

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/SPECIAL CRIMINAL APPLICATION NO. 10206 of 2023
[On note for speaking to minutes of order dated 17/08/2023 in
R/SCR.A/10206/2023]

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XYZ THRO VASAWA CHAMPABEN
Versus
THE STATE OF GUJARAT

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Appearance:

MR DHRUV R THAKKAR(11280) for the Applicant(s) No. 1
NIRAV V PARGHI(8032) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3
MR J.K. SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 19/08/2023
ORAL ORDER

1. Present application was rejected vide order dated 17.08.2023, however, this matter is listed today under a suo-motu note for speaking to minutes. It has come to the notice of this Court that there was an error in transcribing order dated 17.08.2023.
2. In view of the above position, the note for speaking to minutes stands allowed. In an order dated 17.08.2023 passed by this Court in Special Criminal Application No.10206 of 2023, the first line of Para No.5, "*Rule is made absolute to the aforesaid extent*" stands deleted.
3. It is further clarified that this matter was listed for hearing on **08.08.2023** and this Court has passed the following order:



"1. Heard learned advocate for the applicant and learned APP for the respondent State.

2. Considering the facts and circumstances of the case, the Medical Superintendent Dr. Kiran C. Patel, Medical College & Research Institute, Bharuch (Civil Hospital, Bharuch) is directed to conduct medical examination of the applicant herein, original victim, through the Panel of Doctors of the Civil Hospital on urgent basis as the FIR has been registered under Section 376(2)(n) on 02.08.2023 registered with Jhagadia Police Station District Bharuch. As she is carrying 25 weeks pregnancy as on 04.08.2023. After conducting the above tests, Reports thereof shall be prepared and submitted to this Court on the next date of hearing. The Police official is directed to take the victim to the Hospital for her Medical examination. Stand over to 11.08.2023.

Direct service is permitted."

4. Subsequently, the matter came up on board on **11.08.2023** for hearing and after hearing learned Counsels for the respective parties at length, this Court was not inclined to entertain the application filed by the present applicant. Therefore, this Court has inquired from the learned Counsel for the applicant that whether the applicant wants to avail the benefits of existing schemes of the Woman and Child Development and Social Justice Department, State Government, for the betterment of the applicant- victim or not? However, learned Counsel for the applicant has sought time to take instructions from his client in this regard. Therefore, the matter was adjourned to 23.08.2023 and following order was passed on 11.08.2023:



“Report dated 10.08.2023 from the Medical Superintendent Dr. Kiran C. Patel, Medical College & Research institute, Bharuch is taken on record.
Stand over to 23.08.2023.”

5. However, on 17.08.2023, this matter was notified on the board and learned Advocate for the applicant requested to pass appropriate order as he wants to challenge the order of this Court before the Hon'ble Supreme Court because the applicant- victim did not want to continue with the pregnancy. So, this Court has passed the order.
6. With aforesaid clarification, present note for speaking to minutes stands disposed.
7. The Registry to issue fresh writ/ order accordingly.

MEHUL B. TUVAR

(SAMIR J. DAVE,J)



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for the Respondent(s) No. 2,3
MR CHINTAN DAVE, APP for the Respondent(s) No. 1
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CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE

**Date : 17/08/2023
ORAL ORDER**

1. The present application is filed by the mother of the victim-petitioner under Article 226 and 227 of the Constitution of India along with Section 482 of Cr.P.C, 1973 and Section 3 of the Termination of Pregnancy Act, in connection with FIR being C.R. No.111199059230324 of 2023 registered with Jhagadia Police Station, Bharuch for the offences punishable under Section 376(2)(n) of the Indian Penal Code for the direction to the respondent authority to terminate the pregnancy of the victim who is aged about 25 years, at the earliest, which is in the best interest of the victim considering her physical health and incident of rape causing grave injury to her mental health.

2. The learned advocate Mr. Dhruv R. Thakkar for the petitioner-victim has submitted that the present petitioner is the victim of gruesome act of rape and due to such forceful physical intercourse,



the petitioner-victim got pregnant at this age. The petitioner is aged about 25 years and carrying burden of pregnancy in her early age which can adversely affect her mental health as well as her physical health. The learned advocate would further submit that her mental health coupled with the fact that bearing and rearing of a child in the womb would create a great mental agony to her for her entire life and it would also invite other social and economic problems. Learned advocate would further submit that the petitioner-victim has expressed her willingness to terminate her pregnancy. Learned advocate would further submit that the fetus is aged about 25 weeks and 1 day (as per the sonography report dated 05.08.2023), in that case, termination is not permissible as per Section 3 of the Medical Termination of Pregnancy Act (MTP Act). The learned advocate would further submit that the parents of the victim are also undergoing traumatic condition seeing the condition of the victim-girl. It is also urged that it is the petitioner's right under Article 21 of the Constitution of India as a personal liberty whether she should carry the pregnancy or not, therefore, learned advocate has prayed that if the medical report permits then the termination of the fetus may be granted.

3. Report dated 10.08.2023 from the Medical Superintendent Dr. Kiran C. Patel, Medical College & Research institute, Bharuch is on record.

“It is specifically mentioned by the doctors in the said report dated 10/08/2023 that the victim has been examined by the penal of doctors and



she is carrying pregnancy of 25 weeks 6 days +/- 2 weeks duration according to ultrasound done on 10/08/2023. She has been examined by the gynecologist, Anesthesiology, Radiology, Pediatric and physician on 10/08/2023 and accordingly, it is opined that there is no indication of termination of pregnancy as per Maternal Physical health but as the survivor want to terminate pregnancy due to sexual assault with her, Medical Termination of Pregnancy at this stage of pregnancy can be done in this Hospital if Hon'ble Court permits. In that case the Medical Termination of Pregnancy would be done by Induction of Labour, if indicated by Hysterotomy procedure after taking consent & explaining due risks to maternal health and fetal outcome”.

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.

5. Accordingly, present application stands rejected. Rule is made absolute to the aforesaid extent. Direct service is permitted.

RINKU MALI

(SAMIR J. DAVE,J)