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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2020 OF 2018**

Rupali Chetan Kumbhar

...Petitioner

Vs.

Union of India and Ors.

...Respondents

Ms. Minaz Kakalia for the Petitioner.

Mr. Sandeep Babar, AGP for respondent no. 2 State.

Mrs. Purnima Awasthi a/w Mr. Ashok Varma for respondent nos. 1 and 3 Union of India.

CORAM : SHANTANU KEMKAR &**M.S. KARNIK, JJ.****DATE : MARCH 01, 2018****P.C.:**

Petitioner Rupali Chetan Kumbhar has approached this court under Article 226 of the Constitution of India seeking direction to the first respondent to produce a report of the appropriate committee which may be constituted by this court for examination of the petitioner and for submitting its report as to whether the petitioner can be allowed to get the pregnancy terminated.

2. According to the petitioner, pregnancy has gone upto 24 weeks which is beyond the permissible period of 20 weeks, in the circumstances, petitioner has approached this court.

3. On 21.2.2018 while issuing notice to the respondents, this court

has directed constitution of the committee consisting of various experts from Sir JJ Group of Hospitals, Mumbai. The said Committee after examining the medical reports submitted by the petitioner and after conducting various tests upon her, submitted its report. The relevant portion of the report of the said expert committee reads thus:

“THE COMMITTEE AFTER EXAMINATION AND CAREFUL STUDY OF MULTIPLE SONOGRAPHY REPORTS, HAS CONFIRMED THAT THE FETUS HAS A NEUROLOGICAL ABNORMALITY IN THE FORM OF :

- 1. ABSENCE OF CAVUM SEPTUM PALLUCIDUM*
- 2. SQUARING OF FRONTAL HORNS OF BOTH LATERAL VENTRICLES*
- 3. AGENESIS OF CORPUS CALLOSUM*
- 4. COLPOCEPHALY*
- 5. SEPTO OPTIC DISPLASIA CANNOT BE RULED OUT.*

THIS CAN RESULT IN :

- 1. DELAYED DEVELOPMENT.*
- 2. RESISTANT EPILEPSY*
- 3. INTELLECTUAL IMPAIRMENT*
- 4. PSYCHOSIS*
- 5. VISUAL DEFECTS*
- 6. SPASTICITY/CEREBRAL PALSY*
- 7. AUTISM/ADHD/DYSLEXIA*

SUCH CASES ALSO MAY BE ASSOCIATED WITH:

- 1. MIGRATIONAL DISORDERS*
- 2. PVL*
- 3. INTRAVENTRICULAR HAEMORRHAGE*
- 4. MICROCEPHALY OR HYDROCEPHALUS*
- 5. VARIOUS SYNDROMES LIKE AIRCARTER SYNDROME AND OTHERS.*

THUS THE CONDITION OF FETUS FULFILL THE CRITERIA OF “SUBSTANTIAL RISK OF SERIOUS PHYSICAL HANDICAP.” THE PREGNANCY HAS ADVANCED UPTO 24 WEEKS AND IS BEYOND 20 WEEKS CUT OFF OF MEDICAL TERMINATION OF PREGNANCY ACT. HENCE, SHE HAS APPROACHED THE HONOURABLE COURT FOR TERMINATION OF PREGNANCY.

IF THE HONOURABLE COURT PERMITS PREGNANCY CAN BE TERMINATED AS DESIRED BY PREGNANT WOMAN. THE RISK OF TERMINATION OF PREGNANCY IS NOT GOING TO BE MORE THAN THAT OF NORMAL LABOUR.”

4. We have gone through the said opinion which includes

opinion of the various expert doctors including Dr.Ashok Anand, Professor and Head, Dept of OBGY, GGMC, Mumbai, Dr. V.P. Kale, Professor and Head, Dept of Psychiatry, GGMC, Mumbai, Dr. Shilpa Domkundwar, Professor and Head, Dept of Radiology, GGMC, Mumbai, Dr. Bela Varma, Professor and Head, Dept of Pediatric, GGMC, Mumbai, Dr.Kamlesh Jagyasi, Dr. Kamlesh Jagyasi, Professor and Head, Dept of Neurology, GGMC, Mumbai. It appears that the Committee has reached the conclusion that there would be substantial risk of serious physical handicap.

5. Having regard to the aforesaid, it is very difficult for us to refuse permission to the petitioner to undergo the medical termination of the pregnancy. It is certain that if the petitioner is allowed to give birth to foetus, there is substantial risk of serious physical handicap.

6. In view of the above peculiar circumstances and having due regard to the fundamental right conferred on the petitioner 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 medial 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.

7. The learned AGP as also the learned counsel for the Union of

India have not opposed the petitioner's prayer on any ground, legal or medical. We order accordingly.

8. We further direct that the termination of the petitioner's pregnancy to be performed within three days by the expert doctors of Sir, J.J. Group of Hospital, Mumbai where she has to undergo medical check up.

9. The termination of the pregnancy will be supervised by the Committee/Medical Board constituted by this court which shall maintain the complete report of the procedure which would be performed on the petitioner at the time of termination of the pregnancy.

10. We also make it clear that in the event of any problem in connection with the medical termination of the pregnancy, the doctors of the Medical Board shall have immunity in law.

11. Petitioner shall bear the cost of the operation and other expenses.

12. With the aforesaid directions, petition is disposed of.

13. Parties to act on authenticated copy of this order.

(M.S. KARNIK, J.)

(SHANTANU KEMKAR, J.)