



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.164 of 2020

Ram Avatar, S/o Tilak Sai, A/o 48 years, R/o Village Barkela, P.S. Darima, Tahsil Ambikapur, District Sarguja (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Station House Officer, P.S. Darima, District Sarguja (C.G.)

2. Chief Medical Officer, District Sarguja (C.G.)

---- Respondents

For Petitioner: Mr. Anish Tiwari, Advocate.
For Respondents/State: Mr. Mateen Siddiqui, Deputy Advocate General and Mr. Rahul Jha, Government Advocate.
Amicus Curiae: Mr. Manoj Paranjpe, Mr. Prasoon Agrawal and Mr. Anurag Singh, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/03/2020

1. The short question involved in this writ petition is, whether father of a minor pregnant daughter can get the foetus of his minor daughter aborted, when the pregnant minor daughter herself is not agreeing for such termination?
2. In other words, whether the minor daughter's right to life under Article 21 of the Constitution of India includes the right to beget a life or create a life is the short question involved in this writ petition which arises on the following factual background: -
3. The petitioner made a first information report under Crime No.161/2019 at Police Station Darima, District Sarguja against accused





Hari Gopal for offences punishable under Sections 363, 366, 376(2) (n) of the IPC and Sections 5(I) & 5(j)(ii) of the Protection of Children from Sexual Offences Act, 2012 in which the accused has been charge-sheeted for the aforesaid offences on 4-1-2020 and in which the said accused is facing trial. During the pendency of aforesaid trial, the petitioner herein – father of the minor daughter has filed this writ petition with a prayer for directing the State and its officials to conduct medical termination of pregnancy of his minor daughter at the earliest in the interest of justice stating inter alia that her daughter is aged about 17 years 8 months 10 days and pregnancy according to her is as a result of commission of rape upon her. This Court, in order to ascertain the willingness of the minor girl, was inclined to call her personally, but considering that she is carrying pregnancy of 27 weeks and she is residing in a remote village of Ambikapur which is 250 Kms. away from this place, this Court ascertained from the petitioner's counsel as to whether the petitioner's minor daughter is ready and willing to undergo termination of pregnancy and in that view of the matter, this Court directed the petitioner to file affidavit and also directed the State counsel to get the statement of the petitioner's minor daughter recorded and pursuant to that, the petitioner filed affidavit on 14-3-2020 that his minor daughter is ready and agreeable for termination of her pregnancy, whereas the State officials have recorded the statement of the petitioner's minor daughter in which she has refuted and expressed her willingness to continue with the pregnancy.

4. The question is, whether in such a factual background, the Court can direct for termination of pregnancy of the petitioner's minor daughter?



5. Mr. Anish Tiwari, learned counsel appearing for the petitioner, submits that since the petitioner's daughter is a minor, therefore, by virtue of Section 3(4)(a) of the Medical Termination of Pregnancy Act, 1971, the petitioner is competent to accord consent on her behalf as a guardian and since she is a victim of rape, therefore, termination of pregnancy is the only way to protect her and as such, the petition be allowed and termination of her pregnancy be directed.
6. Mr. Mateen Siddiqui, learned Deputy Advocate General appearing for the State / respondents, would submit that the statement of the petitioner's minor daughter has been recorded which has been filed along with the medical report in which it has been mentioned that she is only aged about 17 years 8 months 10 days (minor) and she is carrying the pregnancy of 27 weeks 2 days as on 9-3-2020 and therefore according to the medical opinion rendered therein, termination of pregnancy at this stage is absolutely unsafe and detrimental to the health of the petitioner's minor daughter, therefore, direction for termination of pregnancy would not be appropriate.
7. Mr. Manoj Paranjpe, learned *amicus curiae*, would submit that though the petitioner's daughter is minor and has not completed the age of 18 years, but in view of Section 3(4)(a) of the Medical Termination of Pregnancy Act, 1971, her consent would be necessary and if she has not consented for termination of her pregnancy, no such termination of pregnancy should be directed by this Court.
8. I have heard learned counsel for the parties as well as learned *amicus curiae* Mr. Manoj Paranjpe, Advocate, and considered their rival submissions made herein-above and also went through the record with





utmost circumspection.

9. Before proceeding with the matter, it would be appropriate to notice the relevant provisions by which pregnancy can be directed to be terminated under the Medical Termination of Pregnancy Act, 1971 (for short, 'the Act of 1971'). Section 3 of the Act of 1971 provides for when pregnancies may be terminated by registered medical practitioners and states as under: -

“3. When pregnancies may be terminated by registered medical practitioners.—(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,—

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are,

of opinion, formed in good faith, that—

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.—Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.





Explanation II.—Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

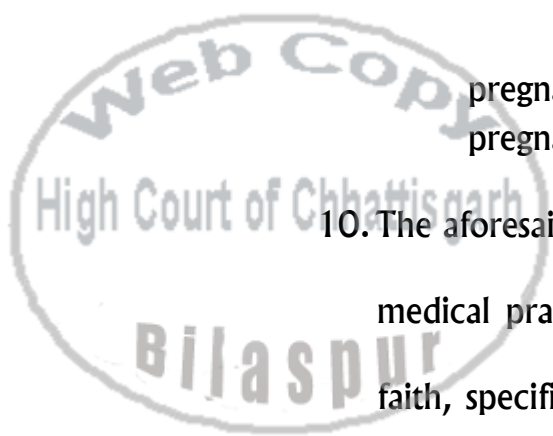
(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

10. The aforesaid provision permits termination of pregnancy by a registered medical practitioner with regard to the circumstances, formed in good faith, specified in sub-clauses (i) and (ii) of sub-section (2) of Section 3 of the Act of 1971 as stated herein-above. Likewise, Explanation I to sub-section (2) of Section 3 also provides in no uncertain terms that where the pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. The termination of pregnancy under the provisions of the Act of 1971 is not the rule, but it is only an exception.

11. The entire scheme of the Act of 1971 would show that the provisions of the said Act under sub-section (4)(a) & (b) of Section 3 can be invoked only by the pregnant woman and if she happens to be a minor,





the registered medical practitioner, who is approached for terminating the pregnancy must take care to get the consent of the guardian of the minor in writing.

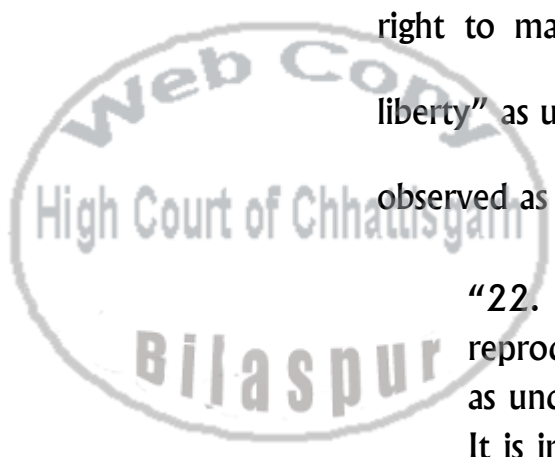
12. However, a Division Bench of the Madras High Court, in the matter of **V. Krishnan v. G. Rajan @ Madipu Rajan and another**¹ has held that sub-section (4)(a) of Section 3 of the Act of 1971 can never be understood as dispensing with the consent of the pregnant woman if she is below 18 years of age.

13. In this regard, the Supreme Court in the matter of **Suchita Srivastava and another v. Chandigarh Administration**², has held that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India and observed as under with reference to the Act of 1971: -

"22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the

1 1994 (2) MWN (Cri.) 333

2 (2009) 9 SCC 1





provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.”

Further, their Lordships of the Supreme Court have laid down the guidelines based on the principle of “best interests” theory and held that the Court is required to ascertain the course of action which would serve the best interests of the person in question. Paragraphs 36 and 37 of the report are relevant and are extracted herein-below: -

“36. Courts in other common law jurisdictions have developed two distinct standards while exercising “parens patriae” jurisdiction for the purpose of making reproductive decisions on behalf of mentally retarded persons. These two standards are the “best interests” test and the “substituted judgment” test.

37. As evident from its literal description, the “best interests” test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of the other stakeholders such as guardians or the society in general. It is evident that the woman in question will need care and assistance which will in turn entail some costs. However, that cannot be a ground for denying the exercise of reproductive rights.”

14. The Supreme Court in the matter of X v. Union of India and others³ has clearly held that termination of pregnancy after 20 weeks to save life of pregnant woman (an alleged rape victim) in case of grave danger to physical and mental health of the said woman, is permissible, and observed as under: -

“13. Having perused the medical report (relevant extracts whereof have been reproduced hereinabove), we are satisfied



that a clear finding has been recorded by the Medical Board, that the risk to the petitioner of continuation of her pregnancy can gravely endanger her physical and mental health. The Medical Board has also expressed an advice that the patient should not continue with the pregnancy. In view of the findings recorded in Para 6 of the report, coupled with the recommendation and advice tendered by the Medical Board, we are satisfied that it is permissible to allow the petitioner to terminate her pregnancy in terms of Section 5 of the Medical Termination of Pregnancy Act, 1971. In view of the above, we grant liberty to the petitioner, if she is so advised, to terminate her pregnancy.”

15. Similar proposition has been laid down recently by the Supreme Court in the matter of **X and others v. Union of India and others**⁴ and also in the matter of **Meera Santosh Pal and others v. Union of India and others**⁵.

16. In a more recent decision, Their Lordships of the Supreme Court in the matter of **Tapasya Umesh Pisal v. Union of India and others**⁶ have permitted termination of pregnancy of a woman, aged 24 years, in her 24th week of pregnancy wherein the Medical Board opined that baby if delivered would have to undergo several surgeries associated with high morbidity and mortality, and thus, granted permission.

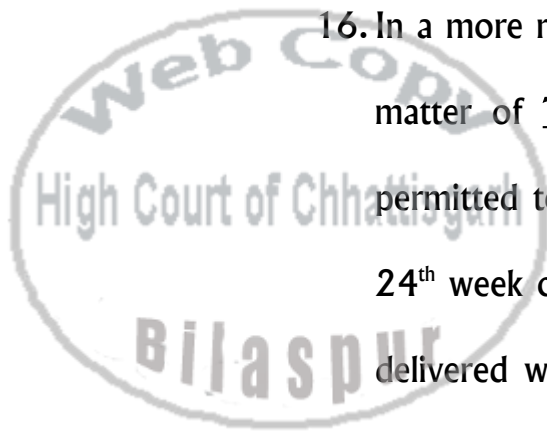
17. Similarly, in the matter of **Mrs. A v. Union of India and others**⁷, the Supreme Court has granted permission for termination of pregnancy of a woman, aged 22 years, in her 25th to 26th weeks of pregnancy holding that continuation of pregnancy can pose severe mental injury to the petitioner and no additional risk to the petitioner's life is involved if she is allowed to undergo termination of her pregnancy. Their Lordships held as under: -

4 (2017) 3 SCC 458

5 (2017) 3 SCC 462

6 AIR 2017 SC 3931

7 AIR 2017 SC 4037





“6. Upon evaluation of the petitioner, the aforesaid Medical Board has concluded that her current pregnancy is of 25 to 26 weeks. The condition of the fetus is not compatible with life. The medical evidence clearly suggests that there is no point in allowing the pregnancy to run its full course since the fetus would not be able to survive outside the uterus without a skull.

7. Importantly, it is reported that the continuation of pregnancy can pose severe mental injury to the petitioner and no additional risk to the petitioner's life is involved if she is allowed to undergo termination of her pregnancy.”

18. The World Health Organization (WHO) in its report (updated January, 2018) considered Adolescent Pregnancy and held that complications during pregnancy and childbirth are the leading cause of death for 15 to 19 year-old girls globally. It has been held as under: -

“Key facts

xxx xxx xxx

Adolescent mothers (ages 10 to 19 years) face higher risks of eclampsia, puerperal endometritis, and systemic infections than women aged 20 to 24 years, and babies born to adolescent mothers face higher risks of low birth-weight, preterm delivery, and severe neonatal conditions than those born to women aged 20 to 24 years (5).

Health consequences

Adolescent pregnancy remains a major contributor to maternal and child mortality, and to intergenerational cycles of ill-health and poverty. Pregnancy and childbirth complications are the leading cause of death among 15 to 19 year-old girls globally, with low and middle-income countries accounting for 99% of global maternal deaths of women ages 15 to 49 years (4), (12).

xxx xxx xxx”

19. The first risk to be suffered by the adolescent mothers is Eclampsia – onset of seizure – sudden uncontrolled change in brain activity.





Eclampsia can be understood in following ways: -

<u>Specialty:</u>	Obstetrics
<u>Symptoms:</u>	Seizures, high blood pressure
<u>Complications:</u>	Aspiration pneumonia, cerebral hemorrhage, kidney failure, cardiac arrest
<u>Usual onset:</u>	After 20 weeks of pregnancy
<u>Risk factors:</u>	Pre-eclampsia
<u>Prevention:</u>	Aspirin, calcium supplementation, treatment of prior hypertension
<u>Treatment:</u>	Magnesium sulfate, hydralazine, emergency delivery
<u>Prognosis:</u>	1% risk of death
<u>Frequency:</u>	1.4% of deliveries
<u>Deaths:</u>	46,900 hypertensive diseases of pregnancy (2015)

20. The issue regarding necessity of / importance of consent of the minor girl has to be considered in the light of rights made available to children under the International Conventions and the Indian Law.

21. The United Nations Convention on the Rights of the Child (UNCRC)

providing for the rights of children cover all civil, political, social, economic and cultural rights of every child.

a) **Right to Survival:** A child's right to survival begins before a child is born. According to Government of India, a child life begins after twenty weeks of conception. Hence the right to survival is inclusive of the child rights to be born, right to minimum standards of food, shelter and clothing, and the right to live with dignity.



b) Right to Protection: A child has the right to be protected from neglect, exploitation and abuse at home, and elsewhere.

c) Right to Participation: A child has a right to participate in any decision making that involves him/her directly or indirectly. There are varying degrees of participation as per the age and maturity of the child.

d) Right to Development: Children have the right to all forms of development: Emotional, Mental and Physical. Emotional development is fulfilled by proper care and love of a support system, mental development through education and learning and physical development through recreation, play and nutrition.

22. In English Law, the opinion of the parents or natural guardians in the matter of abortion is irrelevant and if the minor girl is capable of understanding the implication, her opinion is quite relevant and important.

23. The American Law takes into account the rights of the minor vis-a-vis the maturity level. In *Denforth's case* (49 L.Ed.2d 788), it was held (1) that mature minors have a right to make their own decisions about abortion without parental involvement; (2) that mature and immature minors must, as a matter of constitutional law, have the opportunity, through an alternative judicial or administrative procedure, to obtain an abortion without parental consent or consultation; and (3) that with respect to immature minors, the sole test must be their own best interests.

24. The aforesaid English Law and the American Law have been considered by the Madras High Court in the matter of *Marimuthu v. The Inspector*



of Police and others⁸ and thereafter it has been held as under: -

“39. The right to autonomy to the woman and to decide what to do with their own bodies, including whether or not to get pregnant, and if pregnant whether to retain the pregnancy and to delivery the child, i.e. the right to motherhood is towards their empowerment and it is in accordance with the International Covenant on Human Rights. Considering the right to life, which includes the right to beget a life and the right to dignity, the right to autonomy and bodily integrity, the foetus cannot be ordered to be aborted against the wishes of the victim girl.

40. Whether the foetus carried is a pain or pleasure is the subjective opinion of the minor girl and the girl has formed an opinion that it is the total delight, when India has ratified the conventions on the rights of the Child and when the consent of the victim girl cannot be dispensed with while aborting pregnancy, this Court has no option except to decline permission to terminate pregnancy, leaving it open the question, who is to bear the cross?”

25. In Hindu religion abortion or killing of foetus has always been considered to be sin and prohibited as such. The person who causes abortion is described as *Bhrunaha* and the killing of foetus is described as *Bhrunahatih*. References in *Atharvana Vedha* show that abortion was known in the Vedic age. Abortion was always considered to be a sin for which however, expiation ceremonies were prescribed in *Taittriyapanishad* had and also in *Arunam*. Manu in his *Dharma Sastra* said that the sin of a foeticide is transferred to the person who partakes of his food – destroyer of an embryo. (Chapter VIII Verse 317) *Kautilya's Arthasastra* provides for the highest punishment for causing abortion by physical assault. It refers to *Yajnavalkya* and *Manu* as well as *Vishnuprana*. Lesser punishment are also provided for inducing miscarriage by drugs.

26. Reverting to the facts of the present case in the light of the aforesaid

8 W.P.(MD)No.12212/2016, decided on 19-9-2016



legal position that the right to life includes the right to beget a life or create a life, it is quite vivid that admittedly and undisputedly, as on date, the minor girl is aged about 17 years 8 months 10 days and she is carrying the pregnancy of 27 weeks. The medical report of the doctors conducted on 11-3-2020 states as under: -

“As per the opinion asked regarding MTP of pregnancy of Ku. Anisha D/o Ram Avatar 17 y/F R/o Barkela, P.S. Darima. Paper by LCN 740 Jyoti Kujur P. Darima in case of High Court Bilaspur.

In the above mentioned case the ultrasonography is done on 11.03.20 the pregnancy duration is 27 weeks & 2 days, FHR is 148 bpm, fetus is alive & of weight 10718 ms

As per the MTP New Amendment Act 2019, MTP is allowed only till 24 weeks of gestation. Also by MTP Act 1971 abortion is allowed only up to 20 weeks of gestational age.

In the above case the pregnancy duration as per Sonography is 27 weeks 2 days. So as per MTP Act, abortion is not allowed in this particular case as per MTP Act. As it can put mother's health in danger due to excessive bleeding and risk of death.

Thank you.”

27. Pursuant to the direction of this Court by order dated 9-3-2020, the minor girl has been examined by the lady police officer on 13-3-2020 in which she has categorically stated that she is not willing to get herself aborted. The statement of the minor girl states as under: -

(Name of the minor girl will not be disclosed and she will be named as ABC in place of her original name)

कथन पीडिता

ABC, पिता—श्री राम अवतार सिंह, उम्र—17 वर्ष, जाति—कंवर, साकिन—ग्राम बरकेला परसापारा, थाना—दरिमा, जिला—सरगुजा (छत्तीसगढ़) मो0नं0



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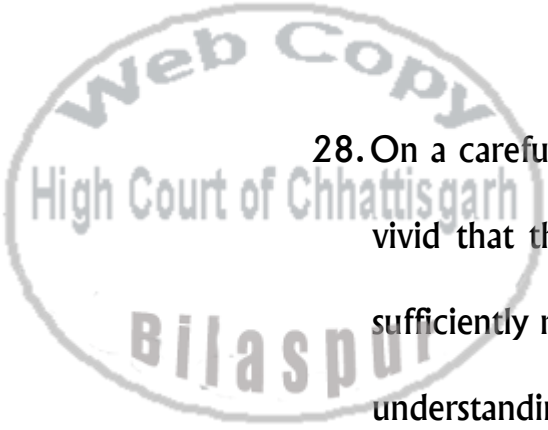
मैं उपरोक्त पते की निवासी हूँ, कक्षा-12वीं शासकीय हायर सेकेण्डरी स्कूल सखौली में पढ़ी हूँ। मैं हरिगोपाल बैरागी को बचपन से जानती-पहचानती हूँ, वह मेरे गांव का है। हम दोनों एक दूसरे को करीब 4-5 वर्ष से पसंद करते हैं, वर्ष 2019 सितम्बर माह में हरिगोपाल मुझे जंगल की तरफ बुलाया और शादी करूंगा कहकर पहली बार मेरे साथ शारीरिक-संबंध बनाया, उसके बाद कई बार मेरे साथ शारीरिक-संबंध बनाया है, जिससे मैं गर्भवती हो गयी हूँ, मेरे पेट में हरिगोपाल का 06 माह का बच्चा पल रहा है। उक्त के संबंध में मेरे माता-पिता थाना-दरिमा में रिपोर्ट दर्ज किये हैं। गांव-घर में बदनामी के डर से मेरे माता-पिता मेरा गर्भपात करवाना चाहते हैं। मैं अपने पेट में पल रहे बच्चे को अपनाना चाहती हूँ, मैं अपना गर्भपात नहीं कराना चाहती हूँ। मैं यह कथन स्वेच्छा से दी हूँ।

सही/-

उपनिरीक्षक अनिता आयाम

थाना-अम्बिकापुर

28. On a careful perusal of the above statement of the minor girl, it is quite vivid that though she is minor (17 years 8 months 10 days), but is a sufficiently matured girl capable of taking decision and further capable of understanding the consequence of the decision taken; and taking her unwillingness and further considering the medical opinion that she is having the advanced stage of pregnancy exceeding 27 weeks and as per the medical advice termination may put girl's health in danger due to excessive bleeding and risk of death, her right to beget a life and / or create a life, which is a facet of right to life guaranteed under Article 21 of the Constitution of India, this Court is not inclined to direct termination of her pregnancy, even otherwise such a direction for want of her consent would amount to forcible termination of pregnancy. As such, the request of the petitioner father to terminate the pregnancy of his daughter is hereby rejected and accordingly, the writ petition is





dismissed. However, the observation made in this order is only for the purpose of disposing of the writ petition filed by the petitioner seeking termination of her minor's pregnancy, it will not have bearing on the criminal case instituted against the accused person and it will be decided strictly in accordance with the material and evidence available in that case. No order as to cost(s).

29. This Court appreciates the assistance rendered by Mr. Anish Tiwari, Mr. Mateen Siddiqui, Mr. Manoj Paranjpe, Mr. Prasoon Agrawal and Mr. Anurag Singh, Advocates, on short notice.

Sd/-
(Sanjay K. Agrawal)
Judge

