

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

Anjali T. Aswale

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WRIT PETITION NO. 3667 OF 2020

Mrs. Sonali Gavhane ... Petitioner
V/s.
State of Maharashtra & Ors. ... Respondents

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Ms. Akanksha Helaskar for the Petitioner.

Mr. Y. D. Patil, AGP for the Respondent Nos. 1 & 2.

Mrs. Neeta Masurkar a/w. Ms. Niyati Masurkar for the
Respondent No.3.

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**CORAM: B. P. COLABAWALLA AND
MADHAV J. JAMDAR, JJ.**

(VACATION COURT)

DATE :23rd DECEMBER, 2020.

P.C:-

1. Rule. Rule made returnable forthwith and by consent of parties heard finally.

2. The present Writ Petition has been filed seeking termination of pregnancy of the Petitioner under the Medical Termination of Pregnancy Act, 1971, (for short the "Said Act").

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3. When this matter had come up before the Regular Bench on 21st December, 2020, it was noted that the Petitioner who is 21 years old, is in her 27th week of pregnancy. It was the case of the Petitioner that pursuant to medical tests conducted, the child to be born may have developmental anomalies and as per the opinion of the Doctor, development of the fetus is not normal. In these circumstances, this Court, by its order dated 21st December, 2020 directed that a medical board be constituted by Respondent No.2-Sasoon General Hospital, Pune consisting of Doctors mentioned in paragraph 2 of the said order and requested the board to submit a report whether it would be safe and advisable to terminate the pregnancy of the Petitioner. In these circumstances, the matter was kept today.

4. When this matter is called out today, the learned AGP appearing on behalf of Respondent Nos. 1 and 2 has submitted a report of the medical board. The said report is taken on record and marked "X" for identification. On perusing the said report we find that it takes into consideration several medical reports/investigations done with reference to the fetus. After examining these reports and investigations, the medical board

comprising of Doctors also conducted their independent examination by doing an ultrasonography on 22nd December, 2020. The findings of that ultrasonography reflects that there is a single live intrauterine fetus of 24 weeks and 2 days. Extensive subcutaneous edema is noted over head and body, mild right sided pleural effusion, slight ulnar deviation of bilateral hand, kyphoscoliotic deformity at thoracolumbar region, cerebellar hypoplasia is also noted.

5. In view of these findings the medical board has recommended that the Petitioner is physically fit for termination and have recommended termination of the pregnancy. The Petitioner is also informed by the Doctors that there is an associated risk in termination of the pregnancy at this gestational age like failure of induction and need of operative intervention and bleeding and all those risks have been explained to the Petitioner and her family.

6. The reason for recommending the termination of pregnancy has been set out in the report which inter alia states that multiple fetal anomalies found on ultrasonography are associated with increased morbidity and mortality with

possibility of growth retardation.

7. We must mention that as per Section 3 of the said Act, the maximum period of pregnancy which can be terminated is prescribed as 20 weeks. The circumstances under which the pregnancy can be terminated are also set out under said Section. For the present case, the relevant provision will be Section 3(2)(b)(ii), which is set out hereinbelow:-

“Section 3(2)(b)(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.”

8. From this provision it is clear that where there is a substantial risk of a child being born suffering from physical or mental abnormalities as to be seriously handicapped then termination of the pregnancy can be sought for under Section 3(2) (b) (ii) of the said Act. In the present case, looking at the report of the medical board, we are satisfied that the circumstances set out in the said section clearly exist. Further, the report of the medical board is accepted by all the parties.

9. In view of the above discussion we are inclined to allow the Petitioner to terminate the pregnancy subject to the following directions:-

(i) Respondent No.2-hospital shall ensure that the

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procedure of medical termination of pregnancy of the Petitioner is carried out within five days from today.

- (ii) The Petitioner is directed to remain present before the Civil Surgeon, Sasoon General Hospital, Pune on 24th December, 2020 at 11.00 a.m.
- (iii) In case, if the child is born alive, Respondent No.2 shall ensure that all necessary medical facilities are provided to such child. If the Petitioner and her husband are not willing or are not in a position to take responsibility of such a child then the State and State agencies will have to assume full responsibility for such child.

10. Rule is made absolute in above terms. Writ Petition is disposed of accordingly. No order as to costs.

11. This order shall be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned shall act on production by fax or email of the digitally signed copy of this order.

(MADHAV J. JAMDAR, J.)

(B. P. COLABAWALLA, J.)