

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

WP No. 41809 of 2024

(PROSECUTRIX X Vs THE STATE OF MADHYA PRADESH AND OTHERS)

Dated : 11-01-2025

*Shri Gyanendra Singh Baghel & Ms. Shikha Baghel - Advocate for the
petitioner - Prosecutrix X.*

Shri L.A.S. Baghel - Government Advocate for the respondent/State.

This Special Bench has assembled today on the order of Hon'ble The Chief Justice for hearing on I.A.No.505/2025 filed on 11.1.2025 in Writ Petition No.41809/2024 [Prosecutrix X Vs. State of M.P. and others].

2. Considered I.A.No.505/2025, an application seeking permission for minor prosecutrix and her parents to keep custody of newly born child on 01.1.2025. The application is supported by affidavits of parents (father and mother of the minor prosecutrix).

3. On 27.12.2024 in Special Sitting in the above case while disposing of the writ petition, permission was granted for premature delivery/termination of foetus of 32 weeks & 06 days of prosecutrix who was minor rape victim in connection with FIR No.234/2024 registered at Police Station, Behrol, District Sagar for offences under sections 376(2)(f), 376(2)(n), 376(3), 506 of IPC and section 5(n), 5(1)/6 of POCSO Act. On the said date it was also directed that if child is born alive then State Government has to take care of child and certain conditions were imposed, which need not be reproduced here again.

4. By way of above interlocutory application (I.A.No.505/2025) filed on behalf of prosecutrix and her parents it has been stated that on 01.1.2025. a male child has been born to the prosecutrix. Both the prosecutrix and newly born baby are in good health. After birth of newly born baby the prosecutrix and her parents

want to take the custody of child and want to raise the child in their family. Therefore, condition No.3 mentioned in order dated 27.12.2024 be modified to the extent of permitting the prosecutrix and her parents to keep the newly born baby in their custody and lookafter him. The Condition No.3 of order dated 27.12.2024 is reproduced below:-

"(iii) The post operative care up to the extent required, will be extended to the petitioner. It will be the duty of the State Government to take care of the child, if born alive."

5. Learned counsel for the petitioner/prosecutrix X submitted that prosecutrix and her parents wish to keep newly born child with them and they undertake to ensure safety of the prosecutrix as well as her child and also to provide all possible nourishment and care to the prosecutrix & child. He further prayed that direction be issued that custody of child be given to the prosecutrix so that proper natural breast feeding be provided to newly born baby which is not being permitted at present perhaps due to earlier order of this Court.

6. Learned Government Advocate submitted that State has no objection if the application is allowed and custody of child is given to the prosecutrix under the guardianship of her parents. It is stated by learned Government Advocate that Dr.Anshu Mujalde, Assistant Professor who is in the concerned Hospital has informed that presently the newly born baby is separate from mother and is in ICU room for care and perhaps in view of order dated 27.12.2024.

7. In this regard it is even worth referring to section 35 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which is reproduced below:-

35. Surrender of children.—(1) A parent or guardian, who for physical, emotional and social factors beyond their control,

wishes to surrender a child, shall produce the child before the Committee.

(2) If, after prescribed process of inquiry and counselling, the Committee is satisfied, a surrender deed shall be executed by the parent or guardian, as the case may be, before the Committee.

(3) The parents or guardian who surrendered the child, shall be given two months time to reconsider their decision and in the intervening period the Committee shall either allow, after due inquiry, the child to be with the parents or guardian under supervision, or place the child in a Specialised Adoption Agency, if he or she is below six years of age, or a children's home if he is above six years.

8. Heard learned counsel for the parties and perused the record. This Court today also contacted the prosecutrix and her mother as also the Attending Doctor through Video Call made through mobile of Government Advocate to ascertain the veracity of the averments made in the application. The prosecutrix and her mother have inclined their wish to keep the custody of child and upbringing him in their family.

9. There is no doubt that mother of newly born baby is the best person in the world to look after the baby and if she wants to take care of her baby then it is in the interest of mother as well as newly born child. Therefore, it is directed that custody of newly born child be given to her minor mother (prosecutrix) under the guardianship of her parents. It is also directed that arrangement be immediately made for natural breast feeding of mother milk to the child which like a nector (Amrit) for a newly born baby.

10. In addition, it is also directed that State Government shall provide helping hand to the prosecutrix and her parents wherever and whenever it is necessary as per law in this regard. It is also made clear that all medical expenses of the newly born baby and her mother (prosecutrix) shall be borne by the State

Government.

11. Accordingly, I.A.No.505/2025 is allowed and order dated 27.12.2024 is modified to the above extent. This order shall be read in conjunction with the order passed on 27.12.2024.

12. Needless to state that prosecutrix and her parents shall cooperate with the Police for proper investigation and trial of the case.

13. Let a copy of this order be forwarded to the concerned Police Station, learned Governed Advocate, Dean-Gandhi Medical College, Bhopal and shall be uploaded on the official website of M.P. High Court which shall be treated as certified copy.

14. I.A.505/2025 and Writ Petition No.41809/2024 are disposed of.

(AVANINDRA KUMAR SINGH)
JUDGE

RM