

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION (ST.) NO.10592/2020

SANA D/O MUNIR PATHAN @ SANA W/O SADDAM PATEL,
aged 18 yrs., occu.household,
r/o Daru Salam Mohalla,
at Post. & Tq.Paithan Dist.Aurangabad,
at present near Nurani Masjid,
Devlai Village, Aurangabad.

...Petitioner..

VERSUS

1] THE STATE OF MAHARASHTRA,
through Secretary, Health Department,
Mantralaya, Mumbai.

2] Government Hospital and Training Institute,
Aurangabad.

.....

Shri Sunil B. Surse, Advocate for petitioner.
Smt.Vaishali Jadhav, AGP for respondent nos.1 & 2.

.....

CORAM: V.L. ACHLIYA, J.

DATE: 19.05.2020

PER COURT :

1] Rule. Rule made returnable forthwith. By consent, heard finally.

2] By this petition filed under Article 226 of the Constitution of India, the petitioner has approached for seeking following relief:-

“B] By issuing appropriate writ or direction in like

nature and the petitioner may kindly be permitted to Medical Termination of the Pregnancy.”

3] Heard learned counsel for the petitioner and learned AGP for the respondent nos.1 & 2.

4] The petitioner has approached with a case that she is a married women and carrying pregnancy of 21 weeks. On 3.5.2020, she has undergone ULTRASOUND EXAMINATION OF GRAVID UTERUS at Shree Diagnostic Centre, Paithan Dist.Aurangabad. After the examination, Dr.Bhagwat Kedar, Radiologist, has given the opinion as under:-

“A – Fetal brain and cranial vault are not seen with positive frog eye sign s/o anencephaly.

B – Fetal spine is abnormal and dysmorphic with abnormal curvatures and areas of absent posterior elements.”

5] In short, it is the case of the petitioner that as the fetus has not developed its brain and skull is having abnormal spine, there is a substantial risk that if child were born, it would suffer from such physical or mental abnormality to make such child seriously handicapped. She has been advised to undergo termination of pregnancy. Since the pregnancy is of more than 21 weeks, the petitioner has approached seeking permission to get the pregnancy terminated medically in terms of provisions of the Medical

Termination of Pregnancy Act, 1971. In support of case of the petitioner, the petitioner has annexed the copy of report of ULTRASOUND EXAMINATION OF GRAVID UTERUS conducted at Shree Diagnostic Centre, Paithan Dist.Aurangabad on 3.5.2020.

6] In order to facilitate this Court to take appropriate decision in the case, by order dated 15.5.2020 passed by this Court, the petitioner was directed to appear before the Medical Board at the Government Medical College and Hospital (Ghati), Aurangabad, on 18.5.2020 at 11-00 a.m. The Medical Board was directed to conduct the medical examination of the petitioner and submit its opinion on the following issues:-

[a] Whether the fetus has not developed brain and having abnormal spine ?

[b] Whether the child born with such abnormality would not be able to lead healthy life even with medical intervention and assistance ?

[c] Whether such child if born with such abnormality would suffer from such physical or mental abnormalities to make it seriously handicapped ?

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

[e] Whether the life of the petitioner would be subjected to risk if such termination of pregnancy is permitted ?

7] The petitioner appeared before the Medical Board on 18.5.2020. The Medical Board examined the petitioner and on her obstetric ultra-sonography report, recorded findings on the above issues as under:-

[a] Fetus has not developed brain and has abnormal spine.

[b] If allowed to be born, child would not be able to survive even with medical intervention & assistance.

[c] Given abnormality would suffer child from such physical and mental abnormality to make it seriously handicap.

[d] Termination of pregnancy would be inevitable and necessary.

[e] Termination of pregnancy has due risk to mother (petitioner). Since she belongs to containment zone, she will have to undergo swab test for Covid-19. The risk involved is explained to her and her relatives. The Hon.High Court is humbly requested to take an affidavit undertaking of the acceptance of the said risk from the petitioner and her relatives.

8] Learned AGP submits that in view of the report received from the Medical Board, appropriate orders may be passed in the matter.

9] Thus, on due consideration of overall facts of the case, the submissions advanced and the report of the Medical Board, I am

of the view that the petitioner has made out the case to allow her to terminate the pregnancy. The Medical Board has opined that the fetus has not developed brain and has abnormal spine and If allowed to be born, child would not be able to survive even with medical intervention & assistance. The Medical Board has further opined that the termination of pregnancy is inevitable and necessary. The Medical Board has also opined that termination of pregnancy has due risk to the petitioner and same has been explained to her as well as her relatives. It is further opined that since the petitioner belongs to containment zone, she will have to undergo swab test for Covid-19 and it is requested to take an undertaking of acceptance of the said risk from the petitioner and her relatives.

10] Learned counsel for the petitioner submits that the petitioner is fully aware about the risk involved in termination of pregnancy and same has been explained to her as well as to her relatives by the Medical Board, which has examined the petitioner. She is ready to file an undertaking before this Court to undergo swab test for Covid-19 and to bear the risk of medical termination of pregnancy and urged to allow the petitioner to get the pregnancy terminated at her risk.

11] Thus, considering the overall facts of the case and report

of the Medical Board, I am of the view that the case is made out to allow the petitioner to get the pregnancy terminated at her own risk. Accordingly, the petition is allowed. The petitioner is permitted to get her pregnancy terminated in the hospital established or maintained by the Government or at a place approved by the Government or at the District Level Committee constituted by the Government to medically terminate pregnancy as provided u/s 4 of the Medical Termination of Pregnancy Act, 1971. The petitioner is directed to file an undertaking before this Court on 20.5.2020 stating that she will undergo swab test for Covid-19 and produce the report of such report at the time of termination of pregnancy and is ready to bear the risk of medical termination of pregnancy.

12] Authenticated copy attested by Court Sheristedar of this Court be supplied to learned counsel for the petitioner as well as to the learned AGP. All concerned to act upon authenticated copy of the order.

13] Rule is made absolute in above terms.

(V.L. ACHLIYA, J.)