



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CRIMINAL APPLICATION NO. 11637 of 2023**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE SAMIR J. DAVE**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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XYZ  
 Versus  
 STATE OF GUJARAT

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Appearance:

MS POONAM M MAHETA(11265) for the Applicant(s) No. 1

NOTICE NOT RECD BACK for the Respondent(s) No. 2,3

PUBLIC PROSECUTOR for the Respondent(s) No. 1

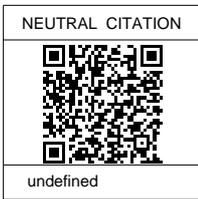
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**CORAM: HONOURABLE MR. JUSTICE SAMIR J. DAVE**

**Date : 06/09/2023**

**ORAL JUDGMENT**

**RULE.** Learned APP waives service of notice of rule on behalf of the respondents.



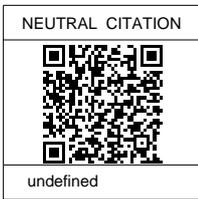
1. By way of this petition, the petitioner has prayed for the following reliefs;

*“(A) This Hon’ble Court may be pleased to issue appropriate writ or order or direction to the respondent authority to terminate the pregnancy of petitioner-victim who is minor aged 11 years and 9 months and 6 days, at the earliest, as the same being in best interest of the victim, considering her very young age, physical health and incident of rape causing grave injury to her mental health and further be pleased to direct the respondent no.3 to hand over, in scientific manner, the tissues drawn from the fetus for DNA identification to the Police Inspector, Dedyada Police Station for onward transmission of the same to the concerned Forensic Science Laboratory, interest of justice.*

*(B) Pending admission hearing and final disposal of this petition, this Hon’ble Court may be pleased to direct the respondent no. 1 to 3 to conduct medical termination of pregnancy of the minor victim with two qualified surgeons including Gynecologist, Obstetrician and in presence of qualified physician with due care and precaution after carrying out necessary medical check-up, so as to avoid any likelihood of untoward harm to the physical or mental health of the minor victim Kiran, in the interest of justice.*

*(C) This Hon’ble Court may be pleased to grant such other and further relief (s) as deemed fit, just and proper in the interest of justice.”*

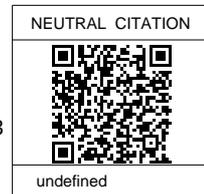
2. Pursuant to the order dated 04.09.2023 passed by this Court, today, learned APP Mr. Patel produced medical report



of the victim girl dated 05.09.2023 prepared by the panel of Doctors of Medical College & SSG Hospital, Vadodara. The same is taken on record. For ready reference, the said report is reproduced hereunder:

“With reference to your above mentioned letter, committee members have jointly examined (xyz) (sic), daughter of Kesharsinh Roopsinh Vasava on 05/09/2023. After thorough examination and review of case, observations of the committee are as under:

1. XYZ (sic), daughter of Kesharsinh Roopsinh Vasava, is having 26-28 weeks viable pregnancy on clinical examination. On ultrasound examination period of gestation is 26 weeks and 5 days with no detectable congenital anomaly (done by Dr Dipen Vaidya, Associate Prof. Dept. Of Radio diagnosis, S.S.G. Hospital, Vadodara).
2. On clinical examination of XYZ (sic), daughter of Kesharsinh Roopsinh Vasava, no significant systemic abnormality detected. Moreover at present she does not show signs of any associated pregnancy complications.
3. During Psychiatrist interview and evaluation, it is

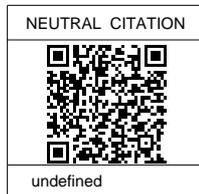


found that she is having clinically average intelligence; currently, she is under stress due to unwanted catastrophic event and pregnancy. Her mother feels continuation of pregnancy will be stressful and embarrassing for her and their family and will impact patient's mental health. She has expressed her desire for termination of pregnancy of her daughter. She (XYZ (sic), daughter of Kesharsinh Roopsinh Vasava) needs mental health professionals help in ongoing care.

4. At present she is having uncomplicated ongoing pregnancy. However considering her age, risks of development of complications in future are higher than compared to other low risk pregnancies.

5. With regard to the fetus, it is 26 weeks and 5 days fetus with estimated fetal weight of 873+/-131grams. If delivered at this stage is likely to be live and viable. The baby has a fair chance of survival if given optimum care. However, compared to a child delivered at full term, he/she has much greater risk of complications which may require intensive care support. This may also result in significant and serious permanent neuro-developmental sequel.”

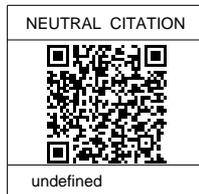
3. As per the opinion given by the panel of Doctors in the



form of the report dated 05.09.2023, the victim girl is carrying pregnancy of 26 weeks and 05 days as on 05.09.2023 and no significant systemic abnormality has been detected. The victim also does not show signs of any associated pregnancy complications.

4. At this juncture, a reference to the judgment rendered by the Apex Court in case of **X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another reported in AIR 2022 SC 4917** would be apposite. In paragraphs-99 & 116, it has been observed as under;

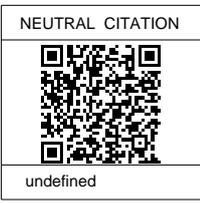
*“99. The right to reproductive autonomy is closely linked with the right to bodily autonomy. As the term itself suggests, bodily autonomy is the right to take decisions about one’s body. The consequences of an unwanted pregnancy on a woman’s body as well as her mind cannot be understated. The foetus relies on the pregnant woman’s body for sustenance and nourishment until it is born. The biological process of pregnancy transforms the woman’s body to permit this. The woman may experience swelling, body ache, contractions, morning sickness, and restricted mobility, to name a few of a host of side effects. Further, complications may arise which pose a risk to the life of the woman. A mere description of the side effects of a pregnancy cannot possibly do justice to the visceral image of forcing a woman to continue with an unwanted pregnancy. Therefore, **the decision to carry the pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman.***



*116. In the context of abortion, the right to 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.*

5. In a recent decision rendered by the Apex Court in **Criminal Appeal arising out of S.L.P. (Cri.) Dy. No.33790 of 2023** dated **21.08.2023**, by relying upon the judgment rendered in *X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another's* case (supra), the Apex Court ordered to conduct medical termination of pregnancy of the victim.

6. It is said that one of the best ways to understand the spirit of a civilization is to study the history about the position and status of women in it. The earliest materials found by archaeological excavations dating back to ancient India suggests about the worship of goddesses. *“Durga Saptashati”*, also known as *“Devi Mahatmya”*, is one of the earliest extant complete manuscripts from the Hindu traditions, which describes reverence and worship of the feminine aspect of God.



The text is believed to be both a culmination of centuries of Indian ideas about the divine feminine as well as a foundation for the literature and spirituality focused on the feminine transcendence in centuries that followed. One of the verses of the Text reads thus:

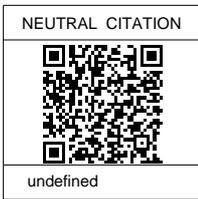
**स्त्रियाः समस्ताः सकला जगत्सु**

[Shri Durga Saptashati Vol.11-6]

जगत् की समस्त स्त्रियां  
तुम्हारा ही स्वरूप हैं।

The meaning in Hindi translates to - "अर्थात् हे देवी जगदम्बे, जगत में जितनी भी स्त्रिया हैं वह सब तुम्हारी ही मुर्तिया हैं । इसलिए अगर स्त्री चाहे तो वह सब कर सकती हैं जो वह करना चाहती हैं, यह ताकत सिर्फ उसीमे हैं जो बड़े बड़े संकटों का नाश कर, श्रेष्ठ से श्रेष्ठ और कठिनतम कार्य भी पूर्ण कर सकती हैं । जरूरत हैं तो सर्वशक्तिमान नारी को स्वयं को पहचानने को ।

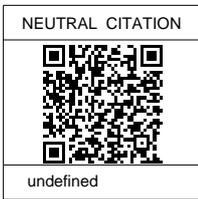
7. There is no higher insult to a woman than trying to touch her dignity. In this case, it is very shocking and painful that the victim herein, who is a 11 year 09 months old girl child, has been subjected to a heinous crime by none else but her own father. Without entering into the criminality of the act committed by the accused in this case, this Court deems it appropriate to order medical termination of pregnancy of the victim herein at the earliest possible time considering the medical report of the victim and the provisions of the Medical



## Termination of Pregnancy Act.

8. In the result, the application is allowed. The respondent No.3 herein, Medical Officer & Medical Superintendent, S.S.G. Hospital, Vadodara is directed to take necessary steps for undertaking the procedure of medical termination of pregnancy of the applicant-victim girl at the earliest possible time and in any case, within a period of one week from today. The respondent No.2-Police Inspector, Dediypada Police Station is directed to take necessary steps, on urgent basis, so that the procedure of medical termination of pregnancy of the victim girl could be undertaken and concluded within a period of one week from today. It is expected that the respondent-authorities concerned would take necessary care, sensitivity and caution so that the procedure of medical termination of pregnancy of the victim girl could be undertaken smoothly keeping in mind the age as well as mental and physical health of the victim girl.

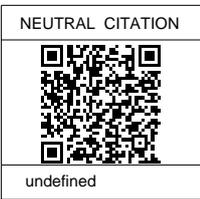
8.1 At this stage, learned advocate for the applicant-victim sought appropriate directions in respect of relief sought in prayer clause-[A] for preservation of the subsequent DNA Test Report by drawing tissues from the foetus for the purpose of using it as a piece of evidence in the ensuing trial. The said prayer-[A] is granted and the Doctors concerned as well as the Police Inspector, Dediypada Police Station, are directed to do



the needful in this regard. If the foetus remains alive, after the procedure of medical termination of pregnancy gets concluded, the respondent No.2-P.I. and the respondent No.3 are directed to take necessary steps qua the foetus in accordance with law.

8.2 Considering the tender age of the victim and the fact that the victim has to undergo strenuous mental / physical agony, the respondent-State is directed to pay an amount of Rs.2,50,000/- (Rupees Two lacs fifty thousand only) by way of compensation to the applicant-victim within a period of Two Months from today. Out of the said amount of compensation, the concerned Department of the State Government shall pay Rs.50,000/- to the victim / her mother in the capacity of guardian, at this stage and the remaining amount of Rs.2,00,000/- shall be kept in Fixed Deposit Receipt with any nationalized Bank in the name of the victim and the concerned District Collector of the District is appointed as the guardian of the minor apropos the said FDR until the victim attains the age of 21 years. The annual interest accruing on such FDR shall be paid to the victim on regular basis until she attains the age of 21 years.

8.3 The above order of compensation will not preclude the trial Court concerned from awarding further compensation to the victim under section 357 of the Cr.P.C. independent of the



present proceeding.

8.4 With the above directions, the petition stands disposed of. Rule is made absolute. **Direct service TODAY.** A copy of this order be provided to the learned APP for onward communication and necessary action. Liberty to apply in case of difficulty.

**(SAMIR J. DAVE,J)**

PRAVIN KARUNAN