

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

Writ Petition (Stamp) NO. 1901 OF 2020

Bhumi Anil Singh

...Petitioner

Versus

State Of Maharashtra

And Anr

...Respondents

....

Mr. Prashant Pandey a/w. Y.B. Jaiswal i/b. Siddharth Jaiswal,
Advocate for the Petitioner.

Mr. S.H. Kankal, APP, for the Respondents – State.

....

**CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.**

**DATED : 31th JANUARY, 2020
[IN CHAMBERS AT 2:45 P.M.]**

PC :

1. The Petitioner has preferred this Petition for allowing her to terminate her pregnancy at any hospital. The other prayers were not pressed and liberty was granted to the Petitioner to pursue them through appropriate remedy.

2. It is the case of the Petitioner that she was rescued as a victim in connection with C.R. No.406/2019 registered at Malad Police Station, Mumbai. It was mentioned before us

that the said offence was registered under Section 370 of I.P.C. and under Sections 4 & 5 of the Immoral Traffic (Prevention) Act, 1956. It is the case of the Petitioner that she was taken into custody on 28.9.2019 and the Metropolitan Magistrate, 54th Special Court for PITA, Mazgaon, Mumbai vide order dated 19.10.2019 had directed that the Petitioner be detained for a period of one year. The Petitioner's mother visited her at the Observation Home and came to know that the Petitioner was pregnant. It is the case of the Petitioner that she told her mother that she wanted to terminate her pregnancy as it was an unwanted pregnancy.

3. According to the Petitioner, Respondent No.2 i.e. Authorities of the Observation Home did not allow her to terminate the pregnancy. Even the learned Magistrate did not accord any such permission. Thereafter this Petition was filed. It is mentioned in the Petition that the Petitioner was major and had the right to decide about continuation of her pregnancy. One of the grounds mentioned that she was a victim of a heinous crime and she had unwillingly conceived

as she was victim in the said offence.

4. During pendency of the Petition, the Petitioner was produced before this Court, and a Co-ordinate Bench of this Court (Coram: B.P. Dharmadhikari & Nitin R. Borkar, JJ.), vide order dated 21.1.2020 recorded that the Petitioner had expressed desire before the Court to terminate the pregnancy. She expressed her wish in presence of her mother and the Superintendent. Accordingly the Co-ordinate Bench of this Court had referred the Petitioner to the Medical Board of Sir J.J. Group of Hospitals, Mumbai for medical examination. Thereafter this matter was placed before us as per Roster by the Registry.

5. Accordingly the Medical Board vide their report dated 21.1.2020 opined thus :

“

COMMITTEE OPINION

After taking history, careful examination, ultrasonography examination and psychiatric evaluation the committee has come to the opinion that there is no abnormality detected at present in the fetus and the pregnant mother.

The pregnancy has crossed 20 weeks. She has desired to continue the pregnancy earlier when she presented to Shatabdi Hospital and then to Nair Hospital.

She is of adult age (19 years) and in good medical condition. In the view of above there is medically no need to terminate pregnancy.”

6. Considering the peculiar facts of the case, in our opinion, the Committee’s opinion did not refer specifically to the categories mentioned under Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as ‘MTP Act’). Therefore we again directed that the Petitioner be produced before the Medical Board and we sought specific opinion in this regard.

7. Accordingly, the petitioner was produced before the Medical Board. Today, the Medical Board of Sir J.J. Group of Hospitals, Mumbai have forwarded a report dated 31.1.2020 before us. The Committee’s opinion reads thus :

“

COMMITTEE OPINION

After taking repeat history, careful examination, ultrasonography examination and psychiatric evaluation the Committee has come to the opinion that there is no abnormality detected at present in fetus and mother.

In the psychiatric evaluation, she (petitioner) as well as her mother have said that they do not want medical termination of pregnancy and will raise the born child.

In front of the Committee members she has reiterated the same. She and her mother have signed a written statement in Hindi in front of the witnesses and the Committee Members stating the same.

The opinion as to whether her case falls in any of the categories mentioned in the Medical Termination of Pregnancy Act, 1971, (Act No.34 of 1971), Clause U/s 3(2)(b)(1) does not arise.”

8. The Medical Board’s opinion clearly mentions that the Petitioner as well as her mother have stated that they did not want medical termination of pregnancy and that they would raise the child. The observations of Dr. V. P. Kale (Professor & Head, Department of Psychiatry), as recorded in

the Committee's report dated 31.1.2020, are as follows :

“Findings : MSE – Conscious, cooperative, communicative, oriented to t/p/p, speech/thought, continuous/coherent/relevant, **she insists that she wants to continue her pregnancy.** She expresses that she is fine and that continuation of pregnancy is not causing her mental distress or mental agony as it is a wanted pregnancy, no delusion and perceptual abnormality could be elicited, mood-euthymic, affect-congruent, concept/judgement – intact, insight – present.

Impression – No active psychopathology seen at present or in past.

Conclusion : - 1) She is mentally sound and can take her own decisions.

2) She does not suffer from mental illness.”

9. Thus, the Medical Board has clearly opined that the Petitioner as well as her mother have stated that they do not want medical termination of pregnancy and they will raise the born child. 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.”

10. In view of the Medical Board’s opinion and considering the specific bar mentioned under Section 3(4)(b) of the MTP Act for medical termination of pregnancy in absence of the pregnant woman’s consent, we are not inclined to grant permission to the Petitioner for medical termination of her pregnancy. Hence, the petition is dismissed.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)