

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9749 OF 2019

Pratiksha Prakash Navle, since minor
through her mother and natural guardian,
Priya Prakash Navle

.. Petitioner

Versus

The State of Maharashtra

.. Respondent

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- Ms. Meena Kakalia a/w Ms. Bhavana Mhatre for the Petitioner
 - Ms. Kavita N. Solunke, AGP for the Respondent - State
 - Dr. Ashok Anand present.
 - Minor Girl along with her Mother present.
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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : SEPTEMBER 3, 2019.

P.C.:

1. This petition is filed by a young girl aged about 15 years through her mother seeking order from the Court for termination of her pregnancy. Her ground is that being minor, the conception was as a result of rape. In terms of Section 3 of the Medical Termination of Pregnancy Act, 1971, there would be presumption of anguish that will be caused to the mother if the child is delivered. However, Section 3 of

the said Act permits termination of pregnancy only upto the period of 20 weeks of the fetus. Hence, this petition.

2. In the present case, the petitioner would point out that out of embarrassment, the girl had not informed the mother about the pregnancy for a long time, as a result of which, this petition was filed at the time when the fetus was close to 27 weeks old. We had first referred the petitioner for a medical opinion by the Board to be constituted at Sir J.J. Group of Hospitals, Mumbai. Accordingly, report dated 31.8.2019 was submitted. In this report, it was stated that there are no abnormalities dictated in the sonography carried on the fetus and the age of the fetus is 27 weeks.

3. In view of such facts, today in the first session, we had requested for presence of minor girl as well as Dr. Ashok Anand from Sir J.J. Group of Hospitals, Mumbai. At 4.45 p.m., both of them remained present. The minor girl was accompanied by her mother. The doctor explained to us that the fetus, according to the reports, is in the range of 27 to 29 weeks old. The possibility of abortion is, therefore, ruled out.

Only possibility is to carry out cesarean. The child in all probability be born alive but would be highly premature and would, therefore, require intensive neonatal care.

4. Section 3 of the Medical Termination of Pregnancy Act, 1971 does not cover the present situation. It only refers to termination of pregnancy of a woman under certain circumstances and subject to certain safeguards. The present case would not be one of termination of pregnancy. We would not authorize forcible child birth through cesarean knowing fully well that the child will be born alive but who forced to be born premature. Whatever be the unfortunate circumstances of the minor girl carrying the baby, neither law nor reality allows us to permit her to terminate the pregnancy. Under these circumstances, request for abortion is refused.

5. Ultimately, when the child is born and if the child's mother in consultation and guidance with other family members desires that the child should be adopted by someone else, it would be open for her to approach the NGO

- Asha Sadan at Dongri, Mubai for such purpose. We are sure that the NGO will give such assistance as required.

6. Writ Petition is accordingly disposed of.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]