

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10375 OF 2019

XYZ THROUGH FATHER DHONDIB WARBA HORGIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Patil Hanmant V.
AGP for Respondents: Mrs. A. V. Gondhalekar

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CORAM: S. V. GANGAPURWALA &
K. K. SONAWANE, JJ.

DATE: 23rd AUGUST, 2019

PER COURT:

1. The petitioner is mentally challenged, so also, 75% disabled and is a rape victim. The petition is moved for termination of pregnancy.

2. Under order dated 21.08.2019, we had directed the petitioner to get examined by the Committee constituted at Dr. Shankarrao Chavan Government Medical College, Nanded. Pursuant to the order, the petitioner is examined by the committee constituted by Dean, Dr. Shankarrao Chavan Government Medical College, Nanded. The committee

has submitted the report. The report reads thus -

Report

All the MTP Committee Members examined the patient individually, as per your letter No. WP/AVG/2019 date 21.08.2019 with Subject Writ Petition No. 10375/2019 Dist. Parbhani.

Patient Meena Dhondiba Horgil D/O Dhondiba Horgil (S/O Warba Horgil) Age 26 Years female with MRD No. 801744 unmarried primigravida with 24 weeks pregnancy with Dwarfism & Kyphoscoliosis, Victim of Sexual Assault. After examination of the patient by specialist considering opinion of Gynaecologist, Cardiologist, Anesthetist, Orthopedician & Psychiatrist along with other committee members are of the opinion that the patient is having 75% physical disability with unmarried status.

The committee is of the opinion that continuation of pregnancy will be of high risk for the patients life. So termination of pregnancy is recommended for this patient on physical & mental trauma ground with permission of Hon High Court & relatives consent but as the patient is having additional clinical problem with 75% physical deformity termination of pregnancy at this gestation of 24 weeks will be of reasonable high risk to her life. Hence committee is of the opinion that such high risk pregnancy termination preferably is to be carried out at higher centre with super speciality services."

3. The report suggest that the continuation of the pregnancy will be of high risk for the petitioner's life. The termination of pregnancy is

recommended on physical and mental trauma grounds.

4. In addition to the above, the petitioner is a rape victim. Explanation No. I to Sec. 3(2)(ii) of the Medical Termination of Pregnancy Act, 1971 (for short "said Act") states that, where any pregnancy 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.

5. It appears that, the FIR bearing Crime No. 324 of 2019 dated 01.08.2019 is registered with Gangakhed Police Station.

6. Considering Explanation-I to Section 3(2)(ii) of the said Act and the opinion of the committee and the fact that the petitioner claims to be a rape victim, we allow the petitioner to terminate pregnancy. The committee has opined that it is the case of high risk pregnancy termination. The termination of the pregnancy should be carried out at higher centre with super speciality

services. Mrs. Gondhalekar, learned Additional Government Pleader informs that it would be better if the procedure for termination of pregnancy is conducted at the Government Medical College and Hospital, Aurangabad having better facilities.

7. The petitioner may get the pregnancy terminated at Government Medical College and Hospital, Aurangabad. The petitioner, at present, is admitted with Dr. Shankarrao Chavan Government Medical College, Nanded. The hospital where the petitioner is admitted may also guide the petitioner as to whether it would be advisable to the petitioner to travel to Aurangabad for termination of pregnancy. If it is not medically advisable to allow the petitioner to travel to Aurangabad, then her pregnancy shall be terminated at Dr. Shankarrao Chavan Government Medical College, Nanded as the petitioner at present is admitted in that hospital.

8. Considering the fact that the pregnancy

carried by the victim is a result of offence of rape, complaint has already been lodged. The hospital where pregnancy of petitioner would be terminated shall preserve tissue sample and blood sample of the foetus for carrying out necessary medical tests including DNA, finger printing/mapping. The Investigating Officer who conducted the investigation in the matter shall ensure that the samples of tissues and blood etc. shall be forwarded to the Regional Forensic Laboratory, Aurangabad for DNA, finger printing/mapping and for carrying necessary tests and the samples and report shall be preserved for the purpose of trial of the offence.

9. The police authority/investigating machinery may approach the hospital where the petitioner would terminate the pregnancy. The petitioner shall also inform the concerned police station about the day the petitioner is to terminate the pregnancy.

10. In the light of above, the writ petition is disposed of. No costs.

11. Authenticated copy be given.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]

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