IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 1137/2023

POONAM SHARMA .... PETITIONER

VERSUS

UNION OF INDIA & ANR. ..... RESPONDENT

O R D E R

1. *Rule Nisi.*

2. Both the sides are represented.

3. The present petition has been filed by the petitioner under Article 32 of the Constitution of India praying *inter alia* for issuing directions to the respondents to permit the medical termination of her on-going pregnancy under Section 3(2)(b)(i) and Sections 3(3) and 5 of the MTP Act[1] read with Rule 3B of the MTP Rules[2], in any Government hospital, preferably at AIIMS, New Delhi[3] on a plea that she is neither physically, mentally, psychologically or financially prepared to continue with the unwanted pregnancy.

4. Learned counsel appearing for the petitioner submits that the petitioner is a married lady aged 27 years. She has two children (both sons, aged four years and one year respectively). The earlier deliveries of the petitioner were C-section deliveries and

1 Medical Termination of Pregnancy Act, 1971
2 Medical Termination of Pregnancy Rules, 2003
3 All India Institute of Medical Sciences, New Delhi

both she and her husband were satisfied that their family is complete. Her current pregnancy has come as an utter shock to the petitioner for the reason that she did not realise that she has an on-going pregnancy since she had adopted LAM[4] which implies absence of menstruation due to continuing breast feeding as a contraceptive method after delivery of the second child.

5. Learned counsel for the petitioner states that the petitioner did not have any symptoms of pregnancy till very recently and immediately on the same being revealed by the Doctor, she has rushed to this Court and instituted the present petition. He further submits that the petitioner is a home maker and her husband is a graduate, working in a private company. The petitioner's husband has the responsibility of supporting not only his own family, but also to maintain his aged parents and a sister with a paltry salary. It is, therefore unviable for the couple to feed one more mouth.

6. The petitioner has averred that she and her husband have approached several doctors and hospitals for medical termination of her pregnancy but the same has been declined due to the statutory bar imposed under the MTP Act that permits medical termination of pregnancy through a RMP[5] upto 20 weeks and only in the case of a forced pregnancy, termination is permitted upto 24 weeks.

7. Having regard to the aforesaid submissions made by learned counsel for the petitioner on 05th October, 2023, notice was issued on the present petition and Ms. Aishwarya Bhati, learned Additional Solicitor General was requested to enter appearance and accept notice on behalf of the respondent No.1-Union of India. In view

4 Lactational Amenorrhea Method
5 Registered Medical Practitioner

of the urgent nature of the matter, it was deemed appropriate to obtain the opinion of a Medical Board directed to be constituted by AIIMS and the case was deferred for today to await the report.

8. We are informed today that the petitioner had appeared before the Medical Board, AIIMS on 06th October, 2023. The report dated 06th October, 2023 forwarded by the Medical Board, AIIMS states as under:

"Details of the woman seeking termination of pregnancy:

1. Name of the woman : Mrs. Poonam Sharma W/o Mr. Sanjay Sharma.
2. Age : 27 years.
3. Registration/Case Number: UHID – 107060237.
4. Additional review done at AIIMS:

S.No.	Investigations done	Key finding
1	Ultrasound done at AIIMS on 20.09.2023	Ultrasonography suggest: Single live intra uterine fetus of 25 weeks 5 days POG. Estimated Fetal Weight – 886 gm. Placenta upper segment.

5. Opinion by Medical Board for termination of pregnancy:
(a) Allowed (X)
(b) Denied (□)

Justification for the decision:

The case has been reviewed by the medical board. The weight of the baby by the scan done on 06/10/2023 is 886gm with gestational age of 25 weeks 5 days.

As per the current status, the baby is viable and has a reasonable chance of survival.

The chances of post partum psychosis of which the couple is worried of, are present even at this gestation following delivery.

The mother is a previous 2 LSCS and the chances of complications due to hysterotomy are there at this gestation.

In such a scenario, the termination of pregnancy may be reconsidered.

The option of antenatal care and delivery at AIIMS, New Delhi has been discussed with the couple.

6. Physical fitness of the woman for the termination of pregnancy:
(a) Yes ( )
(b) No ( )

NA"

9. When this Bench had assembled in the morning, both learned counsel for the petitioner and Ms. Bhati, learned Additional Solicitor General had stated that they had interacted with the petitioner and had persuaded her to continue with the pregnancy. To satisfy ourselves, we had deemed it appropriate to interact directly with the petitioner before passing any orders. As a result, the Bench has re-assembled at noon time. The petitioner and her husband have logged into the hearing virtually. We have interacted with both, husband and wife at some length. In the course of our interaction, the petitioner and her husband have expressed the reluctance of the petitioner to continue with the pregnancy, stating that they are not only worried about the petitioner's health, mental, physical and psychological, but also the fact that she has been under treatment for depression and been prescribed strong medication which could have had an adverse impact on the health of the foetus. At the end of our conversation with the petitioner, she has categorically expressed her unwillingness to continue with the pregnancy. In other words, she seeks permission from this Court to medically terminate her pregnancy.

10. The explanation offered in the petition for approaching this Court so belatedly (by now the pregnancy has reached 26 weeks) is that the petitioner has conceived despite adopting LAM. It is submitted by learned counsel for the petitioner that pregnancy is considered rare amongst breast feeding women with Lactational Amenorrhea, but the petitioner's case is an exception.

11. We may note that LAM is an informed use of breast feeding as a contraceptive method by a woman who is still amenorrheanic and not feeding her baby with supplements for upto a period of six months after delivery. Medical reports estimate

that LAM users have over 95% protection from pregnancy. However, in the instant case, things did not go as planned for the petitioner who is already a mother of two children, the younger one being just one year old. The petitioner had delivered both the children by C-Section delivery and is stated to be undergoing psychiatric treatment and has remained on continuous medication on account of depression, for the past one year. The plea taken is that the petitioner has been suffering from post-partum depression and looking at her precarious physical, mental and psychological condition, this Court may grant her permission to terminate the advanced pregnancy.

12. This Court has recognized the fact that one of the grounds on the basis of which a pregnancy may be permitted to be terminated is when continuing with the pregnancy could seriously imperil the mental health of the women. As observed in the case of **X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another[6],** the expression 'grave injury to her physical and mental health' in Section 3(2)(b) of the MTP Act is used in an overarching and all-encompassing sense. Courts have been liberal in interpreting Section 3 of the MTP Act that permits RMPs to terminate pregnancy beyond 20 weeks in circumstances where continuing with the pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health. This Court has also recognized the fact that the expression 'mental health' has a broader connotation vis-à-vis what is considered as "mental illness", strictly in medical parlance. Different categories that have been carved out in Rule 3(B) of the MTP Rules [7] show that women can seek abortion even after 20

6 2022 SCC Online SC 1321
7 For short 'MTP Rules'

weeks which could be on account of a delay in recognizing their pregnancy or a critical material change of their life circumstances to the point that the pregnancy becomes unwarranted and unviable. Conception in LAM has also been acknowledged as one of the circumstances by the Expert Committee constituted to draft the MTP Rules and draw up categories of women who would qualify under Rule 3(B).

13. Courts have gone that extra mile to ensure that unwanted/ forced pregnancies caused by rape, sexual assault or incest ought to be terminated, they are equally conscious of the fact that unwanted pregnancies can take place even in the case of a married women and rape within a marriage that results in forced pregnancies, has also been recognized. The petitioner before us has taken the plea of Lactational Amenorrhea. There can be other medical conditions too that may lead to an unwanted conception for a married woman.

14. This Court acknowledges the bodily including the reproductive autonomy of the petitioner herein who has explained her physical, mental, psychological, financial and socio-economic backgrounds for seeking termination of her ongoing pregnancy. The right of a woman over her body has been recognized. If an unwarranted pregnancy results in a child being brought into the world, a major part of the responsibility of rearing the child is bound to fall on the petitioner as a mother and a primary a care giver, which onerous responsibility, she does not consider herself fit to shoulder at this point of time due to reasons stated above. The only silver lining for the petitioner is that her mother in-law is ready and willing to support her in bringing up the children. We have been informed that she has been extending help to rear her grandchildren, as the health of the

petitioner has remained indifferent after her second pregnancy.

15. Having regard to the aforesaid facts and circumstances, it is deemed appropriate to grant permission to the petitioner to terminate her unwanted pregnancy. Necessary steps shall be taken by the AIIMS to admit the petitioner for her to undergo the process at the earliest. In the event, the foetus is alive, then the process of incubation and any other procedure as may be advised medically, shall be adopted.

16. Before parting with this case, we propose to highlight the following aspects:

(a) Firstly, we must state that ordinarily, this Court is reluctant to entertain a petition under Article 32 of the Constitution of India when an equally efficacious alternative remedy is available before the State High Court. In the instant case, the petitioner is a permanent resident of NCT of Delhi and she had the option of approaching the High Court of Delhi for appropriate relief. There was no good reason for the petitioner to have rushed directly to this Court for seeking the relief, as prayed for in the petition. This aspect did weigh with this Court when the matter was taken up for admission on 5th October, 2023. It was also put to learned counsel for the petitioner that in the first instance, he ought to have approached the High Court for relief under Article 226 of the Constitution of India. However, as time was running short and each day would count in the facts of the instant case and further keeping in mind that it would take more time for a fresh petition to be filed before the High Court if we were to relegated the petitioner to the High Court, it was considered prudent to entertain the present petition. It is therefore made clear that in ordinary circumstances, this Court would be reluctant to open its doors that wide to entertain a petition directly under Article 32 of the Constitution

of India when an equal efficacious alternative remedy is available to a petitioner under Article 226 of the Constitution of India, but for the fact situation at hand.

(b) Secondly, we may to observe that this is a case of a married couple who already have two children. If the petitioner states that she had used LAM even earlier and she was aware of the difficulties that she had to face during her second pregnancy, it was all the more incumbent for her and her husband to have been more cautious this time. An unplanned pregnancy not only leads to the birth of an unwanted child, it is accompanied by myriad anxieties and complications that travel beyond the health of the mother, on a psychological and mental plane. It is, therefore expected of married couples to be careful in planning their families and take adequate timely precautions so that they do not end up knocking at the doors of the Court at the eleventh hour, praying for termination of pregnancies that have crossed the critical period as in the instant case, 26 weeks.

17. In today's urban background, the norm of the day is a nuclear family. The bulwark of an extended family or a joint family is mostly missing which means that the burden of bringing up the children, giving them a healthy environment and fulfilling all their needs rests entirely on the shoulders of the married couple.

18. As on date, India, is the most populated country in the world, with 1.4 billion population. The nation is striving to achieve social and economic development within the limited means and resources available. When it comes to planning a family, each citizen has an equal obligation to discharge in the interest of the society and the country. Bringing a child in the world is one thing and rearing the child with all the necessary

amenities including nutrition, health, good education and a conducive environment at home to make her a responsible citizen of the country, is another. To nurture children as responsible and healthy citizens is an onerous obligation cast on the parents. In the instant case, if the family of the petitioner was complete as has been stated before us, it was an equal responsibility cast on both, the petitioner and her husband to have taken adequate precautions to avoid an unwanted pregnancy. More so, when the petitioner's mental health is so delicate.

19. Absence of adequate family planning measures can also result in unwanted and avoidable pregnancies. We are of the opinion that this ignorance ought to be addressed by the Central Government and the State Governments if all the schemes relating to family planning, maternal health and betterment of a child's health are given ample publicity and disseminated to all citizens in general and to married couples in particular. We say so, as in the present case, learned counsel for the petitioner has been candid enough to admit that his client was ignorant of the family planning procedures and she and her husband did not approach any doctor for guidance.

20. This Court is also acutely mindful of the patriarchal mindset in many parts of the country and the intense desire to beget a male child sought to be validated by having a *"Kuldeepak"* to carry forward the name of the family. It is regrettable that even in this day and time, a girl child is not accepted by many as a *'Kuldeepika'.* This regressive mindset is also responsible for female infanticide. The situation before us is however different as both the children of the petitioner are boys and therefore, the prayer made in the present petition is not considered suspect. The petitioner has offered valid reasons

for this Court to extend her the latitude to exit from the unwanted pregnancy, though by now she has entered the third trimester.

21. We allow the present writ petition with a direction issued to the petitioner to visit the Obstetrics and Gynaecology Department, AIIMS, New Delhi tomorrow morning, i.e., on 10th October, 2023. AIIMS shall admit the petitioner for her to undergo the procedure of termination of her pregnancy at the earliest with follow up as may be advised by the treating doctors.

.....J.
(HIMA KOHLI)

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

NEW DELHI
09th OCTOBER, 2023

ITEM NO.301/1 COURT NO.14 SECTION X

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

Writ Petition (Civil) No. 1137/2023

POONAM SHARMA **Petitioner(s)**

VERSUS

UNION OF INDIA & ANR. **Respondent(s)**

Date : 09-10-2023 This petition was called on for hearing today.

CORAM :
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s) **Dr. Amit Mishra, Adv.**
Mr. Rahul Sharma, AOR

For Respondent(s) **Ms. Aishwarya Bhati, Ld.ASG**
Ms. Sthavi Asthana, Adv.
Ms. Ameya Thanvi, Adv.
Ms. Manisha Chava, Adv.
Mr. Abhijeet Singh, Adv.
Ms. Shreya Jain, Adv.
Ms. Chitrangda Rastravara, Adv.
Ms. Shagun Thakur, Adv.
Mr. Nithin Chowdhary Panduri, Adv.
Mr. Uday Bhan Singh, Adv.
Mr. G.S. Makker, AOR

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

The writ petition is allowed in terms of the signed order. Pending application(s), if any, are disposed of.

The concluding paragraph of the order reads as under :

"We allow the present writ petition with a direction issued to the petitioner to visit the Obstetrics and Gynaecology Department, AIIMS, New Delhi tomorrow morning, i.e., on 10th October, 2023. AIIMS shall admit the petitioner for her to undergo the procedure

of termination of her pregnancy at the earliest with follow up as may be advised by the treating doctors."

(Geeta Ahuja) **(Nand Kishor)**
Assistant Registrar-cum-PS **Court Master (NSH)**

(Detailed signed order containing the reasons is placed on the file)

earlier signed order dated 09.10.2023 along with ROP has already been uploaded and sent to the concerned Branch.

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.1137 OF 2023

POONAM SHARMA ..... PETITIONER

VERSUS

UNION OF INDIA & ANR. ..... RESPONDENTS

O R D E R

1. We have heard learned counsel for the parties at some length.

2. For the reasons to be recorded separately, we allow the present writ petition with a direction issued to the petitioner to visit the Obstetrics and Gynaecology Department, AIIMS, New Delhi tomorrow morning, i.e. on 10th October, 2023. AIIMS shall admit the petitioner for her to undergo the procedure of termination of her pregnancy at the earliest with follow up as may be advised by the treating doctors.

……..……J.
(HIMA KOHLI)

……..……J.
(B.V. NAGARATHNA)

NEW DELHI;
OCTOBER 09, 2023

ITEM NO.301 COURT NO.14 SECTION X

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

Writ Petition (Civil) No. 1137/2023

POONAM SHARMA **Petitioner(s)**

VERSUS

UNION OF INDIA & ANR. **Respondent(s)**

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HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s) Dr. Amit Mishra, Adv.
Mr. Rahul Sharma, AOR

For Respondent(s) Ms. Aishwarya Bhati, Ld.ASG
Ms. Sthavi Asthana, Adv.
Ms. Ameya Thanvi, Adv.
Ms. Manisha Chava, Adv.
Mr. Abhijeet Singh, Adv.
Ms. Shreya Jain, Adv.
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(Geeta Ahuja) **(Nand Kishor)**
Assistant Registrar-cum-PS **Court Master (NSH)**

(Signed order is placed on the file)