IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6300 OF 2019

Asma Iftekhar Shaikh ... Petitioner.
V/s.
Union of India & Others ... Respondents.

Ms.Neha Philip i/b Afreen Khan for the Petitioner.
Ms.K.N. Salunke AGP for the Respondents-State.

CORAM : R. M. BORDE AND
N. J. JAMADAR, JJ.

DATE : 6TH JUNE, 2019.

P.C.:

1] The petitioner has approached this Court seeking termination of pregnancy which is of 28 weeks duration. The petitioner contends that since there are fatal deformities noticed in ultra sound examination it would be hazardous to continue the pregnancy. There is every likelihood that if the child is born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. The petitioner contends that in view of section 3 (2) (b) (ii) read with section 5 of the Medical Termination of the Pregnancy Act, 1971, she shall be permitted to terminate the pregnancy. The petitioner was referred for medical examination to the Medical Board consisting of the experts at Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai. The Medical Board consist of five experts named below :

(1) Dr.Preeti Lewis, Associate Professor for Professor and Head Dept. of Obstetrics and Gynecology, Grant Government Medical College and Sir JJ Group of Hospitals, Mumbai.
(2) Dr.Sushant Mane, Associate Professor, for Professor and Head Dept. of Pediatrics, Sir J.J. Group of Hospitals, Mumbai.
(3) Dr.Sharad Ghatge, Associate Professor, for Professor and Head Dept. of Radiology, Sir J.J. Group of Hospitals, Mumbai.
(4) Dr.D.R. Kulkarni, Professor and Head Dept. of Pediatric Surgery, Sir J.J. Group of Hospitals, Mumbai.
(5) Dr.Kamlesh Jagiasi, Associate Professor and Head Dept. of Neurology, Sir J.J. Group of Hospitals, Mumbai.

2. The Medical Board has recorded opinion that the fetus has Neurological Abnormalities in the form of findings suggestive of ACRANIA - EXENCEPHALY. It is opined that the fetus fulfill criteria of "Substantial Risk of Serious Physical Handicap with very High Morbidity and Mortality". The Associate Professor for Professor and Head Department of Pediatrics has recorded opinion that the condition of foetus carry risk of early mortality in the new born child within the first few hours of life or it may also lead to a stillbirth and as such the mother may be permitted to undergo medical termination of pregnancy at her own risk, with due risk of procedure being explained to her. The Professor and Head, Department of Pediatric Surgery has also concurred with the opinion of the Professor and Head, Department of Pediatrics. The Associate Professor and Head, Department of Neurology has opined that

in view of abnormalities in the fetus, there are high chances of stillbirth and with this condition of the fetus, the child is not likely to survive after birth.

3. On consideration of opinion recorded by the expert members, the Board has unanimously recommended the medical termination of pregnancy. The pregnant woman has been explained of risk involved in carrying the procedure of termination of pregnancy. It is also recorded in the report that pregnant woman has expressed her desire to terminate the pregnancy.

4. In the circumstances in view of law laid down by this Court in the matter of XYZ vs. Union of India and Others in Writ Petition No.10835 of 2018, the petitioner can be granted permission for medical termination of pregnancy. The counsel for the petitioner states that the petitioner would undergo procedure of medical termination of the pregnancy at Wadia Hospital, Mumbai. We direct the concerned hospital to carry out procedure of medical termination of the pregnancy under supervision of the Expert Gyanecologist and Pediatrician immediately after admission of the petitioner to the hospital.

5. The petitioner shall report at the Wadia hospital by tomorrow i.e. 7th June, 2019.

6. Since the petitioner is carrying the pregnancy beyond 28 weeks, there is every likelihood that the child may be born

alive and may also survive for some duration, in such circumstances the hospital will have to assume full responsibility to ensure that such child is offered best medical treatment available in the circumstances, in order that the child develops into a healthy child. We further direct that in the event, the child is born alive, if the parents of child are not willing to or are not in a position to assume the responsibility for child, the State and its agencies will have to assume full responsibility for the child and offer the medical support and facilities as may be reasonably feasible, adhering to the principle of best interests of the child, as well as in observance of the statutory provisions contained in the Juvenile Justice Act.

7. In view of directions recorded above, the Rule is made absolute. There shall be no order as to costs.

8. The parties shall act on copy of this order duly authenticated by the registry of this Court.

(N. J. JAMADAR, J.) **(R. M. BORDE, J.)**