

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4184 OF 2018

Fanta Rupesh Soni ...Petitioner
vs.
Union of India and Others ...Respondents

Ms. Meenaz Kakalia, for the Petitioner
Mrs. Purnima Awasthi a/w. Mr. Dhanesh Shah, for Respondent
Nos. 1 and 3.
Mr. C.P. Yadav, AGP for the Respondent-State.

**CORAM : SHANTANU KEMKAR &
MAKARAND KARNIK, JJ.**

DATE : APRIL 10, 2018

P.C.:

. The Petitioner 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 23 weeks which is beyond the permissible period of 20 weeks, in the circumstances, petitioner has approached this Court.

3. On 5th April, 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 various experts of the Medical Board after examining the Petitioner had noted their observations in the said report. The observations consists of Dr. Ashok Anand, Dr. K.N. Bhosale, Dr. Shilpa Domkundwar, Dr. V.P. Kale and Dr. Bela Varma. The Committee examined the observations made by all the Doctors and has given its opinion which reads thus:

“After carefully taking history, careful examination and after going through various Ultrasonography reports, opinion of Psychiatrist, Paediatrician as well as Head of the Cardiothoracic department, the Committee is of opinion that the fetus suffers from congenital abnormality where the limbs are short and there is hypoplasia of mandible as well.

This condition can also be associated with other congenital and chromosomal abnormalities. The mother is severely stressed because of status of the fetus and possible out come.

She desires termination of pregnancy in the view fetal condition.

The pregnancy is advanced to 23 weeks, well

beyond permissible limit of 20 weeks of pregnancy. Hence, the permission for termination can only be granted by Hon'ble High Court.

Hence, if the Hon'ble High Court decides to terminate the pregnancy in the view of fetal condition, pregnancy can be terminated with the due risk of termination of pregnancy to mother”.

4. We have gone through the said opinion which includes opinion of the various expert doctors including Dr. Ashok Anand, Professor & Head, Department of Obstetrics & Gynaecology, Dr. V.P. Kale, Prof. & Head, Dept. of Psychiatry, Dr. K.N. Bhosale, Prof. & Head of C.V.T.S., Dr. Shilpa Domkundwar, Prof. & Head, Dept. of Radiology and Dr. Bela Varma, Prof. & Head, Dept. of Paediatrics of Sir J.J. Group of Hospital, 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 fetus, 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 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.

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.

(MAKARAND KARNIK, J.)

(SHANTANU KEMKAR, J.)