

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-20546-2019 (O&M)
Date of Decision:29.07.2019**

Mamta

... Petitioner

Versus

State of Haryana & another

... Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Petitioner in person.

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TEJINDER SINGH DHINDSA, J. (ORAL)

Petitioner-Mamta has filed the instant petition praying for issuance of directions to the respondent/PGIMER, Chandigarh as regards medical termination of her pregnancy.

In support of the prayer made in the petition, reliance was placed upon certain documents reflecting investigation and treatment carried out in PGIMER, Chandigarh itself and such report has been placed on record at Annexure P-2. The report at Annexure P-2 would prima facie indicate that the foetus has been diagnosed with a serious heart condition.

Instant petition had come up for hearing on 25.07.2019 and Mr. Jhanji, Advocate had entered appearance on behalf of PGIMER, Chandigarh.

Thereafter matter was taken up for hearing on 26.07.2019 and Dr. Aashima, Assistant Professor, Obstetrics and Gynaecology, PGI, Chandigarh had come present to assist the Court.

At that stage, this Court was apprised that in pursuance to a letter dated 14.08.2017 received from the Ministry of health and Family Welfare, the premier tertiary level Government Medical Institutes were called upon to immediately establish the Permanent Medical Board for medical termination of pregnancy beyond 20 weeks. Dr. Aashima informed the Court that a Permanent Medical Board already stands approved by the Director, PGI, Chandigarh and stands constituted.

It was under such circumstances that hearing in the instant petition was deferred to today and a request was made to Professor Rashmi Bagga, Chairperson of the Permanent Medical Board to have the petitioner/ Mamta examined during the course of the day itself and to furnish an opinion as regards her prayer for medical termination of pregnancy which is beyond 20 weeks.

Petitioner has been examined by the Permanent Medical Board on 26.07.2019 itself and the report has been furnished and which reads as under:

“Report of the Medical Board

Subject: CWP-20546-2019 (O&M) Mamta Vs. State of Haryana & another in the High Court of Punjab and Haryana at Chandigarh regarding patient Mamta 32 years female w/o Rahul Kamboj with CR.No.201904569461.

1. the patient Mamta W/o Rahul Kamboj was medically evaluated by the Permanent Medical Board at PGIMER, Chandigarh. As per the ultrasound done on 26/07/2019 she is 21+ weeks pregnant, with single live intrauterine foetus.
2. Fetal echo done on 24.7.2019 in PGIMER, Chandigarh shows a large inlet ventricular septal defect with a small

aorta. This foetus has a poor neonatal/long term prognosis as this cardiac anomaly cannot be completely repaired or corrected.

- 3. The Permanent Medical Board recommends termination of pregnancy at this stage as the foetus is likely to be affected with severe cardiac disease.*

<i>Sd/-</i> <i>Prof. Y.S. Bansal</i> <i>(Member)</i>	<i>Sd/-</i> <i>Dr. Tulika Singh</i> <i>(Member)</i>	<i>Sd/-</i> <i>Prof.Kanya Mukhopadhyay</i> <i>(Member)</i>
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<i>Sd/-</i> <i>Dr. Manoj Goyal</i> <i>(Member)</i>	<i>Sd/-</i> <i>Dr. Ruchita Shah</i> <i>(Member)</i>	<i>Sd/-</i> <i>Dr. Himanshu Gupta</i> <i>(Member)</i>
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<i>Sd/-</i> <i>Dr. Sahajal Dhooria</i> <i>(Member)</i>	<i>Sd/-</i> <i>Dr. Anupriya Kaur</i> <i>(Member)</i>	<i>Sd/-</i> <i>Dr. Ranjana Singh</i> <i>(Convener)</i>
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Sd/-
Prof. Rashmi Bagga
(Chairperson)

Section 3 of the Medical Termination and Pregnancy Act, 1971

reads as follows:

“3. When pregnancies may be terminated by registered medical practitioners.-

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve

weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that-

(i) the 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; or

(ii) 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. Explanation 1.-Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken to the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a 4 [mentally ill person], shall be terminated except

with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

In the considered view of this Court the case of the petitioner would fall under Section 3(2)(b)(ii) but for the time period embargo of 20 weeks. The clear opinion given by the Permanent Medical Board constituted at PGI, Chandigarh is that the foetus has a large inlet ventricular septal defect with a small aorta. It has further been opined that the foetus has a poor neonatal/long term prognosis as such cardiac anomaly cannot be completely repaired or corrected. The Permanent Medical Board has recommended termination of pregnancy at this stage as the foetus is likely to be affected with severe cardiac disease.

In the circumstances of the present case, it would be difficult for this Court to refuse permission to the petitioner to undergo medical termination of pregnancy. The medical expert opinion clearly indicates that the foetus if allowed to be born would have grim chances of survival. There would be no basis for this Court not to accept the recommendations made by the Permanent Medical Board and the constitution of which was approved by the Director, PGIMER, Chandigarh.

In taking such a view, this Court would draw support from the judgment of the Hon'ble Supreme Court in **Tapasya Umesh Pisal Vs. Union of India & others, (2018) 12 (SCC) 57**, wherein also a prayer for medical termination of pregnancy had been allowed in the 24th week of pregnancy and the foetus having been diagnosed with a heart ailment called

'Tricuspid and Pulmonary Atresia'. Even a Coordinate Bench of this Court in **Parmjeet Kaur & another Vs. State of Punjab & another (CWP-2181-2018, decided on 07.02.2018)** had permitted medical termination of pregnancy in the 24th week in a case where the foetus was diagnosed to be suffering from a *'Neurological Disorder'*.

For the reasons recorded above, the writ petition is allowed.

The Director, PGIMER, Chandigarh is requested to get the pregnancy of petitioner terminated under the supervision of the head of the Department (Obstetrics and Gynaecology), PGIMER, Chandigarh.

A copy of this order be given to learned counsel for the parties under the signatures of the Bench secretary to ensure necessary and immediate compliance.

Disposed of.

29.07.2019

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |