

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

WRIT PETITION NO. 9014 OF 2019

Hemlata w/o Shailesh Nande

.. Petitioner

Versus

The State of Maharashtra and Another

.. Respondents

Mr. P. V. Suryawanshi, Advocate for Petitioner.

Mr. P. K. Lakhotiya, Advocate for Respondents-State.

**CORAM : S. V. GANGAPURWALA &
 MANGESH S. PATIL, JJ**

DATED : 31st JULY, 2019.

PER COURT:-

1. The petitioner seeks permission to terminate the pregnancy. The length of pregnancy is almost 24 weeks.

2. We had directed the petitioner to be examined by the board / committee constituted by the Dean, Government Medical College and Hospital, Aurangabad. The petitioner was examined twice by the committee. On 26.07.2019, the report is submitted by the committee. The committee opined that the child born would have developmental anomalies of spine namely kyphoscoliosis (outward and lateral abnormal curvature of spine) and spina bifida (failure to develop or incomplete closure of spinal cord).

3. The committee has further opined that these anomalies are not

curable / get natural but surgically correctable and may have residual deformity even after surgical correction. The child may need crutches, braces or walker or may be able to walk without these devices according to severity which can be assessed only after birth of baby.

4. It is also submitted that the husband of the petitioner is a labourer.

5. Section 3 of the Medical Termination of Pregnancy Act, 1971 more particularly sub Section 2 reads thus :

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner, -

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, of not less than two registered medical practitioners are, of opinion, formed in good faith, that -

(i) 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

(ii) 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.

Explanation 1. - Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. Explanation 2. - Where any pregnancy occurs as a result of failure of any device or

method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

6. It appears from the report that there is substantial risk that if the child when born, it would suffer from physical abnormality as to be seriously handicap.

7. The report read in its entirety, it is clear that if the child is born, the child will be born with deformity which would require surgery and even after surgery the same would not be cured. The deformity would remain even after surgical corrections. The report unequivocally suggest that the child would be seriously physically handicap.

8. Considering the environment of the petitioner, the substantial physical handicap that the child would be born with, it would be appropriate to allow the petitioner to terminate her pregnancy.

9. The learned Counsel for the petitioner submits that the petitioner has been intimated about the risk involved and the petitioner seeks permission to terminate pregnancy.

10. In light of the above, the petitioner is allowed to terminate pregnancy at a registered and recognized hospital.

11. Writ Petition is disposed of. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.