



\$~37

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 13371/2023**

**MRS. B**

..... Petitioner

Through: Dr. Amit Mishra and Mr. Amit Rana,  
Advocates.

versus

**THE UNION OF INDIA & ANR.**

..... Respondents

Through: Ms. Manisha Agarwal Narain, CGSC  
with Ms. Archana Surve, GP and Ms.  
Shivangi Gumber and Ms. Kholi  
Rakuzhuro, Advocates.  
Ms. Mehak Nakra, ASC for GNCTD  
with Mr. Abhishek Khari and Ms.  
Disha Chaudhary, Advocates for R-2.  
Mr. Manoj Dahiya and Mr. Sandeep  
Singh, Advocates for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER**

%

**19.10.2023**

1. The Petitioner has approached this Court seeking permission to terminate her ongoing pregnancy of 21 weeks 4 days, as per the ultrasound scan dated 06.10.2023, and as of today 23 weeks 4 days, through a Registered Medical Practitioner in any Government or Private Hospital under Section 3(2)(b)(i) and Section 3(3) of the Medical Termination of Pregnancy Act, 1971 (*herein after referred to as 'MTP Act'*) read with Rule 3B(C) of the MTP Rules, 2003.
2. *Vide* Order dated 16.10.2023, this Court, after hearing the Petitioner



and in view of the law laid down by the Apex Court in X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another, **2022 SCC OnLine SC 1321**, directed All India Institute of Medical Sciences, New Delhi to constitute a Medical Board to assess as to whether it will be safe for the Petitioner herein to undergo the procedure for termination of pregnancy or not and also on the condition of fetus. In compliance of the said Order, a Medical Board was constituted. In the opinion of the Medical Board it is safe for the Petitioner to undergo the procedure for termination of pregnancy and the fetus, which as on 17.10.2023 is of 23 weeks and 2 days gestation by Ultrasound, is non-viable. It is further stated that the fetus is healthy, its growth is normal and there is no malformation.

3. The Petitioner is present in Court today. She states that a complaint has already been filed by her against her husband with the Crime Against Women Cell and that she does not intend to go back to her husband. She also states that in the present circumstances it would be impossible for her to go through pregnancy and bring up a child. *Vide* Order dated 16.10.2023, Notice was issued by this Court to the husband of the Petitioner. He is also present in Court today. He states that he wants to continue with the marriage. However, it is stated that the efforts made to reconcile the marriage have failed.

4. In view of the law laid down by the Apex Court in X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another (supra) wherein it has held that that it is the prerogative of each women to evaluate her life and arrive at the best course of action in view of the change in material circumstance which may result when a woman



separates from her partner and she may no longer have the financial resources to raise the child and also in view of the fact that the right to reproductive choice also includes the right not to procreate, this Court is of the opinion that, at this juncture, the Petitioner should be permitted to terminate her pregnancy on the ground that the Petitioner does not want to live with her husband any longer.

5. Accordingly, the Petitioner is permitted to undergo the procedure for termination of her pregnancy.

6. It is made clear that this Order has been passed in the peculiar facts and circumstances of the present case and the same cannot be treated as a precedent which will have the effect of diluting the Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994.

7. With these observations, the Writ Petition is disposed of along with the pending applications, if any.

**SUBRAMONIUM PRASAD, J**

**OCTOBER 19, 2023**

*Rahul*