

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

**CWP-26852-2019 (O&M)
Date of Decision:20.09.2019**

Seema Rani & another

... Petitioners

Versus

State of Punjab & others

... Respondents

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

Present:- Mr. Sher Singh, Advocate for the petitioners.

Mr. Sachin Gupta, Advocate for
Ms. Tanvi Jain, Advocate for Union of India.

Mr. Luvinder Sofat, AAG, Punjab.

....

TEJINDER SINGH DHINDSA, J. (ORAL)

Instant writ petition has been filed seeking issuance of directions as regards medical termination of pregnancy of petitioner No.1, namely, Seema Rani.

In support of the prayer made in the petition, reliance has been placed upon certain documents reflecting investigation conducted at Rajindra Hospital, Patiala and which would prima facie indicate that the foetus has been diagnosed with a serious medical condition.

Hearing was held in the pre-lunch session and a copy of the writ petition had been furnished to Mr. Luvinder Sofat, learned AAG, Punjab so as to complete instructions in the matter.

The case having been taken up again in the post lunch session, learned State counsel upon instructions from Dr. Jasbir Singh, Nodal Officer, Director, Medical Education Research, Punjab submits that

petitioner No.1 had been duly examined by a duly constituted Medical Board at Rajindra Hospital on 20.08.2019. Learned State counsel does not dispute the contents of the documents placed on record at Annexure P-4 i.e. the findings and opinion of the Medical Board. He further submits that Rajindra Hospital, Patiala would have the requisite facilities to carry out the procedure as regards medical termination of the pregnancy.

As per Annexure P-4, the Principal, Government Medical College, Patiala had referred the case of petitioner No.1 to Rajindra Hospital vide communication dated 08.08.2019. A Board of 4 doctors was constituted by the Medical Superintendent on 14.08.2019 comprising of the Associate Professor, Gynae Department, Associate Professor, Pediatrics Department, Associate Professor, Forensic Medicine Department and Assistant Professor, Radiodiagnosis Department. The Medical Board so constituted examined petitioner No.1 on 20.08.2019 and the report at Annexure P-4 reads as follows:

- *Meeting held on same day (19.08.2019) & need for ultrasound from Rajindra Hospital was decided.*
- *Ultrasound was done on 20.08.2019 as per requisition form from Gynae & Obs dept. dated 20.08.2019. According to ultrasound report fetus has Alobar holoprosencephaly with gestational age according to femur length as 24 weeks 3 days.*

After examination of the patient and going through the ultrasound report, the Board of Doctors is of the unanimous opinion that the pregnancy has crossed 24 weeks period of gestation. The ultrasound report shown abnormal development of fetal brain which will result in birth of the baby with future bodily abnormalities and physical handicap as well as grave injury to the mental health of the mother as well as of the

family. Keeping in view the above noted circumstances and facts, MTP in this case is advised and recommended but under directions from a competent Court of law.

Sd/- Dr. Sarbhjit Kaur (Associate Prof. Gynae Depatt.)

Sd/- Dr. Baljinder Kaur (Associate Prof. Pediatrics Deptt.)

Sd/- Dr. D.S. Bhullar (Associate Prof. Forensic Medicine Deptt.)

Dr. Naresh Kumar (Assistant Prof. Radiodiagnosis Deptt.)

Documents attached along with and duly initialed by members of the Board.

1. Ultrasound film in original (Pg. 1 & 2).

2. Ultrasound report in original (Pg. 3 & 4)”

Perusal of the report would reveal that Seema Rani was examined on 20.08.2019 and as per ultrasound done, the period of gestation is 24 weeks+3 days. As per report, the foetus shows abnormal development of fetal brain which would result in birth of the baby with future bodily abnormalities and physical handicap. The recommendations made by the Board is for medical termination of pregnancy.

Section 3 of the Medical Termination and Pregnancy Act, 1971 reads as under:

“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, 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 Medical Board of 4 senior doctors of Rajindra Hospital, Patiala as per report at Annexure P-4 is that the foetus is suffering from a serious medical condition and the prognosis is rather poor.

The Medical Board has clearly recommended medical termination of pregnancy. It would be difficult for this Court not to accept the recommendations made by the duly constituted Medical Board and to take a different view in the matter.

For the reasons recorded above, writ petition is allowed. The Medical Superintendent, Government Rajindra Medical College and Hospital, Patiala is requested to get the pregnancy of petitioner No.1, namely, Seema Rani terminated under the supervision of the Head of the Department (Obstetrics and Gynecology).

Needless to observe that all the necessary facilities for undertaking such procedure be afforded in favour of the patient.

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

Disposed of.

20.09.2019

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |