

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

CWP No.21495 of 2019
Date of decision:-20.08.2019

Rajni and another

.....Petitioner

versus

Union of India and others

.....Respondents

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

Present:- Mr. Sumeet Singh Brar, Advocate for the petitioners.

Mr. Dharmender Singh, Advocate for
Mr. Tanvi Jain, Advocate for respondent No.1-Union of India.

Mr. Amit Jhanji, Advocate for respondents No.2 and 3.

TEJINDER SINGH DHINDSA, J.(ORAL)

Petitioners Rajni and Ajay Paul are husband and wife.

Instant writ petition has been filed under Article 226 of the constitution of India, seeking direction to the respondent authorities to allow petitioner No.1 to undergo medical termination of her pregnancy. Basis of raising such a prayer is that the foetus has been diagnosed with a serious health condition i.e. '***Beta Thalassemia Major***'.

It has been averred that the onset of pregnancy was in the month of March 2019. As of date the period of pregnancy would be a little over 22 weeks.

As per opinion furnished by Dr. Rashmi Bagga, Professor, Department of Obs & Gynae., PGIMER, Chandigarh, the foetus having been affected with Beta Thalassemia Major, the couple may be offered an

abortion but for the embargo contained under Section 3 of the Medical Termination of Pregnancy Act 1971.

On a previous date of hearing i.e.17.08.2019, Mr. Amit Jhanji, learned counsel representing the respondent/PGIMER, Chandigarh was requested to complete instructions and to elicit an opinion from the doctors in PGI with regard to chances of survival/normal life expectancy of a child which is born with such health condition i.e. Beta Thalassemia Major.

During the course of resumed hearing today, counsel has referred to a communication dated 19.08.2019 issued under the signatures of Dr. Rashmi Bagga and as per which a foetus with Thalessemia Major is not expected to have a normal life expectancy. It has further been recited that the baby would require repetitive blood transfusions for survival which is associated with multiple complications. The doctor has clearly opined that the couple may be allowed to go through the procedure of abortion.

Section 3 of the Medical Termination of 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 petitioners would fall under Section 3 (2) (b) (ii) but for the time period embargo of 20 weeks. The clear opinion given by the medical expert is that a foetus/baby born with the medical condition of **Thalassemia Major** is not expected to have a normal life expectancy and which require repetitive blood transfusions and which process is normally associated with multiple complications.

Counsel for the petitioners has apprised the Court that petitioner No.1, Rajni is a housewife. Her husband/petitioner No.2, is a taxi driver. They would not have the financial means to afford the baby to undergo repetitive blood transfusions and to afford necessary medical treatment in the eventuality of any medical complication rising therefrom.

In the peculiar circumstances of the case, it would be difficult for this Court to refuse permission to petitioner No.1 to undergo medical termination of the pregnancy. The medical expert opinion is clearly leaning in favour of an abortion. There would be no basis for this Court not to accept the recommendations made by the doctor i.e. Dr. Rashmi Bagga who happens to be a Professor in the Department of OBS. & Gynae., 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 No.1, Rajni terminated under the supervision of the Head of the Department (Obstetrics and Gynecology), 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.

(TEJINDER SINGH DHINDSA)
JUDGE

20.08.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No