

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2019 OF 2019

Sau. Varsha w/o Rohit Hade
Age 21 years, Occ. Household,
R/o Bidkin, Tq.Paithan,
Dist.Aurangabad

PETITIONER

VERSUS

1. The Union of India

2. The State of Maharashtra,
Thorough its Secretary,
Health Department,
Mantralaya, Mumbai-32

3. The Dean,
Government Medical College & Hospital,
Aurangabad

RESPONDENTS

Mr.C.K. Shinde, Advocate for the petitioner
Mr.R.R. Bangar for respondent No. 1
Mrs.M.A. Deshpande, AGP for respondent Nos. 2 & 3

**CORAM : PRASANNA B. VARALE &
S.M.GAVHANE, JJ.**

DATED : 22.02.2019

P.C. :-

1. Heard learned Counsel for the petitioner.
2. Considering the urgency claimed by the petitioner, by order dated 13.02.2019, we have permitted

the petitioner to undergo the exercise of medical examination through the Medical Board.

3. Learned AGP with the assistance of respondent No.2 submitted a report of the Committee dated 20.02.2019 before us. The Committee consists of eight Doctors under the Chairmanship of Dr. Zine, Medical Superintendent, Government Medical College and Hospital, Aurangabad. Other members of the Committee are Dr. Rupali Gaikwad, Dr. Ajay A.Vare, Dr.Udhav Khaire, Dr. Pradip Deshmukh, Dr. Amol Joshi, Dr. Junaid Shaikh and Dr. Rashmi Bengali. The report is duly signed by the members of the Committee which states that the patient was examined thoroughly and the Committee also had gone through obst sonography of the patient and recorded findings as below:-

(1) Length of pregnancy has Average Gestational age of 22 weeks 5 days.

(2) On obstetric ultrasonography dated 16.02.2019, done at GMC, Aurangabad, following findings are noted -

Open spina Bifida with meningocele of Arnold chiari II malformation (a developmental anomaly arising due to failure of neural tube to

close completely with herniation of neural tissue through incompletely formed spine)

Taking into consideration the above findings there is evidence of substantial risk to the fetus if born, pregnancy can be terminated with due risk to mother and the risk is explained to the mother.

4. Learned Counsel appearing for the petitioner by inviting our attention to the documents placed on record, namely, the reports issued by a private hospital & diagnostic center, provisions of the Act, as well the judgments of the Apex Court and Division Bench of this Court, drew support for his contentions. Learned Counsel for the petitioner was justified in inviting our attention to the judicial pronouncement and we are certainly guided by this authoritative pronouncement by the Hon'ble Apex Court in the matter of "X" and others Vs. Union of India, MANU/SC/0149/2017 and order passed by Division Bench of this Court in the matter of "X" Vs. State of Maharashtra and others in Writ Petition No.12408 of 2017.

5. The Division Bench of the Court also referred to

judgment of the Apex Court in the case of Suchita Srivastava Vs. Chandigarh Administration, 2009(9) SCC 1 and it states that there is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choice can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. It also referred to the observations made by Division Bench of this Court in para - 13 of the judgment and order in Sou Moto Public Interest Litigation No.1/2016 in the matter of High Court on its own motion Vs. The State of Maharashtra, LEX(BOM) 2016 9 page 114.

6. The Division Bench of this Court then referred to the judgment of the Apex Court in the matter of Appellant "X" Vs. Union of India & Ors, AIR 2016 SC 3525 and observed that the Hon'ble Apex Court considering the

provisions of Section 5 of the Act of 1971, permitted termination of pregnancy of duration of 23 to 24 weeks. It is observed in the judgment that section 3 leaves no room for doubt that it is not permissible to terminate pregnancy after 20 weeks, however, section 5 of the Act lays down exception to section 3. It is further observed that termination of pregnancy which is necessary to save life of a pregnant woman is permissible (Emphasis supplied).

7. The Hon'ble Apex Court in the matter of Appellant "X" Vs. Union of India and others, AIR 2017 SC 1055 granted permission for termination of pregnancy of duration of 24 weeks since it was noticed that the foetus could not survive.

8. In the present matter, the petitioner has also been sensitized by the Committee/Medical Board about risk factors involved and learned Counsel for the petitioner reiterated and assures this fact that the petitioner has been sensitized about the risk factors involved.

9. Learned Counsel for the petitioner, on instructions, submits before us that that petitioner is ready to go before the Medical authorities of respondent No.2 i.e. the Government Medical College and Hospital, Aurangabad for the exercise of termination of pregnancy by following due procedure of the Government Medical College and Hospital, Aurangabad and by bearing expenses as required.

10. This Court has already dealt with the issue involved in the present petition and for elaborate reasons recorded in the order dated 15th January, 2019 and based on the decisions rendered by the Honourable the Apex Court and this Court, referred supra, allowed Writ Petition No. 420 of 2019. Having regard to the facts of the present case, we see no reason to take a different view.

11. In that view of the matter, writ petition is allowed in terms of prayer clause (B).

12. Parties to act upon authenticated copy of this order.

[S . M . GAVHANE , J .]

[PRASANNA B . VARALE , J .]