

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

WRIT PETITION NO.11651/2018

“X”

.. PETITIONER

VERSUS

1] The Union of India
through its Secretary
Public Health & Administration
New Delhi.

2] The State of Maharashtra
through its Secretary,
Public Health Department
Mantralaya, Mumbai-400 032.

3] The Dean,
Government Medical College &
Hospital, Ghati, Aurangabad. .. RESPONDENTS

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Mrs.Sabahat T. Kazi, Advocate for petitioner.

Mrs.S.C.Kulthe ASG for respondent no.1

Mrs.G.L.Deshpande, AGP for respondent nos.2 and 3.

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**CORAM : R.M.BORDE &
MANGESH S. PATIL,JJ.
DATE : 23/10/2018**

ORAL JUDGMENT : [PER R.M.BORDE,J.] :-

Heard. Rule. By consent of the parties, the Rule is made returnable forthwith and Petition is taken up for final hearing and disposal at the admission stage.

2] The petitioner is a pregnant lady and is praying for issuance of directions to the respondents to conduct the procedure of termination of pregnancy since on Sonological examination, certain deficiencies were noticed in the fetus. The pregnancy carried by the petitioner is stated to be of 23 weeks and 3 days duration as on 23/10/2018. It is noticed on examination of the petitioner/pregnant lady by Sonologist on 9/10/2018 that the fetus is carrying certain anomalies. The opinion recorded by the Sonologist is as below :

“OPINION :

Single live intrauterine pregnancy of 22 weeks 1 day with F/s/o complex congenital heart disease in the form of :

-Large VSD

-Pulmonary stenosis with hypoplastic pulmonary artery.

*Fetus may not survive or may need complex heart surgery in future after birth”.

3] In order to conduct in depth investigation and to secure expert advice, the petitioner was referred to the Medical Board constituted at Government Medical College and Hospital, Aurangabad consisting of 9 expert doctors specialized in different medical specialities. The petitioner was examined by the Medical Board and on examination, the Board has reported as follows :

“1] Length of Pregnancy is 23 weeks 3 days.

2] On obstetric ultra sonography dated 19/10/2018 following findings are noted :

Large Ventricular Septal Defect with pulmonary Stenosis and overriding of aorta and possibility of Tetralogy of Fallot.”

4] It is further reported that taking into consideration the above findings, there is evidence of substantial risk to the fetus. Pregnancy can be terminated with due risk.

5] Section 3 of the Medical Termination of Pregnancy Act, 1971 prescribes outer limit of 20 weeks for undergoing procedure of termination of pregnancy. In view of Section 3 of the Act, pregnancy can be terminated by a registered medical practitioner in case 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. Though Section 3 of the Act of 1971 prescribes outer limit of 20 weeks for

undergoing procedure of termination of pregnancy, in certain circumstances enumerated in Section 5 of the Act, an exception is carved out and it can be inferred that termination of pregnancy in certain circumstances beyond 20 weeks may be permitted which inference has been drawn on analysis of above noted Section by Division Bench of this Court while deciding a Writ Petition presented by one **Shaikh Ayesha Khatoon V/s Union of India and others reported in 2018 SCC Online Bom 11**. It is observed in paragraph no.13 of the judgment as quoted below :

“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) or the Act of 1971). It is true that Clauses (i) & (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)&(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) & (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.”

6] This Court has adopted a view that the provisions of Section 3 of the Act so far as it relates to the circumstances enabling the pregnant woman to undergo medical procedure of

termination of pregnancy as recorded in sub-section (b)(i) and (ii) of Section 3 are attracted and shall have to be read as part of Section 5 of the Act.

7] Considering the aspects as noted above, it would be permissible for this Court to exercise jurisdiction and consider the request of the petitioner. The Medical Board has reported certain fatal anomalies and has further reported in clear terms that there is an evidence of substantial risk to the fetus. The petitioner shall have to be permitted to undergo the procedure of termination of pregnancy by a registered medical practitioner or at the Government Medical College and Hospital, Aurangabad.

8] The petitioner undertakes to report to the Government Medical College and Hospital, Aurangabad for carrying out the procedure of medical termination of pregnancy either on 24th or 25th of October 2018. The procedure shall be carried out under the supervision of expert Gynecologist and Obstetrician.

9] It is clarified at this stage that the petitioner has been sensitized by the Committee/Medical Board 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 opinions 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. There shall be no order as to costs.

11] Parties to act upon authentic copy of this order.

(MANGESH S. PATIL,J.) (R.M.BORDE,J.)

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