

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 5145 OF 2018**

“X” Through Her Mother and Natural Legal
Guardian

.... Petitioner

Versus

Union of India, through the Secretary and Ors. ... Respondents

Ms. Saranga Ugalmugle for the petitioner.

Ms. Purnima Awasthi a/w Mr. A.R. Verma for respondent nos. 1
and 3.

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

Smt. Maya Sawant for Rainbow Home, Pune (NGO) present.

**CORAM : SHANTANU KEMKAR &
M.S. KARNIK, JJ.**

DATE : MAY 04, 2018

P.C.:

Petitioner claims to be 13 years old girl. She is victim of alleged rape and sexual abuse. She has preferred this writ petition seeking direction for allowing her termination of pregnancy which is now more than 26 weeks which is beyond the permissible limit of termination of pregnancy i.e. 20 weeks. On 27th April, 2018 this court directed the Medical Board comprising of specialists of B.J. Medical College and Hospital, Pune. The report from the said

hospital was received which was examined by this court on 25/4/2018 and on 27/4/2018. After examining the report in detail, this court vide order dated 27th April, 2018, issued the following directions :

“4. In pursuance of the said order, the report of the Dean has been produced before us. We have gone through the said report. Having gone through the said report and the earlier report, we find that there is no clear opinion as to whether there would be any risk to the life of the petitioner if pregnancy is terminated or whether it would be advisable to continue with the same and to deliver the child after completion of normal period of pregnancy. We are making this observation keeping in view the fact that the petitioner is a girl aged only 13 years and is a rape victim. The trauma which she has to suffer because of the alleged sexual abuse and agony which she is going through at present and she will continue to go through all along her life, has also to be taken into consideration. In the circumstances, instead of closing the matter at this stage, we deem it appropriate to get the petitioner once again examined by the Medical Board of Sir JJ Group of Hospitals, Mumbai. We request the Dean of the said College/Hospital to constitute the medical board consisting of Dean of the said Sir J.J. Group of Hospitals, Head of the Department (Gynaecology), Professors and Head of Department of Paediatric Cardiac, Cardiac Surgeon, Professors of Head of Department of Radiology had Psychology, a Cardiologist and any other expert in the field. The Medical Board shall give its express opinion as to whether considering the overall facts including the age of the petitioner, it would be advisable to get the pregnancy terminated or not. Let the petitioner appear before the Medical Board of Sir JJ Group of Hospitals, if she so desires, within four days from today. The report be submitted by the Medical Board on or before the next date of hearing.”

2. In pursuance to the said directions, the Medical Board of Sir JJ Group of Hospitals Examined the petitioner. The Medical Board of Sir J.J. Group of Hospitals has submitted its report consisting of the opinion of various experts of the Medical Board which was constituted by the Dean of the said College in terms of the aforesaid order passed by this court. The final opinion of the Committee reads thus :

“AFTER TAKING HISTORY, CAREFUL EXAMINATION, ULTRASONOGRAPHY EXAMINATION AND PSYCHIATRIC EVALUATION THE COMMITTEE HAS COME TO THE OPINION THAT ALTHOUGH THERE IS NO ABNORMALITY DETECTED AT PRESENT IN THE FETUS AND THE MOTHER CONSIDERING THE AGE OF MOTHER THAT IS 13 YEARS, IT IS NOT ADVISABLE TO CONTINUE THE PREGNANCY, MOTHER (MINOR) IS EXTREMELY ANGUISHED WITH THE PREGNANCY, CONTINUATION OF PREGNANCY MAY ENDANGER THE LIFE OF MOTHER (MINOR). SHE IS LIKELY TO DEVELOP, PREGNANCY RELATED COMPLICATIONS LIKE ANEMIA, PREGNANCY INDUCED HYPERTENSION, AS WELL AS COMPLICATIONS DURING LABOUR AND ITS PSYCHOLOGICAL IMPACT ON MINOR MOTHER.

MOTHER (MINOR) AND HER MOTHER BOTH HAVE EXPRESSED DESIRE TO TERMINATE THE PREGNANCY AND BOTH ARE MADE AWARE OF THE DANGERS OF CONTINUATION OF PREGNANCY AS WELL AS TERMINATION OF PREGNANCY. SINCE THE PREGNANCY HAS ADVANCED TO 26 WEEKS, WELL BEYOND THE LEGAL LIMIT OF TERMINATION OF PREGNANCY THAT IS 20 WEEKS, THE TERMINATION CAN ONLY BE DONE WITH HONOURABLE HIGH COURT PERMISSION.

AS 26 WEEKS OF GESTATION, TERMINATION OF PREGNANCY ALSO CARRIES RISK TO MOTHER (MINOR). HOWEVER, CONTINUATION OF PREGNANCY WOULD BE RISKIER. HENCE, IT IS ADVISABLE TO TERMINATE THE PREGNANCY.

Sd/-

Sd/-

Sd/-

Sd/-

Dr. Ashok Anand
Professor and Head,
Dept of OBGY
CGMC, Mumbai.

Dr. Matghili Umate
Aasso. Professor
Dept of Psyychiatry
GGMC, Mumbai.

Dr.Subhash Walinjkar
Aasso. Professor
Dept of Pediatrics,
GGMC, Mumbai.

Dr. Suraj Nagre,
Asst. Professor,
Dept of C.V.T.S.
GGMC, Mumbai.”

3. Having gone through the aforesaid report, it is clear that the Committee of the Expert Doctors are of the opinion that it is not advisable to continue the pregnancy. It is also clear that as per the report of the Psychiatrist the petitioner who is aged 13 years is extremely anguished with the pregnancy. The report states that continuation of pregnancy may endanger the life of the petitioner who is minor of 13 years. There is every likelihood to develop pregnancy related complications like anemia, pregnancy included hypertension as well as complications during labour and its psychological impact on minor mother. It appears that the Committee had interacted with the petitioner (minor) and her mother and both of them have expressed desire to terminate the pregnancy. They were made aware of the dangers of the continuation of pregnancy as well as termination of pregnancy.

4. Having regard to the aforesaid as also taking into consideration that the petitioner is 13 years of age, the trauma she has suffered because of the alleged sexual abuse and agony which she is going through at present and she will continue to go through all along her life, and above all the report of the Medical

Board and also having due regard to the fundamental rights conferred 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.

5. Accordingly, we allow the petition and direct the petitioner to remain present in Sir JJ Group of Hospitals, tomorrow i.e. 5th May, 2018, so that the termination of pregnancy can be carried out within a day or two by the expert team.

6. The learned AGP is directed to apprise the Dean of the said Hospital so that appropriate arrangements for the termination of the pregnancy can be done.

7. 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 or the doctors performing the procedure, shall have immunity in law.

8. The necessary expenses, if any will be borne by the NGO Rainbow Home, Pune as stated by the representative of NGO Smt. Maya Sawant. We record the said statement.

9. With the aforesaid directions, petition is disposed of.
10. Parties to act on authenticated copy of this order.

(M.S. KARNIK, J.)

(SHANTANU KEMKAR, J.)