

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6553 OF 2019

Poonam Ashish Gupta ... Petitioner.

V/s.

Union of India ... Respondents.

Ms.Meenaz Kakalia for the Petitioner.
Mr.Karan S. Thorat for Respondent No.2.

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

DATE : 14TH JUNE, 2019.

P.C.:

1] Heard.

2] Rule. Rule made returnable forthwith. With consent of the parties, the petition is taken up for final hearing at the stage of admission.

3] The petitioner who is pregnant beyond 20 weeks has approached this Court for seeking permission to terminate the pregnancy on account of disclosure of certain foetal abnormalities on conducting Radiological examination by the Expert on 25th May, 2019. The petitioner was referred to the Medical Board for examination constituted at Sir J.J. Group of Hospitals and Grant Medical College, Mumbai. The Medical Board consisting of the following :

- 1) Dr. Ashok Anand, Professor & Head, Department of Obstetrics and Gynecology, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.
- 2) Dt.Nita Sutay, Professor & Head of Paediatrics, Grant Govt. Medical College and Sir J.J. Group of Hospitals, Mumbai.
- 3) Dr.Shilpa Domkundwar, Professor and Head, Dept. of Radiology, Sir J.J. Group of Hospitals, Mumbai.
- 4) Dr.Vernan Velho, Professor and Head, Dept. of Neurosurgery , Sir J.J. Group of Hospitals, Mumbai.
- 5) Dr.D.R.Kulkarni, Professor and Head, Dept. of Paediatrics Surgery, Sir J.J. Group of Hospitals, Mumbai.
- 6) Dr.Kamlesh Jagyashi, Professor and Head, Dept. of Neurology, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai, have tendered the opinion which is recorded as under :

“It is confirmed that the fetus suffers from serious neurological abnormality in the form of THORACOLUMBAR MENINGOMYELOCOELE, LEMON SHAPED SKULL ELONGATED CEREBELLUM, SMALL POSTERIOR FOSSA.

The condition of the fetus fulfills the criteria of “Substantial Risk of Serious Physical Handicap”.

4] Section 3 (2)(b) of the Medical Termination of Pregnancy Act, 1971 mandates that if the length of pregnancy exceeds twelve weeks but does not exceeds twenty weeks, if not less than two registered medical practitioners are of the opinion, formed in good faith, that 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, permission can be accorded to terminate the pregnancy. In view of the judgment of this Court in the matter of Shaikh Ayesha Khatoon vs. Union of India & Others in Writ Petition (Stamp) No.36727 of 2017 decided on 9th January, 2018 wherein the contingencies and the parameters laid down in clauses (i) and (ii) of sub-section (2) (b) of Section 3 shall have to be read in Section 5 except the bar of limitation as provided in Section 3(2)(b) of the Act of 1971. If the conditions laid down in clauses (i) and (ii) of sub-section (2)(b) of Section 3 are satisfied it would provide a good ground for exercise of jurisdiction under section 5 of the Act of 1971. This Court, while dealing with Writ Petition No.10835 of 2018 decided on 3rd April, 2019, has reiterated the same view and has also issued certain directions. Considering the judgments in decided matters as referred to above the request made by the petitioner deserves to be granted and it is accordingly granted. The petitioner has tendered an undertaking that if child were born alive, she would take responsibility of the child. The undertaking is taken on record and marked "X" for identification.

5] Learned counsel appearing for the petitioner informs that the petitioner would prefer to undergo termination of pregnancy at Sir J.J. Group of Hospitals, Mumbai. The concerned hospital is directed to conduct the procedure of medical termination of pregnancy upon admission of the petitioner at the hospital forthwith. The petitioner has been informed of the risk involved in carrying out the procedure of termination of pregnancy at late stage i.e. beyond 20 weeks and it would be open for the petitioner to undergo termination of pregnancy at her own risk and consequences. It is further made clear that doctors who have put their opinions on record shall have the immunity in the event of occurrence of any litigation arising out of the instant petition.

6] In view of the above, Rule is made absolute. There shall be no order as to costs.

(N. J. JAMADAR, J.)

(R. M. BORDE, J.)

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