



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 12147 OF 2024

Miss "XYZ"

.....Petitioner

Vs.

The State of Maharashtra
Through the Principal Secretary,
Public Health Department,
Mantralaya, Mumbai-400 023.

.....Respondent

Ms. Snehal Chaudhari (Through Legal-Aid) for the Petitioner.
Mrs. M. P Thakur, A.G.P for the Respondent-State.

CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.

RESERVED ON : 3rd SEPTEMBER 2024.

PRONOUNCED ON : 5th SEPTEMBER 2024.

JUDGMENT :-

1) The Petitioner, a minor of 17 years of age, is in the 26th week of pregnancy, being a victim of child abuse. There is a F.I.R. filed against the accused in the said crime. She seeks permission for medical termination of the pregnancy.

2) By an Order dated 28th August 2024, this Court directed the Authorities of J.J. Group of Hospitals and Grant Medical College, Mumbai to constitute a Medical Board in terms of the provisions of Section 3(2-D) of the Medical Termination of Pregnancy (Amendment) Act of 2021 (M.T.P.

Act) read with the Medical Termination of Pregnancy Act, 1971, to examine the Petitioner and to submit a report to this Court. The Medical Board while forming its opinion was also requested to evaluate the physical and emotional well-being of the Petitioner as well as the impact and repercussions of the continuance/termination of pregnancy.

3) Accordingly, a Medical Board was constituted by the J.J. Group of Hospitals and Grant Medical College, Mumbai and a report dated 2nd September 2024 is submitted before us today. We have perused the report. It is taken on record and marked “X” for identification. The report is unanimous.

4) The conclusive Committee opinion is as under:

“On interviewing the victim and her mother, the following facts were revealed:

- *That the mother is widowed since past two years.*
- *That she is the sole breadwinner and also has two other children (an older son and a younger daughter) dependent on her.*
- *That they were seeking treatment in K.E.M. Hospital which is not only close by to their residence but is also very convenient.*
- *That this pregnancy is an incidental finding while seeking treatment for fever. It is begotten from a consensual relationship with a 22 year old male, named Sujit Sonkar, a known person and that the victim and her male partner are willing to marry, settle down and accept*

the child as their own in due course of time, a scheme of arrangement that has blessings of the mother.

- That travelling up to J.J. Hospital every day is a harrowing experience for the mother resulting in the loss of daily earnings. She'd much rather prefer receiving further treatment at K.E.M. Hospital.

After thorough investigation and examination of the patient, the committee has found that at present the mother is 17 year old, unmarried primigravida with BD? BS 24 weeks + 5 days of gestational age with no congenital anomaly in the fetus.

As the patient has filed a complaint under section 376 of I.P.C. and sought High Court Order for the opinion of the Medical Termination of Pregnancy, the Committee is of the opinion that as mother is underage and a case of P.O.C.S.O., carrying unwanted pregnancy to term will cause mental stress to the teenage-mother. The patient, in her current state of health, is not fit for undergoing the procedure as opined by specialists in the discipline of Medicine & Anaesthesia. Patient needs to be stabilized and revaluated for fitness which can be done in 2 to 3 weeks.

Medical termination of pregnancy may be undertaken thereafter pursuant to the final decision of the Honourable High Court.”

- 5) Ms. Chaudhari, learned counsel appears for the Petitioner and Ms. Thakur, learned A.G.P represents the State.
- 6) The report of the Board was shared with both the counsels.

Ms. Chaudhari requested one day's time to take instructions from the Petitioner and her mother. Accordingly, the matter was listed today on 3rd September 2024.

7) Ms. Chaudhari on instructions submits that, considering the opinion of Medical Board, the Petitioner and her mother have shown their inclination to continue the pregnancy and take it to its full term. Ms. Thakur submitted that, appropriate orders in the interest of justice may be passed considering the findings and opinion of the Medical Board.

8) Conscious of the right of Petitioner to reproductive freedom, her autonomy over the body and her right to choice and having considered the findings and opinion of the Medical Board, we permit the Petitioner to medically terminate the pregnancy, if she so desires. However since she has expressed her willingness and desire to continue with the pregnancy, she is fully entitled to do so. The present case squarely falls within the purview of the Explanation-2 to Section 3(2) of the M.T.P. Act read with Rule 3-B(a) and (b) of the M.T.P. Rules of 2003.

9) The Petitioner and her mother have indicated their desire that, the delivery procedure, etc. to be done in the K.E.M. Hospital, Mumbai, which is close to their residence and convenient to them. In these facts and circumstances, we issue the following directions:

- i) We permit the Petitioner to medically terminate the pregnancy, if she so desires.

ii) The finding of the Medical Board indicates that, the minor-Petitioner, in her current state of health is not fit for undergoing the procedure as opined by the specialist and she needs to be stabilized and reevaluated for fitness, which can be done in 2-3 weeks. It is only thereafter that, the termination procedure can be done. Thus in case, the Petitioner opts to terminate the pregnancy, the procedure shall be carried out only at such time as advised by the doctors concerned with the procedure.

iii) The Hospital shall also provide post-delivery care to the Petitioner including neo-natal care for the baby, if so required. Considering that, the Petitioner is a victim of sexual abuse, the Hospital Authorities shall also provide for counseling, post-delivery.

iv) Given that there is an allegation of sexual assault, the Authorities of the Hospital will preserve the appropriate tissue/DNA sample of the fetus/child after its birth and forward the same to the Investigating Officer for ensuing criminal trial.

v) In the event that the Petitioner desires to give the child in adoption after the delivery, the State and its agencies will assume responsibility of the child and take such steps as necessary to rehabilitate the child including exercising the option of placing the child in foster care/adoption by following the due legal process. This shall not however be construed as a direction of this Court binding

the Petitioner and the State shall abide by the wishes as expressed at the appropriate stage.

10) The Petition is allowed in the aforesaid terms.

11) All concerned to act on the production of authenticated copy of this order.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

12) While we allow the present Petition, we find the predicament of young women finding themselves in these situations disturbing. Their plight in dealing with the situation, without support from their families and more importantly the partner, who is equally responsible for the situation, is disquieting. It is distressing to see the victim being left alone to fend for herself while understanding the nuances of the pregnancy itself, accepting the anatomical changes brought about by the pregnancy, the dilemma of disclosing the fact to her parents and the partner leading to the pregnancy advancing beyond 24 weeks and thereby compelling her to approach the Court for permission to terminate the pregnancy, facing a Medical Board alone and finally undergoing the procedure of either termination or the delivery all by herself.

13) In our recent Order dated 8th July 2024 passed in Civil Writ Petition No. 8920 of 2024, we had already expressed our anguish in respect

of the difficult circumstances in which women such as the Petitioner find themselves. We were hopeful that the Government would address this complexity by devising proactive measures and putting in place an effective mechanism to provide much needed succor to the women victims.

14) We now intend to ensure that, the victims are not left without support to face the challenges presented by such pregnancies. We thus deem it appropriate to appoint *amicus curiae* to assist the Court in its endeavor to determine a suitable mechanism so as to facilitate involvement, accountability and participation of the partner in these testing times of the women.

15) We have thus requested Dr. Abhinav Chandrachud, learned counsel to assist us in regard to the aforesaid issue.

15.1) The Registry is directed to supply a copy of complete compilation of present Petition alongwith the report of Medical Board. We request Dr. Chandrachud to submit his note within a period of two weeks from today.

16) List the matter on 20th September 2024 for further consideration.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

Digitally signed
by GITALAXMI
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KOTAWADEKAR
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