the RMP. The same applies to medical boards constituted under Section 3(2-C) and Section 3(2-D) of the MTP Act.
23. The opinion of the RMP or the medical board, as the case may be, is indispensable under the scheme of the MTP Act. This inadvertently gives the power to the RMP or the medical board to stand in the way of a pregnant person exercising their choice to terminate the pregnancy. When there is fear or apprehension in the mind of the RMP or the medical board it directly jeopardises the fundamental freedoms of pregnant persons guaranteed under the Constitution. However, the scheme of the MTP Act and the steady line of application of the law by the courts has made it clear that the RMP or the medical board cannot be prosecuted for any act done under the MTP Act in good faith.
24. In the present case, the medical board of the Grant Government Medical College & Sir JJ Group of Hospitals, Mumbai had prepared a report dated 28 March 2024 stating that the pregnancy may be terminated in view of the physical and mental health of 'X'. The report however sought the permission of the High Court since the gestational age of the fetus was above twenty four weeks, which is the permissible age for termination of pregnancy under the MTP Act. What is inexplicable is the diametrically opposite view taken

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7 [\[2022\] 7 SCR 686](#) : (2023) 9 SCC 433

8 "IPC"



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by the medical board in its 'clarificatory' opinion dated 3 April 2024. As we have noted above, the medical board issued a clarification without re-examining 'X'. Moreover, the opinion did not elaborate on the change in circumstances which prompted the board to issue a clarification on its earlier opinion.

25. From a perusal of the MTP Act, its statement of object and reasons as well as the recommendation of the Shah Committee which examined the issue of liberalising abortion laws in India,<sup>9</sup> 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 \(NCT of Delhi\)](#)<sup>10</sup> 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 fetus 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 April 2024 fell into this error by denying termination on the ground that the gestational age of the fetus is above twenty-four weeks and there are no congenital abnormalities in the fetus.
26. The report failed to form an opinion on the impact of the pregnancy on the physical and mental health of the pregnant person. If a pregnant person meets the condition under Section 3(2-B) of the MTP Act then there would be no need for any permission by the courts. Therefore, whenever a pregnant person approaches the High Court or this Court, it is imperative for the medical board to opine on the physical and mental health of the pregnant person. This court in **XYZ v. State of Gujarat**,<sup>11</sup> held that the medical board or the High Court cannot refuse abortion merely on the ground that the gestational

9 Report of the Committee to Study the Question of Legislation of Abortion, Ministry of Health and Family Planning, Government of India, dated December 1966.

10 [\[2022\] 7 SCR 686](#) : (2023) 9 SCC 433

11 2023 SCC OnLine SC 1573

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age of the pregnancy is above the statutory prescription. In light of the peculiar circumstances of that case where the pregnancy was detrimental to the physical and mental health of the pregnant person, this Court held that:

“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...”

...

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.”

27. The powers vested under the Constitution in the High Court and this Court allow them to enforce fundamental rights guaranteed under Part III of the Constitution. When a person approaches the court for permission to terminate a pregnancy, the courts apply their mind to the case and make a decision to protect the physical and mental health of the pregnant person. In doing so the court relies on the opinion of the medical board constituted under the MTP Act for their medical expertise. The court would thereafter apply their judicial mind to the opinion of the medical board. Therefore, the medical board cannot merely state that the grounds under Section 3(2-B) of the MTP Act are not met. The exercise of the jurisdiction of the courts would be affected if they did not have the advantage of the medical opinion of the board as to the risk involved to the physical and mental health of the pregnant person. Therefore, a medical board must examine the pregnant person and opine on the aspect of the risk to their physical and mental health.

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28. The MTP Act has removed the restriction on the length of the pregnancy for termination in only two instances. Section 5 of the MTP Act prescribes that a pregnancy may be terminated, regardless of the gestational age, if the medical practitioner is of the opinion formed in good faith that the termination is immediately necessary to save the life of the pregnant person. Section 3(2-B) of the Act stipulates that no limit shall apply on the length of the pregnancy for terminating a fetus with substantial abnormalities. The legislation has made a value judgment in Section 3(2-B) of the Act, that a substantially abnormal fetus would be more injurious to the mental and physical health of a woman than any other circumstance. In this case, the circumstance against which the provision is comparable is rape of a minor. To deny the same enabling provision of the law would appear *prima facie* unreasonable and arbitrary. The value judgment of the legislation does not appear to be based on scientific parameters but rather on a notion that a substantially abnormal fetus will inflict the most aggravated form of injury to the pregnant person. This formed the basis for this Court to exercise its powers and allow the termination of pregnancy in its order dated 22 April 2024. The provision is arguably suspect on the ground that it unreasonably alters the autonomy of a person by classifying a substantially abnormal fetus differently than instances such as incest or rape. This issue may be examined in an appropriate proceeding should it become necessary.
29. Moreover, we are conscious of the fact that the decision to terminate pregnancy is one which a person takes seriously. The guidelines to terminate pregnancy as well as the scheme of the MTP Act show the seriousness attached to the well-being of the pregnant person throughout the process envisaged under the MTP Act. Change in the opinion of the medical board may cause undue trauma and exertion to a pregnant person whose mental health is understandably under distress. While we understand the need for a medical board to issue a clarificatory opinion based on the facts and circumstances of each case, the board must explain the reasons for the issuance of the clarification and, in particular, if their opinion has changed from the earlier report. Pregnant persons seeking termination of pregnancy seek predictability for their future. The uncertainty caused by changing opinions of the medical board must therefore balance the distress it would cause to the pregnant person by providing cogent and sound reasons.

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30. The opinion of the pregnant person must be given primacy in evaluating the foreseeable environment of the person under Section 3(3) of the MTP Act.<sup>12</sup> In [Z v. State of Bihar](#),<sup>13</sup> this Court found that the state authorities had failed in not terminating the pregnancy before the passage of twenty weeks which was permissible under the law. While a pregnancy beyond the statutory prescription would require the intervention of a constitutional court, the vitality of time sensitivity was recognised by this Court. 'X' was taken for termination of her pregnancy at the gestational age of twenty-five weeks in the present case. The passage of time in seeking the permission of this Court after being unsuccessful before the High Court matured the gestational age of the fetus to almost twenty-nine weeks. This increased the risk involved in ending the pregnancy of 'X' inducing the voluntary change of opinion by 'X' and her parents to take the pregnancy to term.
31. This highlights the need for giving primacy to the fundamental rights to reproductive autonomy, dignity and privacy of the pregnant person by the medical board and the courts. The delays caused by a change in the opinion of the medical board or the procedures of the court must not frustrate the fundamental rights of pregnant people. We therefore hold that the medical board evaluating a pregnant person with a gestational age above twenty-four weeks must opine on the physical and mental health of the person by furnishing full details to the court.

**Primacy of the pregnant person's consent in abortion**

32. As noted above, the order of this court allowing 'X' to terminate her pregnancy is recalled. This decision is made in light of the decisional and bodily autonomy of the pregnant person and her parents. The MTP Act does not allow any interference with the personal choice of a pregnant person in terms of proceeding with the termination. The Act or indeed the jurisprudence around abortion developed by the courts leave no scope for interference by the family or the partner of a pregnant person in matters of reproductive choice.
33. As stated above, the role of the RMPs and the medical board must be in a manner which allows the pregnant person to freely exercise

12 [X v. State \(NCT of Delhi\)](#) [2022] 7 SCR 686 : (2023) 9 SCC 433

13 [\[2017\] 8 SCR 212](#) : (2018) 11 SCC 572

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their choice. In the present case, the guardians of 'X', namely her parents, have also consented for taking the pregnancy to term. This is permissible as 'X' is a minor and the consent of the guardian is prescribed under Section 3(4)(a) of the MTP Act.

34. In [Suchita Srivastava v. Chandigarh Admn.](#)<sup>14</sup>, 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](#) (supra) 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 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.
35. In the present case the view of 'X' and her parents to take the pregnancy to term are in tandem. The right to choose and reproductive freedom is a fundamental right under Article 21 of the Constitution. Therefore, where the opinion of a minor pregnant person differs from the guardian, the court must regard the view of the pregnant person as an important factor while deciding the termination of the pregnancy.

### Conclusion

36. In the facts and circumstances of this case, we issue the following directions:
- (i) The Sion hospital shall bear all the expenses in regard to the hospitalization of the minor over the past week and in respect of her re-admission to the hospital for delivery as and when she is required to do so; and
  - (ii) In the event that the minor and her parents desire to give the child in adoption after the delivery, the State Government shall take

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14 [\[2009\] 13 SCR 989](#) : (2009) 9 SCC 1

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all necessary steps in accordance with the applicable provisions of law to facilitate this exercise. This shall not be construed as a direction of this Court binding either the parents or the minor and the State shall abide by the wishes as expressed at the appropriate stage.

37. In light of the issues which arose before this Court we record our conclusions as follows:
- (i) The MTP Act protects the RMP and the medical boards when they form an opinion in good faith as to the termination of pregnancy;
  - (ii) The medical board, in forming its opinion on the termination of pregnancies must not restrict itself to the criteria under Section 3(2-B) of the MTP Act but must also evaluate the physical and emotional well being of the pregnant person in terms of the judgment;
  - (iii) When issuing a clarificatory opinion the medical board must provide sound and cogent reasons for any change in opinion and circumstances; and
  - (iv) The consent of a pregnant person in decisions of reproductive autonomy and termination of pregnancy is paramount. In case there is a divergence in the opinion of a pregnant person and her guardian, the opinion of the minor or mentally ill pregnant person must be taken into consideration as an important aspect in enabling the court to arrive at a just conclusion.
38. In view of the above, the appeal is disposed of. There shall be no order as to costs.
39. Pending application(s), if any, disposed of.

*Headnotes prepared by:* Nidhi Jain

*Result of the case:*  
Appeal disposed of.