

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (LODG.) NO. 1694 OF 2019

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|--|---|----------------|
| 1. Vaishali Pramod Sonawane, 29 yrs. |] | |
| Occupation : Housewife |] | |
| 2. Pramod Dattatray Sonawane, 29 yrs. |] | |
| Occupation : Machine Operator |] | |
| both residing at : |] | |
| Ganraj Chowk, Khese Aali, Lohugaon, |] | |
| Pune : 411 047 |] | .. Petitioners |
| <u>Versus</u> |] | |
| 1. Union of India |] | |
| through the office of Ministry of Health, |] | |
| Aikar Bhavan, New Marine Lines, Mumbai. |] | |
| 2. The State of Maharashtra |] | |
| Through Secretary, Women and Children |] | |
| Development, Mantralaya, Mumbai – 32. |] | |
| 3. Sassoon General Hospitals, Pune |] | |
| Jay Prakash Narayan Roads, Opposite |] | |
| Central Building near Pune Station Road, |] | |
| Sassoon Rd., Pune 411 001. |] | |
| 4. The Secretary, |] | |
| High Court Legal Services Authority, |] | |
| PWD Building, 1 st floor, High Court, |] | |
| Mumbai – 400 032. |] | .. Respondents |

Mr. Prosper D'souza for petitioner.

Mrs. Purnima Awasthi for respondent No.1-Union of India.

Ms. P.H. Kantharia, Government Pleader a/w. Ms. Deepali Patankar, Asstt.
to G.P. for respondent-State.

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

DATE : 7TH JUNE 2019

ORAL JUDGMENT: [PER R.M. BORDE, J.].

1. Heard.
2. Rule. With the consent of the parties, rule made returnable forthwith and the petition is taken up for final disposal at the admission stage.
3. The petitioner No.1 is a lady carrying pregnancy of 24th weeks (approximately), that is the gestational age of the fetus. Petitioner No.2 is the husband of the petitioner No.1. The petitioner No.1 was examined by the Sonologist and certain congenital anomalies have been reported. According to the petitioners, continuation of the pregnancy is not desirable since there is a substantial risk, if the child is born, it would suffer from such physical and mental abnormalities as to be seriously handicapped.
4. On 4th June 2019, the Medical Board at B.J. Medical College, Pune was directed to examine the petitioner No.1 and tender report informing as to whether it would be desirable to terminate the pregnancy in view of the fetal anomalies, recorded in the report of the Sonologist. The Committee has accordingly tendered the report today. The Committee has opined thus :

“Clinical examination and investigations reveals that the pregnancy is 23 weeks and the baby has fatal complex cardiac anomaly. If this pregnancy is continued the baby will require many cardiac surgeries with high morbidity and mortality if born alive at term. The Committee feels that the pregnancy

should be terminated at this gestational age with kind permission of Hon'ble High Court."

5. A Division Bench of this Court, while dealing with Writ Petition (St.) No.36727 of 2017 in case of ***Shaikh Ayesha Khatoon Vs. Union of India & Ors.*** decided on 9th January 2018, has observed in paragraph 13 of the judgment thus :

"13 It is further observed that ordinarily a pregnancy can be terminated only when a medical practitioner is satisfied that a 'continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health' [as per Section 3(2)(b)(i) of the Act of 1971] or when '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' [as per Section 3(2)(b)(ii) of the Act of 1971]. It is true that Clauses (i) & (ii) of sub-section 2(b) of Section 3 are attracted in the case where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks. However, as has been recorded above Section 5 permits termination of pregnancy by a registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman. It shall also have to be construed that Section 5 brings within its ambit the provisions of Section 4 and so much of the provisions of sub section (2) of Section 3 of the Act of 1971 except the limitation in respect of length of the pregnancy of 20 weeks as provided in subsection (2)(b) of Section 3 of the Act of 1971. It would thus be logical to conclude that the contingencies referred in Clauses (i) & (ii) of subsection (2)(b) of Section 3 will have to be read in Section 5 of the Act of 1971 and it would be relevant to consider the threat perception and substantial risk involved if the child were to born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. The contingencies laid down in Clauses (i) & (ii) of subsection (2)(b) of Section 3 shall therefore equally apply to the request of a pregnant woman seeking permission to terminate the pregnancy beyond 20 weeks and accordingly Section 5(1) will have to be construed, to meet the object and purpose of enactment and to promote cause of justice."

6. Although, sub-section (2) of Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the Act of 1971') put a cap of 20 weeks for permitting the pregnant woman to terminate the pregnancy, on consideration of Section 5 of the Act of 1971, it would be logical to conclude that the contingencies referred in Clauses (i) & (ii) of subsection (2)(b) of Section 3 will have to be read in Section 5 of the Act of 1971 and as such in an exceptional case, the request of a pregnant woman seeking permission to terminate the pregnancy beyond 20 weeks can be considered. This view taken by the Division Bench of this Court has been followed in a subsequent judgment in Writ Petition No.10835 of 2018 in the matter of *XYZ Vs. Union of India & Ors.* and connected matters decided on 3rd April 2019.

7. In the facts and circumstances of this case and on considering the judgments referred to above, we are of the opinion that requests made by the petitioners deserve to be granted. The Writ Petition is allowed. The petitioner No.1 is permitted to undergo medical termination of pregnancy at the earliest. It is informed that the petitioner No.1 is already admitted at Sassoon Hospital/B.J. Medical College, Pune. The Head of the Department of Obstetrics and Gynecology at B.J. Medical College, Pune, to ensure that the procedure of medical termination of pregnancy is carried out forthwith.

The procedure shall be carried out in presence of and under supervision of an expert of Gynecologist and a Pediatrician.

8. It has been recorded in the report tendered by the Medical Board that the petitioner No.1 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 the petitioner No.1 has consented for carrying out the procedure. It has also been reiterated by the learned counsel for the petitioners that the petitioner No.1 is desirous of medically terminating the pregnancy, at her own risk and consequences.

9. 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.

10. We further direct that in the event the child is born alive, the medical experts and the hospital concerned will have to assume full responsibility to ensure that child is offered best medical treatment available in the circumstances, in order that it develops into a healthy child.

11. We further hold and direct that if the parents of child are not willing to or are not in a position to assume the responsibility for child, then, the State and its agencies will have to assume full responsibility for such child and offer such child medical support and facilities, as may be reasonably feasible, adhering always to the principle of best interests of such child as well as the Statutory provisions in the Juvenile Justice Act.

12. Rule is accordingly made absolute. There shall be no order as to costs.

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

[N.J. JAMADAR, J.]

[R. M. BORDE, J.]