

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION (ST.) NO.10586/2020

Kavita w/o Vijay Pawar,
age 28 yrs., occu.household,
r/o Plot No.15, Old Dharangaon Road,
Anandnagar, Erandol Tq.Erandol
Dist.Jalgaon.

...Petitioner..

VERSUS

1] The State of Maharashtra,
through the Secretary to the
Ministry of Health and Family Welfare,
Mantralaya, Mumbai-32.

2] The District Civil Surgeon,
District Hospital, Jalgaon. Dist.Jalgaon.

...Respondents..

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Dr.S.D. Tawshikar, Advocate for petitioner.
Smt.Vaishali Jadhav, AGP for respondent nos.1 & 2.

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CORAM: V.L. ACHLIYA, J.

DATE: 15.05.2020

PER COURT :

1] Rule. Rule made returnable forthwith. By consent, heard finally at the stage of admission.

2] By this petition under Article 226 of the Constitution of India, the petitioner has claimed the reliefs as under:-

[B] To permit the petitioner to medically terminate her

pregnancy at Government Hospital or Private Hospital, by issuing writ of mandamus or any other writ or order.

[C] To direct the respondent No.2 to conduct the clinical verification of the petitioner before the Medical Board at Jalgaon forthwith so as to examine the status and anomalies of the foetus and to submit its report immediately to this Hon'ble Court opining the medical termination of the pregnancy of the petitioner or otherwise, by issuing writ of mandamus or any other writ or order."

3] Heard learned counsel for the petitioner and the learned AGP for the respondent nos.1 & 2. Perused the report submitted by the Medical Board constituted pursuant to order dated 12.5.2020 passed by this Court (Ravindra V. Ghuge, J.).

4] In brief, it is the case of the petitioner that she is a married woman carrying pregnancy of more than 21 weeks. As per the medical advice of her doctor with whom she was taking pre-delivery treatment came to know that during periodical ultra sonography examination conducted on 24.4.2020, it was noticed that the foetus was having complex cardiac deficiency, which will be dangerous to the life of the child. She was advised to undergo FETAL 2D ECHO test for the confirmation and evaluation of said deficiency detected during ultra sonography test. Accordingly, the petitioner has undergone the special test as suggested by the

doctor. As per the FETAL 2D ECHO test conducted on 4.5.2020 at Jalgaon, it was confirmed that the foetus of the petitioner was suffering from severe heart disease i.e. complex cardiac anomaly. The Gynecologist treating the petitioner advised her to get the pregnancy terminated since the pregnancy was of more than 20 weeks. She has approached for grant of requisite permission to terminate pregnancy by exercising extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5] By order dated 12.5.2020 passed by this Court, the petitioner was directed to appear before the committee constituted at Dr.Ulhas Patil Medical College & Hospital at Jalgaon for medical examination. The committee constituted was directed to submit the report on the points referred in the order.

6] After conducting the clinical examination as well as sonography test pursuant to order dated 12.5.2020, the committee has recorded its response to points referred in the order dated 12.5.2020 as under:-

“Q 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 ?

Opinion:- The Fetus has such serious congenital defects that it would be preferable not to be delivered by the probable mother.

Q 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 ?

Opinion:- If the child is allowed to be born, there is significant risk of heart failure and death any time after birth and chances of survival up to 20 years are very less, even with medical intervention and assistance.

Q c] Whether in the opinion of the board, the termination of the pregnancy would be inevitable and necessary ?

Opinion:- As per opinion of the committee termination of pregnancy is inevitable and necessary.

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

Opinion:- Commonly the life of petitioner will not be subjected to any extra risk if termination of pregnancy is permitted as compared to general population deliveries."

7] The facts stated in the petition are duly supported by the report of ultra sonography and FETAL 2D ECHO test. The expert committee has independently examined the petitioner and on the basis of clinical and ultra sonography reports, the committee has opined that the termination of pregnancy is inevitable and necessary in view of foetus having serious congenital defect and

preferably not to be delivered by the probable mother. It is also opined that even if the child is allowed to be born, there is significant risk of heart failure and death any time after the birth. It is also mentioned in the report that chances of survival of such child upto 20 years are very less even with medical intervention and assistance. It is further opined that the life of petitioner will not be subjected to any extra risk if termination of pregnancy is permitted in comparison to general population deliveries.

8] Thus, considering the overall facts of the case and the report of the expert committee, I am of the view that in the peculiar facts and circumstances of the case, the extraordinary jurisdiction of this Court deserves to be invoked. The case is made out for termination of pregnancy as provided u/s 3(2)(i)(ii) of the Medical Termination of Pregnancy Act, 1971.

9] In the result, the petition is allowed in terms of prayer clause (B) strictly in terms of Section 4 of the Medical Termination of Pregnancy Act, 1971 i.e. medical termination of pregnancy must be conducted either in the Government hospital or at the centre recognized by the Government authorized to carry out medical termination of pregnancy.

10] Rule made absolute in above terms.

11] All concerned to act upon copy authenticated by Court

Sheristedar of this Court as true copy. Copy of the order attested by Court Sheristedar be provided to learned counsel for the petitioner as well as learned AGP.

(V.L. ACHLIYA, J.)