

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.4160 of 2018
Date of Decision: 21.03.2018

Aarti Rani

. Petitioner

Vs.

State of Punjab and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Anant Kataria, Advocate,
for the petitioner.

Mr.H.S. Sitta, AAG, Punjab.

Ms.Nirmaljeet Kaur, Advocate,
for respondent No.3.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner was married to respondent No.3 on 2.9.2017 and conceived on 9.11.2017. Thereafter, the petitioner had some routine tests from Mata Kaushalaya Hospital, Patiala and Government Rajindra Medical College and Hospital, Patiala and found that she is a HIV positive patient. She was thus registered in HIV care vide registration No.P-9699 and ART registration No.PB-PTE-7946 on 5.1.2018 and was put on medicines by the doctors. It is alleged that respondent No.3, instead of looking after her, turned her out from the matrimonial home on 24.1.2018 and since then the petitioner is living with her old parents, who themselves are dependent upon their son. Not only this, respondent No.3 has also filed a divorce petition against the petitioner on 5.2.2018 in the Court at Patiala. The petitioner received the summons of the divorce petition for 26.3.2018. The petitioner

come to know that the divorce petition, filed by her husband, is on the ground that she is suffering from HIV positive. The petitioner also came to know that the child in her womb may also suffer from HIV positive which would result into a traumatic life for the child after his/her birth and her own health shall be at stake and that the stigma of being a patient of HIV would cause an adverse effect on her physical and mental health. The petitioner then decided to get the pregnancy terminated but since it was more than 12 weeks old, therefore, she could not have got it done otherwise than adverting to provision of the Medical Termination of Pregnancy Act, 1971 [for short 'the Act'] and has thus prayed that a direction may be issued to respondents No.1 & 2 to constitute a board of experts for the purpose of termination of her pregnancy as the foetus is already 14 weeks old.

After notice was issued, this Court passed an order on 12.3.2018, asking respondent No.2 to constitute a Board of Doctors, to opine as to whether it would be feasible to terminate the pregnancy of the petitioner at this stage. The said order is reproduced as under: -

“The petitioner has produced a report of the Board of Doctors addressed to the Principal, Government Medical College, Patiala, dated 3.3.2018, wherein they have opined that the petitioner has foetus of 14 weeks and 4 days as on 3.3.2018 and the termination of her pregnancy is feasible. The said report is taken on record.

There is no dispute that the petitioner is HIV Positive patient. Section 3 of the Medical Termination of Pregnancy Act, 1971 provides that a pregnancy may be terminated by the registered medical practitioner, where the pregnancy is of 12 weeks but not exceeding 20 weeks, and they are of the opinion, formed in good faith, that there is a substantial risk if the child is born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. So far, there is no evidence on record of the opinion formed by the Medical Board that the child in womb, if born, would also suffer from the disease of HIV Positive.

In order to satisfy the provisions of Section 3(2)(b)(ii) of the aforesaid Act, it would be just and expedient if an opinion be also obtained from the Medical Board that in case child is born, he would also suffer from physical or mental abnormality because the mother is HIV Positive or the child in womb or after birth would also suffer HIV Positive. The Principal, Government Collage, Patiala, is directed to constitute the Board

immediately on receipt of the copy of the order of this Court, so as to form an opinion in the light of the provisions of Section 3(2)(b)(ii) of the Act.

Adjourned to 15.3.2018.

Copy of this order be given dasti to learned counsel for the parties and the learned State counsel is directed to ensure the compliance of this order on or before the next date of hearing.

To be shown in the urgent list.”

Apropos, respondents No.1 & 2 submitted their report on 3.3.2018 in which the following observations have been made: -

“We the members of the board, submit the following regarding the above mentioned subject:

1. Aarti Rani aged 26 years wife of Ajay Kumar, daughter of Sukhdev Singh resident of Dalichi, Ward No.3, Sirhind City, Distt. Fatehgarh Sahib, is Primigravida with 16 weeks + 3 days pregnancy. (DLMP – 19-11-2017) with HIV positive status on ART vide ART Centre No. GMC/141, Punjab Punjab since 5.1.2018. Her Registration No. is PB PTA-7946.

2. *P/A findings 14-16 weeks*

uterus, soft.

3. *Ultrasound findings 14 weeks 4 days*

pregnancy dated 3.3.2018.

4. *Termination of pregnancy can be done*

under MTP Act, 1971.

Signature of Aarti Rani – Aarti Rani

<i>Sd/-</i>	<i>Sd/-</i>	<i>Sd/-</i>	<i>Sd/-</i>
<i>Dr. Parneet Kaur, Prof. Gynae Deptt, Govt. Medical College</i>	<i>Dr. Arvind Kaur Associate Prof. Govt. Medical College</i>	<i>Dr. Ruby Bhatia Associate Prof. Govt. Medical College</i>	<i>Dr. Rama Garg Assistant Prof. Govt. Medical College</i>

The opinion of the Board of Doctors was that the pregnancy can be terminated. However, this Court was of the view that a second opinion may also be obtained from respondents No.1 & 2 as to whether the child in womb would also suffer from HIV infection after his/her birth?

The respondents No.1 & 2 have submitted a report in this regard dated 14.3.2018, which is also reproduced as under: -

“We the members of the board, submit the following regarding the above mentioned subject,

1. *Termination of pregnancy can be done under the MTP Act 1971 3(2)(b)(i) and not under 3(2)(b)(ii) as mentioned. On examination of partient Aarti Rani by board members on 3.3.2018, she said she*

was under immense mental stress due to incidentally being diagnosed as HIV positive during her first antenatal check up. This led to serve marital discord. She expressed great anguish and does not want to continue her pregnancy in view of reasonable foreseeable environment. Hence board was of opinion, in good faith that termination could be done under Clause 3(2)(b)(i).

2. *The above mentioned case is under treatment from ART centre No. GMC/141 Patiala, Punjab since 5.1.2018 (when her pregnancy was 6 weeks 5 days) vide Registration No.PBPTA 7946. If she takes ART (antiretroviral therapy) for HIV positive status throughout her pregnancy and life long thereafter for her own health and minimal 6 weeks treatment for her new born baby, the risk of HIV infection transmission to the newborn will be*

2% or less. Her baby will need to undergo blood test time to time till 18 months of age or 3 months after cessation of breast feeding to exclude HIV infection. Without any treatment, the risk of transmission of HIV from infected pregnant women to her children is estimated to be around 20-45%.

<i>Sd/-</i>	<i>Sd/-</i>	<i>Sd/-</i>	<i>Sd/-</i>	<i>Sd/-</i>
<i>Dr.Parneet</i>	<i>Dr.Parveen</i>	<i>Dr.Arvind</i>	<i>Dr.Ruby</i>	<i>Dr.Rama</i>
<i>Kaur,</i>	<i>Mittal,</i>	<i>Kaur</i>	<i>Bhatia</i>	<i>Garg</i>
<i>Prof.</i>	<i>Professor</i>	<i>Associate</i>	<i>Associate</i>	<i>Associate</i>
<i>Gynae</i>	<i>Pediatrics</i>	<i>Prof.</i>	<i>Prof.</i>	<i>Prof.</i>
<i>Deptt,</i>	<i>Deptt.</i>	<i>Gynae</i>	<i>Gynae</i>	<i>Gynae</i>
		<i>Deptt.</i>	<i>Deptt.</i>	<i>Deptt.”</i>

In the aforesaid report, the Medical Board has opined that it would be a long drawn treatment not only of the petitioner, who is suffering from HIV positive but also for the child to be born who would run a risk of HIV, from the infected mother estimated to be around 20-45%.

Learned counsel for the petitioner has submitted that at present the petitioner is 18 weeks 3 days pregnant and at this stage the pregnancy can be terminated but after 20 weeks there may be medical complications. It is further submitted that the petitioner is totally dependent upon her old parents who are in turn dependent upon her brother. She is suffering from HIV positive and has to put on medicines through out her life and has no source of earning. The child in her womb is also likely to suffer from the same disease. Her husband has already cleared his intentions by leaving her at her parental house w.e.f. 23.1.2018 and by filing a divorce petition

thereafter on 5.2.2018 that he is not going to live with the petitioner and has separated her both socially and economically. It is submitted that though the legislature has not categorically made it a ground to seek termination of pregnancy in case a woman is suffering from HIV positive but the petitioner has no social and economic support from her husband and has no independent source of income, therefore, the Court can read into Section 3(2)(i) of the Act which provides that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave physical or mental injury and also Section 3(2)(ii) of the Act in which it is provided that if the child were born, he would suffer from physical or mental abnormalities and may be seriously handicapped.

Learned counsel for the petitioner has further submitted that in this case not only the pregnant woman/petitioner would suffer grave injury to her physical and mental health being a HIV positive patient but also it is a social stigma and the petitioner shall have to deal with the society because a person suffering from HIV/AIDS becomes untouchable. The petitioner does not want that her child, who is likely to suffer from HIV positive, may also face this trauma or a stigma right from his/her birth and become a burden.

Learned counsel for the petitioner has referred to a decision of the Bombay High Court rendered in the case of ***“Shaikh Ayesha Khatoon Vs. Union of India and others”*** to contend that the freedom of a pregnant woman of making choice of reproduction is an integral part of “personal liberty”. He has also referred to a decision of the Delhi High Court in the case of ***“X (Assumed named of petitioner) Vs. Govt. of NCT of Delhi and another”*** 2014 (2) Crimes 752 which is also a case of termination of

pregnancy of a rape victim who was also HIV positive patient. In the said case, the pregnancy was 19 weeks old which was allowed to be terminated on the ground that the conception through an act of rape is extremely traumatic, humiliating and psychologically devastating. In the said judgment there is a reference to a decision of the Supreme Court in the case of ***“Suchita Srivastava and another Vs. Chandigarh Administration” 2009 (4) RCR (Criminal) 232*** in which it is held that *“As evident from its literal description, the "best interests" test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of the other stakeholders such as guardians or the society in general. It is evident that the woman in question will need care and assistance which will in turn entail some costs. However, that cannot be a ground for denying the exercise of reproductive rights.”*

Although I know that the child in womb has also a right to live but it has been held in the case of ***Suchita Srivastava and another (Supra)*** that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim and that the Court's decision should be guided by the interests of the victim alone.

Learned counsel for the respondent, however, has not objected to the prayer made by the petitioner rather it is submitted that in the

given circumstances the petitioner has already become destitute, having no source of income, have to look after her own health being HIV positive patient and after giving birth, have to look after the health of the child also, who may also suffer from the same disease as opined by the medical board.

I have heard learned counsel for the parties and perused the available record with their able assistance.

Section 3 of the Act deals with the situation where the pregnancy may be terminated by registered medical practitioners. It says that the registered medical practitioners shall not be guilty of any offence if the pregnancy is terminated by him in accordance with the provisions of the Act. However, it further provides that the pregnancy may be terminated by the registered medical practitioner where the length of the pregnancy does not exceed twelve weeks, if such medical practitioners is of the opinion, formed in good faith that the 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 or there is a substantial risk that if the child were born, he would suffer from such physical or mental abnormalities as to be seriously handicapped. It is further provided therein that in determining whether the continuance of pregnancy would involve such risk or injury to the health as mentioned in sub section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment. It is further provided therein that where the length of pregnancy exceeds twelve weeks but does not exceed twenty weeks, the opinion has to be obtained by not less than two registered medical practitioners and the same procedure mentioned hereinabove has to be followed. It is further provided therein that the

pregnancy cannot be terminated except with the consent of the women or if she is a minor and has not attained the age of eighteen years or having attained the age of eighteen years is a mentally ill person then it cannot be terminated except with the consent in writing of her guardian.

In the present case, the length of the pregnancy is more than 12 weeks but less than 20 weeks. Thus the Court has taken the opinion of 2 registered medical practitioners much less the gynaecologists by its order dated 12.3.2018. The medical board, vide its report dated 03.03.2018, has categorically opined that it has been found in the ultrasound that the foetus is 14 weeks and 4 days as on 3.3.2018 and the pregnancy can be terminated. Thereafter, the Court was anxious to know as to whether the child in the womb would also suffer from HIV positive after his/her birth if the pregnant mother is the patient of HIV positive. The medical board again reported on 14.3.2018 that without any treatment the risk of transmission of HIV from infected pregnant women to her child is estimated to be around 20-45%. It is also opined that such HIV positive patient has to take various precautions and life long treatment. Thus taking into consideration the aforesaid facts and circumstances in which not only there is a threat to the life of the petitioner, in regard to her mental and physical health being HIV positive patient, delivering the child without any support of her husband, who has already filed divorce petition against her and left her in lurch much less to the mercy of her brother, who is also looking after his old parents and that she has to live through out her life with a stigma as HIV patient and that there is a strong possibility of transmission of the HIV from the petitioner to the child in her womb to the extent of 20-45%, if no treatment is provided,

which has to be provided through out the life of the child to be born, I am of the considered opinion that keeping in view the provisions of Section 3(2(i)(ii) of the Act read with Section 2(3) of the Act and the observations made by the Supreme Court in ***Suchita Srivastava and another (Supra)*** that the opinion has to be formed by the Court on the basis of medical opinion and on the feasibility of the termination of pregnancy as well as social circumstances faced by the victim and the interest of the victim alone, who is a HIV positive, the prayer made by the petitioner in this case appears to be genuine and hence the writ petition is hereby allowed with a direction to the respondents to terminate the pregnancy of the petitioner forthwith. The petitioner shall appear before the Principal, Government Medical College and Rajindra Hospital, Patiala, Punjab (respondent No.2) on 22.03.2018, who is further directed to immediately proceed, taking into consideration the health and mental condition of the petitioner, for termination of her pregnancy and shall also provide the pre and post termination medicines and other facilities to the petitioner, keeping in view the fact that she has become destitute as her husband has already left her at the mercy of her old parents.

21.03.2018*Vivek***(RAKESH KUMAR JAIN)
JUDGE***Whether speaking /reasoned : Yes/No**Whether Reportable : Yes/No*