

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION**

WRIT PETITION NO.13228 OF 2017

Gausiya Gulam Pathan	Petitioner
vs	
Union of India & ors ..	..Respondents

Ms.Meenaz Kakalia for Petitioner
Mr.Y.R.Mishra a/w Mr.N.R.Prajapati for Respondent-Union of India
Mr.S.L.Babar AGP for State-Respondent no.2

***Coram : SHANTANU S.KEMKAR AND
G.S.KULKARNI, JJ
Date : 5 DECEMBER 2017***

P.C.

Heard learned counsel for the parties. With consentm finally disposed of.

2. The Petitioner who is a 13 year old girl and a victim of alleged rape and sexual abuse has preferred this writ petition seeking direction for allowing her to terminate the pregnancy which is of more than 25 weeks.

3. On 30.11.2017 while issuing notice to the respondents, this Court constituted a Committee of Experts of K.E.M.Hospital Mumbai to medically examine the petitioner and

submit a report. As per directions of this Court the Expert Committee consisting of (1) Dr.Avinash N.Supe, Director (Medical Education and Major Hospitals) and Dean (G&K)-Chairman (2) Dr.Ajita Nayak, Professor, Psychiatry, K.E.M.Hospital (3) Dr.Amar Pazare, Professor and H.O.D. Medicine, K.E.M.Hospital (4) Dr.Indrani Hemantkumar Chincholi, Professor and H.O.D.Anesthesia K.E.M.Hospital (5) Dr.Y.S.Nandanwar, Ex-Professor and H.O.D. Obstetrics & Gynecology, L.T.M.M.C and L.T.M.G.Hospital (6) Dr.Padmaja Samant, Addl. Professor, and Unit Head, Obstetrics & Gynecology, K.E.M.Hospital (7) Dr.Hemangini Thakkar, Addl.Professor, Radiology K.E.M. Hospital and (8) Dr.Ruchi Nanavati Prof & H.O.D. Neonatology, K.E.M.Hospital has been constituted by the said hospital. The Petitioner appeared before the said Medical Board. The Medical Board on examination has submitted its opinion. The salient features of the said opinion reads thus:

“(a) On the other hand, pregnancy at this stage (especially with this patient's challenges) is known to cause severe detrimental effects on the physical and psychological health and emotional well being of a young girl.

(b) Continuation of pregnancy may pose additional risk of conditions like pregnancy- induced hypertension. (Known to occur in very young pregnant patients) It is the 2nd most common cause of maternal mortality.

(c) The patient has also been anaemic and was transfused blood to correct the same. Anemia is another important cause of maternal mortality.

Thus, we submit that continuation of pregnancy is likely to cause severe physical and mental consequences for the patient.

(d) The mental trauma of childbirth will be the same regardless of whether the pregnancy is continued but the guilt of abandoning a fully-grown neonate will be additional in case of continuation of pregnancy.”

4. The said opinion is taken on record and marked as **Exhibit 'X'** for identification. The said report/opinion is suggestive of the fact that the termination of the pregnancy at this stage of 25 weeks and three days or delivery at term will have equal risk to the mother. It also suggests that it would be in the interest of the (patient) petitioner that the pregnancy is to be terminated at it may pose danger to the risk on conditions like hypertension and cause of maternal mortality.

5. Considering the age of the petitioner which is only 13 years, the trauma she has suffered because of sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by this Court, and also having due regard to the fundamental rights conferred under Article 21 of the Constitution of India to live life of dignity, it will be appropriate and in the interest of justice to permit the petitioner to undergo the medical termination of pregnancy under the provisions of the

Medical Termination of Pregnancy Act, 1971. Such fundamental right as conferred on the petitioner would not allow her to lead and live a life of misery.

6. Accordingly, we allow the petition and direct the petitioner to remain present in the said hospital tomorrow i.e. 6.12.2017 so that the termination of pregnancy can be carried out within a day or two by the expert team.

7. The learned AGP is directed to apprise the Dean of the said Hospital so that appropriate arrangements for the termination of the pregnancy can be done.

8. In addition, we direct the Law Officer of the Municipal Corporation of Greater Mumbai to inform the said Hospital about passing of this order.

9. Parties to act on an authenticated copy of this order.

10. With aforesaid directions, petition is allowed in aforesaid terms.

11. We are passing this order keeping in view the law laid down by the Supreme Court in case of **MURUGAN NAYAKKAR VS**

UNION OF INDIA & ORS decided on 6.9.2017 in Writ Petition (s)
Civil No. (s) 749 of 2017.

(G.S.KULKARNI, J)

(SHANTANU S.KEMKAR,J)