

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

WRIT PETITION NO.9044 OF 2020

XYZ
THROUGH HER NATURAL GUARDIAN MOTHER,
-VERSUS-
THE STATE OF MAHARASHTRA AND OTHERS.

...
Shri Harshal P. Randhir, Advocate for the petitioner.
Shri A.M.Phule, AGP for respondent Nos.1 to 3/ State.
...

**CORAM : RAVINDRA V. GHUGE
&
MANGESH S. PATIL, JJ.**

(VACATION COURT)

DATE :- 28th December, 2020

Per Court :-

1. This Court, having heard the parties on 26.12.2020, had passed the following order :-

- “1. *Heard.*
2. *The minor girl, 16 years of age, is rape victim. Her own father, who is heavily addicted to the alcohol, allegedly committed rape on her. The victim is carrying 24th week of her pregnancy. The petitioner, real mother of the victim, is seeking permission for medical termination of pregnancy of said daughter.*
3. *The victim is thus referred to the expert committee constituted at the Government Medical College and Hospital, Jalgaon. The petitioner shall keep the victim present before the expert committee at Government Medical College and Hospital, Jalgaon on 27.12.2020 at 11.00 a.m.. The expert committee shall examine the*

victim and submit its report in a sealed envelope on or before 28.12.2020. Learned A.G.P. Mr. Phule to coordinate in the matter.

4. *The expert committee shall opine whether the continuance of the pregnancy would involve a risk to the life of the victim girl, or of grave injury to physical or mental health or that there is substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.*
5. *Learned A.G.P. Mr. Phule shall inform the Dean, Government Medical College and Hospital, Jalgaon forthwith about this order and for necessary action at his end.*
6. *Stand over to 28.12.2020.*
7. *Authenticated copy be given to the parties to this petition.”*

2. Pursuant to the above order, the Medical Board (07 doctors including the Dean) constituted by the Dean, Government Medical College, Jalgaon have submitted the report dated 27.12.2020. We have taken the said report on record and which is marked as “X” for identification. The brief contents of the said report read as under:-

“The Medical Board committee had meeting on dated 27.12.2020 and discussed the provisions of MTP Act 1971 after thorough clinical examination and upon necessary investigations committee concludes as follows:

- 1) *On clinical & Sonographic assessment of the pregnancy of Miss.XXXX Age 16 years on 27.12.2020 there is no evidence of any obvious structural congenital anomaly in fetus, at present.*
- 2) *Considering given age of patient at 16 years as notified by honourable court the patient is clinically normal and psychologically stable at present. There is no substantial risk to fetus.*
- 3) *Continuation of pregnancy can cause grave injury to mothers mental health.”*

(Name of the victim appearing in the above report in paragraph 1 is deleted).

3. It is not disputed that the victim has suffered an offence as set out in the First Information Report No.242/2020 registered on 20.12.2020 with the Parola Police Station, District Jalgaon. Details of the offence allegedly committed against her are set out in paragraph 2 of the order dated 26.12.2020, reproduced above.

4. It requires no debate that the report of the Medical Board indicates “no congenital anomaly” in the foetus and the probable mother (victim), who is 16 years of age, is “clinically normal” and “psychologically stable”. The opinion expressed is that there is no substantial risk to the foetus, except that the continuation of pregnancy can cause grave injury to the probable mother’s mental health.

5. Section 3 of the Medical Termination of Pregnancy Act, 1971 reads as under :-

- “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 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 pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of 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 [mentally ill person], shall be terminated except with the consent in writing of her guardian.*
- (b) Save as otherwise provided in C1.(a), no pregnancy shall be terminated except with the consent of the pregnant woman."*

(Coram : Prasanna B. Varale and Avinash G. Gharote, JJ.) have dealt with Writ Petition No.12029/2019 decided on 04.10.2019. It was concluded in the said order that the victim, who is a minor, is likely to suffer mental trauma and agonies. This Court, therefore, directed that in such circumstances the victim should be granted the liberty to proceed for medical termination of pregnancy. In Writ Petition No.13738/2018, the learned Division Bench of this Court at the Principal Seat, has delivered an order dated 10.12.2018, considering similar set of circumstances.

7. The learned AGP submits that since the victim has approached this Court after completion of 24 weeks of pregnancy and as Section 3(2)(a) of the Medical Termination of Pregnancy Act, 1971 provides for termination of pregnancy in between 12 to 20 weeks, the risk in terminating such pregnancy is involved. The biological mother of the victim (probable mother) needs to make a statement that in such a situation, involving the risk to the probable mother while carrying out medical termination of pregnancy, the petitioner would not hold the doctors responsible for any complications.

8. The learned advocate for the petitioner submits that neither the petitioner, who is the biological mother of the victim, nor the victim herself would blame the doctors carrying out the medical termination of pregnancy considering the peculiar facts involved in this case and both are willing to run the risk of seeking medical termination of pregnancy. It is

stated that this statement is made on instructions and should be recorded as a statement made to the Court. No claim of any nature whatsoever would be raised by the petitioner or the victim in the event of any complication arising out of such medical termination of pregnancy, against the doctors carrying out the said medical procedure.

9. In view of the above, this Writ Petition is allowed with the following directions :-

- (a) As the victim is already admitted in the Government Medical College, Jalgaon, the concerned doctors would carry out the medical termination of her pregnancy, on or before 05:00 PM on 29.12.2020 (tomorrow).
- (b) Since the medical termination of pregnancy arises on account of an offence registered in the FIR No.242/2020, the doctors shall ensure that the foetus/ contents in the womb of the probable mother, would be preserved strictly as is prescribed.
- (c) The Head of the team carrying out the medical termination of pregnancy, shall coordinate with the Investigating Officer, insofar as the preservation of the foetus/ contents of the womb of the probable mother is concerned, for such duration as may be required for completing the investigation in the crime.
- (d) In the improbable event of any complication arising out of

such medical termination of pregnancy, the petitioner as well as the victim would not hold the concerned doctors responsible for the same.

10. Parties shall act on an authenticated copy of this order and/or the printout copy of this order taken from the official website of this Court.

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(MANGESH S. PATIL, J.)

(RAVINDRA V. GHUGE, J.)