

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

WRIT PETITION (STAMP) NO.10574 OF 2020

ANISHKA DADA JAIDASBHAI SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Shri J.M.Murkute h/f Shri S.S.Deshmukh, Advocate for the petitioner.
Shri D.R.Kale, Government Pleader for the respondents/ State.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th May, 2020

Per Court:

1 This matter is taken up through Video Conferencing by Vidyo App during the nationwide lock-down on account of COVID-19 pandemic.

2 By order dated 30.04.2020, this Court had ordered as under :-

"1 This matter is taken up through Video Conferencing by Vidyo App during the nationwide lock-down on account of COVID-19 pandemic.

2 The petitioner has put forth prayer clause "A", which reads as under :-

"A) By issuance of writ or appropriate writ or order in the like nature respondent authorities be directed to permit the petitioner to undergo the medical termination of pregnancy forthwith; and for that purpose issue necessary directions."

3 The learned Government Pleader appearing on behalf of the respondents/State submits that the Medical Board for considering such cases has already been constituted and is available at Respondent No.2/ Swami Ramanand Teerth

Rural Government Medical College and Hospital,
Ambajogai, District Beed.

4 I find from the report of respondent No.2 dated 23.04.2020 that the petitioner was examined on 23.04.2020 and it is mentioned that on account of Anencephaly in fetus i.e. defect in brain development resulting in small or missing brain hemispheres, it is necessary to have termination of pregnancy.

5 Considering the above, the petitioner shall present herself before the Medical Board available at respondent No.2 on 02/05/2020 at 03:00 pm. Her husband is permitted to accompany her. She shall be subjected to the medical examination by the Medical Board in accordance with the established medical procedure.

6 The Medical Board shall express it's opinion on the following issues :-

[a] Whether, the fetus has such anomalies that a child with serious congenital defects should not be allowed to be delivered by the probable mother?

[b] Whether, such a child, if allowed to be born, would not be able to lead a healthy life even with medical intervention and assistance?

[c] Whether, in the opinion of the Medical Board, the termination of pregnancy would be inevitable and necessary?

[d] Whether, the life of the petitioner would not be subjected to risks if such termination of pregnancy is permitted?

7 The Medical Board shall send it's report to the learned Registrar (Judicial) of this Court via email (email address : hcaur.judl@bhc.gov.in), by 03.00 p.m. on 04.05.2020.

8 List this petition on 05.05.2020 for further hearing and orders."

3 The report tendered by the Dean of the Swami Ramanand Teerth Rural Government Medical College and Hospital, Ambajogai, District Beed dated 02.05.2020, is placed before the Court. I have gone

through the said report threadbare. The learned advocate for the petitioner as well as the learned Government Pleader have gone through the said report. The report of the Committee is taken on record and marked as "X" for identification.

4 Under Item No.8, below annexure-2, the Committee has noted that there is a foetal abnormality. Under item No.10, the opinion is "*cranium absent with anencephaly*". Under item No.13, the key findings are that cranium is absent and the live pregnancy of 24 weeks suffers with "*anencephaly with frog eye sign present with increased liquor*". Under Item No.15, the Committee has observed that the petitioner/ probable mother has the physical fitness to undergo the termination of pregnancy.

5 The Committee has observed under Item No.16(a)(2) that there is a substantial risk of physical and mental handicap to the child to be given birth and besides the mother having a risk of termination of pregnancy, if undertaken at an advanced stage, it is mentioned under sub-item (6) of Item No.16(a) that there is major non correctable and lethal fetal congenital anomaly and the termination of pregnancy is recommended. The probable mother/ petitioner has been explained of the risk involved and the Committee prays that the petitioner should tender an affidavit of being willing to undergo the risk of termination of pregnancy.

6 The learned advocate for the petitioner submits, on

instructions, that the petitioner is aware of the risk involved, is willing to run the risk and will not lodge any complaint or grievance against any government recognized MTP centre or doctor if she suffers any untoward incident during such termination of pregnancy.

7 In view of the above, this Writ Petition is allowed in terms of prayer clause A, which reads as under :-

"A) By issuance of writ or appropriate writ or order in the like nature respondent authorities be directed to permit the petitioner to undergo the medical termination of pregnancy forthwith; and for that purpose issue necessary directions."

8 The request of the petitioner to present herself along with her husband before Respondent No.2/ Medical College and Hospital for termination of pregnancy on 08.05.2020 at 11:00 AM, is accepted.