

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION (st.)NO.10539 OF 2020

Bibi Khatija w/o Salman Khan,
Age: 21 years, Occu: Household,
R/o. Heena Nagar Chikalhana,
Taluka & District Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
Thorough its Secretary,
Public Health and Family
Welfare Department,
Mantralaya, Mumbai- 32

2. Government Medical College & Hospital,
Aurangabad

RESPONDENTS

Mr D. S. Manorkar, Advocate for the petitioner;
Mr S. S. Dande, AGP for respondents

CORAM : PRASANNA B. VARALE, J.

DATE : 8th April, 2020

ORAL ORDER:

Heard learned Counsel for the petitioner.

2. In response to the notice dated 3rd April, 2020, issued by this Court, Mr Dande, learned AGP for the respondents made available the report of the

experts committee. Needless to state that in view of the directions of this Court, the petitioner was subjected to medical examination.

3. Perusal of the report of the experts committee duly signed by all the members of the committee shows that the committee made key recommendations and also recorded its findings, which read thus:

“(a) Length of pregnancy : Gestational Age of 22 weeks 01 day.

(b) Single live intrauterine fetus with gross ventriculomegaly.

Taking into consideration the above findings there is substantial risk to the fetus if born. Hence this Committee recommends termination of pregnancy. Pregnancy can be terminated at Government recognized centre of choice of patient with due risk to mother and the risk is explained to her and her relatives.”

4. Learned Counsel appearing for the petitioner invited our attention to the documents placed on record as well the judgments of the Apex Court and Division Bench of this Court to draw support for his contentions. Learned Counsel for the petitioner was justified in inviting our attention to the judicial pronouncements and I am certainly guided by this authoritative pronouncement by the Hon'ble Apex Court in the matter of “X” and others Vs. Union of India, MANU/SC/0149/2017 and order passed by Division Bench of this Court in the matter of “X” Vs. State of Maharashtra and others in Writ Petition No.12408 of

2017.

5. The Division Bench of this Court also referred to judgment of the Apex Court in the case of Suchita Srivastava Vs. Chandigarh Administration, 2009(9) SCC 1 and it states that there is no doubt that a woman's right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choice can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. It also referred to the observations made by Division Bench of this Court in para - 13 of the judgment and order in Sou Moto Public Interest Litigation No.1/2016 in the matter of High Court on its own motion Vs. The State of Maharashtra, LEX(BOM) 2016 9 page 114.

6. The Division Bench of this Court then referred to the judgment of the Apex Court in the matter of Appellant “X” Vs. Union of India & Ors, AIR 2016 SC 3525 and observed that the Hon'ble Apex Court considering the provisions of Section 5 of the Act of 1971, permitted termination of pregnancy of duration of 23 to 24 weeks. It is observed in the judgment that section 3 leaves no room for doubt that it is not permissible to terminate pregnancy after

20 weeks, however, section 5 of the Act lays down exception to section 3. It is further observed that termination of pregnancy which is necessary to save life of a pregnant woman is permissible **(Emphasis supplied).**

7. The Hon'ble Apex Court in the matter of Appellant “X” Vs. Union of India and others, AIR 2017 SC 1055 granted permission for termination of pregnancy of duration of 24 weeks since it was noticed that the fetus could not survive.

8. In the present matter, the petitioner has also been sensitized by the Committee/Medical Board about risk factors involved and learned Counsel for the petitioner reiterated and assures this fact that the petitioner has been sensitized about the risk factors involved.

9. Learned Counsel for the petitioner, on instructions, submits before this Court that that petitioner is ready to go before the Medical authorities of respondent No.2 i.e. the Government Medical College and Hospital, Aurangabad for exercise of termination of pregnancy by following due procedure of the Government Medical College and Hospital, Aurangabad and by bearing expenses as required.

10. This Court has already dealt with the issue involved in the present petition and for elaborate reasons recorded in the order dated 15th January, 2019 and based on the decisions rendered by the Honourable the Apex Court and this Court, referred supra, allowed Writ Petition No. 420 of 2019.

11. Having regard to the facts of the present case, I see no reason to take a different view. Thus, present writ petition stands allowed.

12. Authenticated copy of this order be supplied to learned Counsel for the petitioner as well as learned AGP.

Parties to act upon authenticated copy of this order.

[PRASANNA B. VARALE, J.]

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