

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Writ Petition NO. 847 OF 2020

1. Gitanjali Ganesh Surve, &	
2. Ganesh Madhukar Surve.	...Petitioners
<i>Versus</i>	
Union Of India	
And Ors	...Respondents

....

Mr. Prosper D'souza, Advocate for the Petitioners.
Smt. Purnima Awasthi, Advocate for Respondent No.1 – UOI.
Mr. A.P. Vanarase, AGP, for Respondent Nos.2 & 3 – State.

....

**CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.
DATED : 31th JANUARY, 2020
[IN CHAMBERS AT 2:45 P.M.]**

PC :

1. Petitioner No.1 is wife of Petitioner No.2. Both of them have approached this Court for permission to terminate pregnancy of Petitioner No.1.

2. It is the case of the Petitioners that the medical examination of Petitioner No.1 conducted at a Private Hospital showed that the fetus was suffering from various anomalies. It is mentioned in the Petition that Petitioner No.1 was pregnant for more than 24 weeks. It is their case in the Petition that the child was likely to be delivered in May, 2020

and till then Petitioner No.1 was going through mental anguish. It is also mentioned that they were financially poor.

3. Vide order dated 28.1.2020, we had referred Petitioner No.1 to the Medical Board at Civil Hospital, Ratnagiri established for the purpose of determination as to whether the medical termination of pregnancy was advisable and as to whether Petitioner No.1's case fell in any of the categories under the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'MTP Act').

4. Accordingly the Medical Board consisting of the Civil Surgeon, Ratnagiri and other Medical Officers have tendered a report dated 29.1.2020 before us. The recommendation of the Medical Board in respect of termination of pregnancy reads thus:

“16. Recommendation by Medical Board for termination :-

There is a substantial risk that if child borne alive, it would suffer from such physical or mental abnormalities as to be seriously handicapped. So MTP is recommended. There are chances of complications of MTP at this gestation age.

The woman is not ready to give consent for termination. Termination without consent is not recommended.”

5. Thus, the Medical Board has clearly opined that Petitioner No.1 is not willing to give consent for termination and the termination without consent was not recommended. In any case, there is a specific bar under Section 3(4)(b) of the MTP Act in carrying out medical termination of pregnancy if the pregnant woman did not give consent. Section 3(4)(b) reads thus :

“3. When pregnancies may be terminated by registered medical practitioners. –

xxxxxx

xxxxxx

(4) (a) xxxxxx

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

6. In view of the opinion of the Medical Board and the specific bar mentioned in Section 3(4)(b) of the MTP Act, we are not granting permission for medical termination of pregnancy of Petitioner No.1.

7. The Petitioners by prayer clause (c) have also prayed that if the permission is not granted for termination of pregnancy then the State should be directed to assume responsibility for such child and offer such medical support and facilities as may be reasonably feasible in the best interest of the child and as per law.

8. In our view, in this case the State cannot be directed to assume the full responsibility of such child. However, directions are issued to the State to offer such medical support and facilities to Petitioner No.1 and her child, which are necessary, in accordance with the Rules and Laws. It is expected that the State Government shall treat this case sympathetically on humanitarian ground considering the poor financial condition of the Petitioners.

9. The Petition is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)