

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-35070-2019 (O&M)
Date of Decision: 07.12.2019

Sunil Sahu

--Petitioner

Versus

Union of India & another

--Respondents

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

Present:- Mr. Vinod Bhardwaj, Advocate for the petitioner.

Mr. Satish Singla, Advocate for respondents.

TEJINDER SINGH DHINDSA.J (Oral)

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

Writ petition had come up for preliminary hearing before this Court on 2.12.2019 and while issuing notice of motion, the following order was passed:-

“Petitioner seeks a Mandamus for directing respondent No.2 to carry out a procedure for medical termination of pregnancy of his wife.

Counsel submits that wife of the petitioner was having a brain tumor. The same was surgically removed on 06.09.2019. Surgical Pathology report from the Department of Histopathology, PGIMER, Chandigarh (Annexure P-1) has been adverted to which would indicate malignancy. Further document placed on record at P-2 issued by PGIMER indicates that wife of the petitioner cannot be given any radiation on account of the pregnancy.

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

petitioner in the face.

Notice of motion, returnable for 07.12.2019.

Mr.Satish Singla, Advocate, who is present in Court, accepts notice on behalf of respondents No.1 and 2 and waives service. A complete copy of the writ paper-book already stands furnished.

In the meanwhile, a request is made to the Chairperson of the Permanent Medical Board at PGIMER to have wife of the petitioner examined during the course of next two days and to furnish an opinion as regards his prayer for medical termination of pregnancy of his wife which is beyond 20 weeks.

Report be furnished on the adjourned date.

A copy of this order be furnished to counsel for the parties under the signatures of the Bench Secretary.

To be taken up in the urgent motion list.”

During the course of resumed hearing today learned counsel representing the respondents-PGIMER, Chandigarh has furnished a report of the Medical Board dated 5.12.2019. 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.35070 of 2019 titled as Sunil Sahu Vs. Union of India and another in the Hon'ble Punjab and Haryana High Court regarding patient Varsha Sahu age 27 years female CR No.201904924241.

With reference to the directions received from the Hon'ble Punjab and Haryana High Court dated 02/12/2019 received in MS office on 04/12/19, patient Varsha Sahu was medically evaluated by the Permanent Medical Board at PGIMER, Chandigarh on dated 05/12/19. Following are the observations:

- 1. As per the ultrasound done on 05/12/2019 the period of gestation is 26 wks+4 days with single live intrauterine healthy fetus who is likely to be born alive if termination is done immediately.*
- 2. As per the records, patient has been operated for malignant brain tumor and has been advised for radiotherapy.*
- 3. Medical board co-opted consultant from the Dept. of Radiotherapy who has advised the patient for Radiotherapy and evaluated the pros and cons of continuing the pregnancy vis-a-vis risk to her life due to ongoing medical condition.*
- 4. Keeping in view the hazardous medical condition of the patient and the need for radiotherapy treatment the Permanent Medical Board recommends medical termination of pregnancy at this stage so that her Radiotherapy can be initiated.*

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

*Sd/-
Prof. Nandita Kakkar
(Member)*

*Sd/-
Dr. Shefali K. Sharma
(Member)*

*Sd/-
Dr. Manoj Goyal
(Member)*

*Sd/-
Dr. Tulika Singh
(Member)*

*Sd/-
Dr. Himanshu Gupta
(Member)*

*Sd/-
Dr. Sahajal Dhooria
(Member)*

*Sd/-
Dr. Inusha Panigrahi
(Member)*

*Sd/-
Dr. Ruchita Shah
(Member)*

*Sd/-
Dr. Renu Madan
(Co-opted Member)*

*Sd/-
Prof. Rashmi Bagga
(Chairperson)*

*Sd/-
Prof. Bhavneet Bharti
(Member)*

*Sd/-
Dr. Ranjana Singh
(Convener)*

Perusal of the report would reveal that Varsha Sahu was examined by the Permanent Medical Board at PGIMER, Chandigarh on 5.12.2019. As per ultrasound done on 5.12.2019 itself the period of gestation is 26 weeks+4 days. It has been stated in the report that Varsha has been operated upon for malignant brain tumor and has been advised radiotherapy. The Medical Board co-opted a consultant from the

Department of Radiotherapy and after evaluation of the pros and cons of continuing the pregnancy vis-a-vis risk of her life due to the on going medical condition/cancer, the Permanent Medical Board has recommended medical termination pregnancy at this stage so as to facilitate the initiation of treatment of radiotherapy.

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 continuation of pregnancy may not be feasible as the treatment of a malignant brain tumor of the mother can then not be treated by way of radiotherapy. Such view has been expressed by the medical board after associating a consultant from the Department of Radiotherapy as well. 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, writ petition is allowed.

The Director, PGIMER, Chandigarh is requested to get the pregnancy of wife of the petitioner terminated under the supervision of the

Head of 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.

(TEJINDER SINGH DHINDSA)
JUDGE

07.12.2019

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No