IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5804 OF 2018

1 Manali Nitin Nimbhorkar
Age: 23 years, Occu.: Household,
R/o.Reshmai Plaza, Plot No.4,
Jagrut Nagar Housing Society, Jalgaon,
Tal. & Dist.Jalgaon. Petitioner

Versus

1 The Union of India
Through Secretary,
Ministry of Health,
Nirman Bhavan, New Delhi.

2 The State of Maharashtra,
Through Secretary,
Health & Family Welfare Department,
Mantralaya, Mumbai 32.

3 Chief Medical Officer,
Civil Hospital, Jalgaon,
District Jalgaon. Respondents

Mr.S.P.Brahme, advocate for the petitioner
Mr. A.B. Girase, Government Pleader for Respondent State.
Mr.D.G.Nagode, Advocate for Respondent No.1

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CORAM : **R.M. BORDE AND**
A.M. DHAVALE, JJ

DATE : 19th JUNE, 2018

ORAL JUDGMENT :-

(Per R.M.Borde, J.)

1 Heard.

2 Rule. With the consent of the parties, petition is taken-up for final disposal at admission stage.

3 The petitioner is praying for issuance of directions, permitting the petitioner to terminate pregnancy carried by her which is stated to be more of than 20 weeks duration.

4 It is the case of the petitioner that on preliminary investigation conducted by the consulting Radiologist and Sonologist on 11.6.2018, certain deformities were reported. The consulting Radiologist reported that the gestation period is of 21 weeks 2 days and foetus has complex cardiac anomaly, requiring fetal echo study at higher center. On further examination, the evidence of complex cardiac anomaly was noticed. Considering the request of the petitioner, she was referred for the medical examination by the Board, constituted at Medical College and Hospital, Aurangabad. The Committee of medical experts examined the petitioner on 15.6.2018. The Committee consisted of following experts:-

(i) Head of OBGY department

(ii) Head of Radiology Department

(iii) Head of General medicine Department

(iv) Head of General Surgery Department

(v) Medical Superintendent.

(vi) Psychiatrist

5 It is reported by the Committee as noted below:-

" 1 From general medical examination she has no active medical complaints.

2. Obstetric examination her vital parameters are within normal limits with 22 weeks of pregnancy.

3. Ultrasonographic examination suggestive of single live intrauterine foetus of approximately 21 weeks 4 days s/o SLIUP with adequate liquor, variable lie ant placenta with foetal heart – four chembered view distorted hypoplastic left atrium left ventricle & LVOT, Right ventricle appears grossly dilated, large VSD is noted measuring 5.2 mm (Report attached).

4. On psychiatric examination, clinically she is of average intelligence. No active current psychopathology. Her concept and judgment are intact. She is aware about the incident and the consequences about the continuation of pregnancy.
1. Current pregnancy, on clinical and ultrasonographical examination is around 21 weeks, four days of gestation. Four chembered view distorted hypoplastic left atrium, left ventricle & LVOT, Right ventricle appears grossly dilated, large VSD is noted measuring 5.2 mm.
2. Her physical and Mental Health is within normal limits.
3. The length of pregnancy 21 weeks 4 days.
4. Whether the continuance of Pregnancy would involve risk to the life of

the pregnant woman or grave injury to her physical or mental health ? - No.
5. Whether there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped ? - Complex congenital heart disease is a substantial risk involved in risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped and may be lethal.
6. Risk of termination of pregnancy is within normal acceptable limits. ”

6 Considering the report of the Medical Board, it would be in the interest of justice to permit the petitioner to carry out the procedure of medical termination of pregnancy.

7 This Court, in the matter of **Shaikh Ayesha Khatoon versus Union of India and others** (reported in 2018 (3) Mah. L.J. 486) has interpreted provisions of sections 3 and 5 of the Act of 1971. It is held by the Division Bench of this Court that clauses (i) and (ii) of subsection 3 (2)(b) will have to be read in section 5 except the bar of limitation as provided in subsection 3(2)(b) of the Act of 1971. In paragraph Nos.22 and 23 it is recorded as below:-

“22 In the instant matter, on reading of section 5 of the Act of 1971, it does transpire that the contingencies and the parameters laid down in clauses (i) and (ii) of sub-section (2)(b) of section 3 shall have to be read in section 5 except the bar of limitation as provided in section 3(2)(b) of the Act of 1971. It would not be

appropriate to overlook the contingencies laid down in clauses (i) and (ii) of sub-section (2)(b) of section 3 while considering the request of a pregnant woman for termination of the pregnancy if the conditions laid down in clauses (i) and (ii) of sub-section 2(b) of section 3 are satisfied it would provide a good ground for exercise of jurisdiction under section 5 of the Act of 1971.

23. The Ministry of Healthy and Family Welfare, Government of Maharashtra has prepared the MTP (amendment) Bill and the Notification in that regard was published on 29.10.2014. The State Government has proposed amendment to section 3 of the Act of 1973 and clause (C) is proposed to be added which reads thus:

" (C) the provisions of subsection (2) of section 3 as relate to the length of the pregnancy shall not apply to the termination of a pregnancy by a registered health care provider where the termination of such pregnancy is necessitated by the diagnosis of of any of the substantial foetal abnormalities as may be prescribed. "

8 The petitioner is permitted to undergo the procedure of medical termination of pregnancy at medical facility of her choice. The petitioner undertakes to report to the approved center for carrying out the procedure of medical termination of pregnancy within three days from today. The procedure shall be carried out under the supervision and guidance of two experts in Obstetrics & Gynecology.

9 It is clarified at this stage that the petitioner has been sensitized by the committee about the risk factors involved and

it would be open for the petitioner to undergo the procedure of medical termination of pregnancy at her own risk and consequences. It is further made clear that the Doctors who have put their opinion on record shall have the immunity in the event of occurrence of any litigation arising out of the instant petition.

10 Rule is accordingly made absolute.

11 There shall be no order as to costs.

12 Parties to act upon authenticate copy of this order.

(A.M. DHAVALE, J) (**R.M. BORDE, J**)

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