

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

CWP No.33984 of 2019

Date of Decision : 25.11.2019

Mandeep Kaur

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

...

Present : Mr.Sandeep Saini, Advocate
for the petitioner.

Ms.Sukhmani Boparai, Advocate for
Mr.Amit Jhanji, Advocate
for respondent No.2.

TEJINDER SINGH DHINDSA, J.(ORAL)

Instant writ petition has been filed seeking issuance of directions as regards medical termination of pregnancy of the petitioner.

Writ petition had come up for preliminary hearing before this Court on 21.11.2019. While issuing notice of motion, the following order was passed :-

“Instant writ petition has been filed seeking issuance of directions as regards the medical termination of pregnancy of the petitioner.

In support of the prayer made in the petition, reliance has been placed upon certain documents at Annexure P-3 reflecting examination/ investigation in PGI, Chandigarh itself and which would prima facie indicate that the fetus has been diagnosed with a serious heart condition.

The period of pregnancy in the instant case is stated to be more than 20 weeks and as such, the embargo envisaged under Section 3 of the Medical Termination of Pregnancy Act, 1971 stares the petitioner in her face.

Notice of motion, returnable for 25.11.2019.

Mr. Abhishek K. Premi, Advocate for Mr. Amit Jhanji, Advocate, who is present in Court accepts notice on behalf of respondent No.2 i.e. PGI, Chandigarh.

An Advance copy of the writ petition already stands furnished.

Court has been informed that a Permanent Medical Board for assessing cases for medical termination of pregnancy beyond 20 weeks already stands constituted under the PGI, Chandigarh.

A request is made to the Chairperson of Permanent Medical Board, PGI, Chandigarh to have the petitioner examined on 23.11.2019 and to furnish an opinion as regards the prayer for medical termination of pregnancy on the adjourned date.

A copy of this order be furnished to counsel for the petitioner as also for PGI, Chandigarh under the signatures of the Bench Secretary.”

During the course of resumed hearing today, learned counsel representing respondent No.2/Institute has furnished a report of the Medical Board dated 23.11.2019. Copy of the same is taken on record as Mark 'A'.

Report of the Medical Board reads as follows :-

“Report of the Medical Board.

Subject: CWP No.33984 of 2019 titled as Mandeep Kaur Vs. State of Haryana and another in the Hon'ble Punjab and Haryana High Court regarding patient Mandeep Kaur 25 yrs female CR.No.201906563681.

With reference to the directions received from the Hon'ble Punjab and Haryana High Court dated 21.11.2019 received in MS office on 21/10/19 patient Mandeep Kaur was medically evaluated by the Permanent Medical Board at PGIMER, Chandigarh on dated 23/11/19. Following are the observations:

1. As per the ultrasound done on 23/11/2019 and fetal ECHO done on 19/11/19 the period of gestation is 23 wks + 3 days with single live intrauterine fetus with hypoplastic left heart syndrome.
2. This is a severe congenital anomaly with very poor fetal/neonatal outcome not compatible with life.
3. Keeping in view the above, the Permanent Medical Board recommends medical termination of pregnancy at this stage due to hypoplastic left heart syndrome.

Sd/-
Prof.Y.S.Bansal
(Member)

Sd/-
Prof. Nandita Kakkar
(Member)

Sd/-
Dr.Shefali Sharma
(Member)

Sd/-
Dr.Manoj Goyal
(Member)

Sd/-
Dr.Gita devi
(Member)

Sd/-
Dr.Himanshu Gupta
(Member)

Sd/-
Dr.Sahajal Dhooria
(Member)

Sd/-
Dr.Anupriya Kaur
(Member)

Sd/-
Dr.Swapnajeet Sahoo
(Member)

Sd/-	Sd/-	Sd/-
Prof.Seema Chopra	Prof. Kanya Mukhopadhyay	Dr.Ranjana Singh
(Chairperson)	(Member)	(Convener)

Perusal of the report would reveal that the petitioner was examined on 23.11.2019 and as per ultrasound as also fetal ECHO done on 19.11.2019, the period of gestation is 23 weeks+3 days with single live intrauterine fetus with hypoplastic left heart syndrome. The Board has opined that the fetus suffers from a severe congenital anomaly and which has very poor fetal neonatal outcome and compatibility with life. It has been recommended by the Board that medical termination of pregnancy be permitted.

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, 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 PGIMER, Chandigarh, as per report at Mark 'A' is that the foetus is not likely to survive on account of congenital anomaly noticed in the report itself.

Under such circumstances, it would be difficult for this Court to refuse permission to the petitioner to undergo medical termination of pregnancy. 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.

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

The Director, PGIMER, Chandigarh is requested to get the pregnancy of the petitioner, namely Mandeep Kaur terminated under the supervision of the Head of the Department (Obstetrics and Gynecology), PGIMER, Chandigarh.

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.

25.11.2019

dss

(TEJINDER SINGH DHINDSA)

JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No