

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

WRIT PETITION NO. 6869 OF 2019

Dhanashree Kalpesh Nagrekar

Age : 26 years

L 304, Tulsi Aastha, Phase II,

Tulsi City, Near MSEB Office,

Kharwai, Badlapur East,

Thane – 421 503

.. Petitioner

Vs.

1. State of Maharashtra

Through the Principal Secretary,

Public Health Services,

Mantralaya, mumbai 23.

.. Respondent

Ms.Neha Philip a/w. Ms. Bhavana H. Mhatre for petitioner.

Mr.Arun Kumar for respondent Nos.1 and 3.

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

DATE : 27TH JUNE 2019

ORAL JUDGMENT (PER R.M. BORDE, J.) :

1. The learned counsel appearing for the petitioner, on instructions, seeks leave to delete the names of the respondent Nos.1 and 3.

2. Leave granted. The names of the respondent Nos.1 and 3 stand deleted. Amendment be carried out forthwith.

3. Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, petition is taken up for final hearing.

4. The petitioner is seeking permission to carry out the procedure of termination of pregnancy which is stated to be of 27 weeks duration. The

petitioner was referred for medical examination by the Court to the Medical Board constituted at Sir J.J. Group of Hospitals and Grant Medical College, Mumbai. The Medical Board consists of (i) Professor and Head, Department of Obstetrics and Gynecology; (ii) Professor and Head, Department of Pediatrics/Pediatric Surgeon/Pediatric Cardiologist; (iii) Professor and Head, Department of Radiology; and (iv) Professor and Head, Department of Psychiatry. The opinion of the Committee is recorded hereunder :

“ Upon examination and after careful study of multiple sonography reports, it is confirmed that the fetus suffers from serious cardiac abnormality in the form of mean gestational age 27 weeks and 6 days with congenital cardiac anomaly. Hypoplastic left heart syndrome with DORV with hypoplastic aortic arch with aortic and mitral valvular stenosis with small VSD and patent foramen.

The Condition of the fetus fulfills the criteria of “Substantial risk of serious physical handicap.

The woman has been explained about the outcome in the language she understands.

The pregnant woman has voluntarily expressed her desire to terminate the pregnancy and is well informed about the nature of the condition of fetus in utero. As the child born with may have morbid life with multiple operative interventions with very high morbidity and mortality.

The pregnancy has advanced to 27 weeks, 6 days and is beyond 20 weeks”

5. Since the Committee has categorically concluded that, *“The condition of the fetus fulfills the criteria of “Substantial Risk of Serious physical*

handicap”, the petitioner, in view of the provisions of Section 3 read with Section 5 of the Medical Termination of Pregnancy Act, 1971 (The MTP Act, 1971) deserves to be granted permission to terminate the pregnancy at her own risk. Since the petitioner is carrying the pregnancy at an advanced stage, there is a strong likelihood that the child may be born alive and it would be the responsibility of the parents to take care of the child and to take responsibility of neonatal management of the child, if born alive.

6. The petitioner has tendered an undertaking stating therein that she would take responsibility of the child, if born alive. The said undertaking is taken on record and marked 'X' for identification.

7. The issue as regards permissibility to accept the request of a pregnant woman seeking permission to terminate the pregnancy beyond 20 weeks has been considered by a Division Bench of this Court while dealing with the case of *Shaikh Ayesha Khatoon Vs. Union of India and Others*¹. This view taken by the Division Bench of this Court has been accepted with approval in a subsequent judgment in Writ Petition No.10835 of 2018 in the matter of *XYZ Vs. Union of India & Ors.* and other connected matters decided on 3rd April 2019. In the facts and circumstances of this case and on considering the judgments referred to above, we are of the opinion that

¹ 2018 3 Bom.C.R.399

request made by the petitioner deserves to be granted.

8. The Writ Petition is allowed.

The petitioner is permitted to undergo procedure of medical termination of pregnancy at her own risk and consequences. The Head of the Department of Obstetrics and Gynecology of Nowrosjee Wadia Maternity Hospital, in Parel, Mumbai to ensure that the procedure of medical termination of pregnancy is carried out forthwith. The procedure shall be carried out in the presence and under supervision of an expert Gynecologist and Pediatrician.

9. It has been recorded in the report tendered by the Medical Board that the petitioner has been explained the risk of carrying out the procedure of medical termination of pregnancy at the late stage, i.e., beyond 20 weeks and it has been informed that the petitioner is desirous of medically terminating the pregnancy, at her own risk and consequences.

10. It is made clear that the 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.

11. Rule is made absolute in above terms. In the circumstances, there shall be no order as to costs.

12. All concerned to act on an authenticated copy of this judgment.

[N.J. JAMADAR, J.]

[R. M. BORDE, J.]