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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10583 OF 2018

XYZ. ... Petitioner.
V/s.
Union of India and others. ...Respondents.

Ms.Meenaz Kakalia for the petitioner.
Mr.A.R.Varma and Mr.Anand Singh for respondent No.1.
Mr.Y.S.Khochare, AGP for respondent No.2.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 21st September 2018.

JUDGMENT : (PER A.S.OKA, J.)

1 The petitioner who is in 23rd week of pregnancy has moved this Court by way of this petition under Article 226 of the Constitution of India seeking permission for the termination of pregnancy. Under the order dated 18th September 2018, the petitioner's case was referred to a medical board. Accordingly, the medical board submitted a report. The report reads thus:

"AFTER CAREFUL EXAMINATION OF PATIENT AND STUDY OF ULTRASONOGRAPHY AND FETAL MRI REPORT, COMMITTEE CONFIRMS THAT FETUS HAS NEUROLOGICAL ABNORMALITIES IN THE FORM OF FINDINGS SUGGESTIVE OF DANDY WALKER

MALFORMATION AND RIGHT DIAPHRAGMATIC HERNIA
WITH SINGLE TIGHT LOOP OF CORD AROUND NECK.

THE CONDITION OF FETUS FULFILLS CRITERIA
OF SUBSTANTIAL RISK OF SERIOUS PHYSICAL
HANDICAP WITH VERY HIGH MORBIDITY AND
MORTALITY.

THE WOMAN HAS EXPRESS HER DESIRE TO
TERMINATE THE PREGNANCY AND IS WELL INFORMED
ABOUT THE NATURE OF THE CONDITION OF THE
FETUS AND ITS OUTCOME. SHE IS ANGUISHED WITH
THE CONDITION OF THE FETUS IN UTERO.

SINCE THE PREGNANCY HAS ADVANCED TO 23
WEEKS OF GESTATION, IT IS BEYOND 20 WEEKS CUT
OFF OF MEDICAL TERMINATION OF PREGNANCY ACT.

SHE HAS APPROACHED HONOURABLE COURT FOR
TERMINATION OF PREGNANCY.

IF THE COURT PERMITS, THE PREGNANCY CAN
BE TERMINATED AS DESIRED BY THE PREGNANT
WOMAN WITH DUE RISK."

2 The law on this subject is no longer *res-integra* as far as this Court is concerned. The law is laid down by a Judgment and Order dated 9th January 2018 in Writ Petition Stamp No.36727 of 2017. This Court considered the provision of the Medical Termination of Pregnancy Act, 1971 (for short

"the said Act of 1917") and in particular sections 3 to 5. Paragraph 13 of the said decision reads thus:

"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) & (ii) of subsection 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 subsection (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 subsection (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 subsection (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 subsection (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."**

(emphasis added)

3 Ultimately in paragraph 22, the Division Bench has held thus:

"22. In the instant matter, on reading of Section 5 of the Act of 1971, it does transpire that the contingencies and the parameters laid down in clauses (i) & (ii) of subsection (2)(b) of Section 3 shall have to be read in Section 5 except the bar of limitation as provided in Section 3(2)(b) of the Act of 1971. It would not be appropriate to over look the contingencies laid down in clauses (i) & (ii) of subsection (2) (b) of Section 3 while considering the request of a pregnant woman for termination of the pregnancy if the

conditions laid down in clauses (i) & (ii) of subsection (2)(b) of Section 3 are satisfied it would provide a good ground for exercise of jurisdiction under Section 5 of the Act of 1971."

4 There is no reason to dispute the opinion expressed by the medical board consisting of expert Doctors attached to Sir J.J.Group of Hospitals. Their opinion is that fetus has substantial risk of serious physical handicap with very high morbidity and mortality.

5 Hence, in view of the law laid down in the aforesaid decision, a case is made out to permit medical termination of pregnancy.

6 Hence, we pass the following order:

(i) We direct the petitioner to file on record of this petition within one week from today a true photocopy of Pan Card or Adhar Card or any other authentic photo identity document;

(ii) We permit the petitioner to undergo medical termination of her pregnancy in Sir J.J.Group of Hospitals, Mumbai. It will be open for the petitioner to report to the office of the Dean of the said hospital on Monday i.e. 24th Septemebr 2018 at 10.00 a.m. The petitioner will produce a copy of this writ petition along with annexure

and documents of identity which shall be verified by the concerned officers of the said hospital;

(iii) The authorities of the Sir J.J.Group of Hospital will make all arrangements to enable the petitioner to undergo medical termination of pregnancy;

(iv) Needless to add that the medical termination of pregnancy will be at the risk of the petitioner and the doctors who are members of the Medical Board and the doctors who will perform the procedure will enjoy immunity from any legal action arising out of this litigation;

(v) The petition is disposed of on the above terms;

(A.S.GADKARI,J.)

(A.S.OKA,J.)