

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9971 OF 2018

Nikita Vishal Somwanshi
Age: 21 years, Occu.: Housewife
R/o: Padegaon, Aurangabad
Dist. Aurangabad.

...PETITIONER

Versus

1. The Union of India
Through the Secretary
of Ministry of Law and Justice
Shastri Bhawan, C-Wing,
New Delhi - 110001
2. The State of Maharashtra
Through the Principal Secretary
Public Health Services,
Mantralaya, Mumbai - 22
3. Union of India
Through its Secretary,
Ministry of Health and Family Welfare
M. H. Division, New Delhi
4. The Govt. Medical College, Aurangabad
Through its Superintendent

... RESPONDENTS

Mr. Shaikh Samir Ahmad Saifuddin, Advocate for the Petitioner.
Mr. S.W. Munde, AGP for Respondent/State.
Mrs. Sudha Kulthe, Advocate for Respondent No.1.

**CORAM : R.M. BORDE &
MANGESH S. PATIL, JJ.**
DATE : 06.09.2018

JUDGMENT: *(Per Mangesh S. Patil, J.)*

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the petition is taken up for final disposal at the stage of admission.

2. The petitioner is a married women who is 20 weeks and 5 days pregnant on the date of the petition. She is praying for an appropriate writ directing the respondents to permit her to undergo medical termination of pregnancy. According to her she had undergone sonography in order to evaluate anomalies at Tapadia Diagnostic Centre on 25.08.2018 and following observations were noticed during such evaluation.

“1] Face and eye balls appear normal on usg.

2] Lemon shaped skull seen, bilateral lateral Ventricles appeared dilated, diameter at level of atria 12-13 mm, Cerebellum and posterior fossa structures are ill defined, hypoplastic.

3] stomach bubble is seen in thorax, pushing cardiac apex towards right, heart appeared compressed s/o diaphragmatic hernia, 4 chambered heart seen, 3 VESSEL VIEW seen

4] Anterior abdominal wall appeared normal

5] Kidneys/bladder are normal.

6] E/O large bifida defect seen in lumbosacral region with

associated cystic structure s/o myelomeningocele

Biometry

B.P.D. 44.5 mm 19 wks 3 days

H.C. 170.2 mm 19 wks 4 days

A.C. 135.8 mm 19 wks 0 days

F.L. 32.9 mm 20 wks 2 days

Avg GA- 19 wks 4 days. Foetal weight – 303 gms, EDD – 15/01/2019

Bilateral uterine flow appears normal.”

The concerned Sonologist has further opined as under:

“Impression – 19 weeks 4 days single live intrauterine pregnancy with changing presentation with Arnold chiari malformation, diaphragmatic hernia.”

3. She has further confirmed such anomalies by undergoing another sonography at M.G.M. Hospital on 27.08.2018 and identical findings were noted with a similar impression.

4. By the order dated 30.08.2018 this Court had constituted a Medical Board consisting of:-

- (1) Head of the Obstetrician & Gynecology department
- (2) Head of the Radiology Department
- (3) Head of General Medicine Department
- (4) Head of General Surgery Department
- (5) Medical Superintendent

(6) Psychiatrist.

5. It was directed that the Medical Board shall conduct thorough examination and to submit a report today and the petitioner was asked to appear before the board on 01.09.2018. Pursuant to such directions today the learned A.G.P. submits the report in a sealed cover. The board consisting of following experts was constituted:

1. Dr. Bharat Sonwane (Chairman), Medical Superintendent, GMCHA
2. Dr. Prashant Bhingare (Member), Asso. Prof, OBGY
3. Dr. Anjali Dahiphale (Member), Asso. Prof, Radiology
4. Dr. Jirvankar (Member), Asso. Prof, Medicine
5. Dr. Sanjay Ghuge (Member), Head of Dept. Psychiatry
6. Dr. Suresh Harbade, (Member), Asso. Prof. Surgery
7. Dr. Rashmi Bangali (Member), Asso. Prof. Anaesthesia
8. Dr. Trupti Joshi (Member), Asso. Prof. Pediatrics

It has submitted the following findings:

“1] That the Length of Pregnancy is 20 weeks.

2] Lemon Shaped skull noted. Bilateral lateral ventricles appear dilated with max. diameter at atria = 1.2 cm

3] Cerebellum and posterior fossa structures appear hypoplastic.

4] Large bifid defect is noted in lumbosacral region with associated cystic structure measuring 1.6x2.2 cm s/o

meningo present.

5] Diaphragmatic hernia present.” and has submitted the opinion which reads as under:

“Taking into consideration the above findings there is evidence of substantial risk to the fetus. Pregnancy can be terminated with due risk.”

6. The Division Bench of this Court in the case of **Shaikh Ayesha Khatoon vs. Union of India and others;** 2018 (3) Mh.L.J. 486 to which one of us was a party (R.M.Borde, J.) had an occasion to consider the provisions of Medical Termination of Pregnancy Act and it has been laid down in paragraph no.13 as under:

“13. It is further observed that ordinarily a pregnancy can be terminated only when a medical practitioner is satisfied that a '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' [as per section 3 (2) (b) (i) of the Act of 1971] or when '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' [as per section 3 (2) (b) (ii) of the Act of 1971]. It is true that Clauses (i) and (ii) of sub-section 2 (b) of section 3 are attracted in the case where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks. However, as has been recorded above section 5 permits termination of pregnancy by a registered medical practitioner in case where he is of opinion, formed in good faith, that the

termination of such pregnancy is immediately necessary to save the life of the pregnant woman. It shall also have to be construed that section 5 brings within its ambit the provisions of section 4 and so much of the provisions of sub-section (2) of section 3 of the Act of 1971 except the limitation in respect of length of the pregnancy of 20 weeks as provided in sub-section (2) (b) of section 3 of the Act of 1971. It would thus be logical to conclude that the contingencies referred in Clauses (i) and (ii) of sub-section (2) (b) of section 3 will have to be read in section 5 of the Act of 1971 and it would be relevant to consider the threat perception and substantial risk involved if the child were to born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. The contingencies laid down in Clauses (i) and (ii) of sub-section (2) (b) of section 3 shall therefore equally apply to the request of a pregnant woman seeking permission to terminate the pregnancy beyond 20 weeks and accordingly section 5 (1) will have to be construed, to meet the object and purpose of enactment and to promote cause of justice.”

7. Considering the law laid down by the Division Bench in the case of **Shaikh Ayesha Khatoon (supra)** and in view of the finding of the Medical Board constituted by this Court referred to herein-above, it is apparent that there is evidence of substantial risk to the foetus which necessitates termination of pregnancy.

8. The Writ Petition is allowed. The petitioner is allowed to undergo medical termination of pregnancy at registered medical center of her choice or at Government Medical College and Hospital, Aurangabad and at her expenses and under supervision of expert Obstetrician and Gynecologist.

9. The Rule is made absolute in above terms.

[MANGESH S. PATIL, J.]

[R.M. BORDE , J.]