

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(202)

CWP No. 7722 of 2020

Date of Decision : 09.06.2020

Baljinder Kaur and another

....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Aminder Singh, Advocate for the petitioners.

Ms. Sudeepti Sharma, Additional Advocate General, Punjab
for respondent No. 1.

Mr. Amit Jhanji, Advocate for respondent No. 3.

Harsimran Singh Sethi, J. (Oral)

File has been taken for hearing through video conference due to
Covid-19 pandemic.

On the last date of hearing, the following order was passed by
this Court :-

*“The petition has been taken for hearing through video
conference due to Covid-19 pandemic.*

*The present writ petition has been filed with a prayer
that petitioner No.1 be allowed to terminate her pregnancy. As
per the averments made in the writ petition, the petitioner
states that keeping in view the report of the doctor from
respondent No.2-Hospital, where she is being examined during*

her pregnancy, the fetus has been diagnosed with severe health problems i.e. enlarged heart and a missing kidney, which will cause permanent physical handicap to the child when born but as the pregnancy is beyond 20 weeks, the termination of the same cannot be allowed without their being an opinion of two registered medical practitioners as per the provisions of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the 1971 Act').

As per the 1971 Act, the pregnancy may be terminated by a registered medical practitioner but the same can only be done on the opinion of two registered medical practitioners rendered in good faith to the effect that the life of the pregnant woman will involve a risk if the pregnancy is continued or the child would suffer physical or mental abnormalities leading to the serious handicap after the birth.

Section 3 of the 1971 Act is 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 to her 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 a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken to 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 clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

Learned counsel for the petitioners argues that keeping in view the recommendation of the doctor serving under respondent No.2 under whom the petitioner No.1 is under treatment/observation during her pregnancy, who has already opined that the fetus is having enlarged heart and a missing kidney and the child will suffer severe handicap after birth because of the said ailment, therefore, petitioner No.1 be allowed to terminate her pregnancy.

Notice of motion for 09.06.2020.

Ms. Anu Pal, Deputy Advocate General, Punjab accepts notice on behalf of respondent No.1 and Mr. Amit Jhanji, Advocate accepts notice on behalf of respondent No.3.

Mr. Jhanji informs the Court that a regular Medical Board has already been constituted by respondent No.3 for assessing such kind of requests for termination of pregnancy and petitioner No.1 can be examined by the Medical Board on 06.06.2020 on which date, the Medical Board will examine her and the report/recommendation of the Medical Board in respect of the prayer of the petitioner in this writ petition can be presented before this Court on the next date of hearing, if directed by this Court.

Counsel for the petitioners states that petitioner No.1 is in a position to appear before the Medical Board already constituted by respondent No.3 on 06.06.2020 for her medical examination and she will present herself before the said Board, in case so directed.

In view of the above, let petitioner No.1 present herself in the office of the Medical Superintendent of respondent No.3 at 11.00 am on 06.06.2020, who will ensure that the Medical Board, already constituted by respondent No.3 for the said purpose, assesses the request of petitioner No.1 for the termination of her pregnancy. After the assessment, the

recommendation/report will be prepared by the Board in respect of the request of petitioner No.1 for allowing her to terminate her pregnancy and the said assessment report be placed before this Court in a sealed envelope on the next date of hearing.

Let the Medical Board clearly opine as to whether the termination of the pregnancy will be feasible in the facts and circumstances of the present case keeping in view the requirements of Rule 3(2)(b)(i)(ii) of the 1971 Act.

Learned counsel appearing on behalf of respondent No. 3-PGIMER, Chandigarh has submitted a report of the Medical Board dated 08.06.2020. The said report is as under:-

“With reference to the directions received from the Hon'ble Punjab and Haryana High Court dated 04.06.2020 in which the Permanent Medical Board has been asked to examine the first petitioner Baljinder Kaur and submit its recommendation in a sealed cover to the Court indicating as to whether it recommends termination of the pregnancy of the petitioner at this stage.

The first petitioner pt. Baljinder Kaur was medically evaluated by the Medical Board at PGIMER, Chandigarh on dated 06.06.2020 following are the observations:

- 1. As per her last menstrual period, the period of gestation (POG) on 06.06.2020 is 24 wks + 2 days. As per USG done today (6.6.2020), the POG is 23 weeks + 4 days.*
- 2. She has a single intrauterine live fetus with anhydramnios (absence of amniotic fluid) and both the kidneys are non-visualised. In addition, the lung volume is reduced and heart size is increased. This congenital malformation of bilateral non-visualised kidneys (renal agensis or dysplasia) is not compatible with normal life.*

3. *The patient has been examined and has been found to be mildly anaemic (HB 9.7 gram/dl). She is under mental stress for carrying a fetus with severe congenital malformations.*
4. *Keeping in view the above, the Permanent Medical Board recommends that this patient may undergo medical termination of pregnancy at this stage due to severe congenital malformations.*

*-sd-
Dr. Y.S. Bansal
Member*

*-sd-
Dr. Anu Priya Kaur
Member*

*-sd-
Dr. Geeta
Member*

*-sd-
Dr. Himanshu Gupta
Member*

*-sd-
Dr. Ruchita Saha
Member*

*-sd-
Dr. Manoj Goyal
Member*

*-sd-
Dr. Shefali Sharma
Member*

*-sd-
Dr. Kanya Mukhopadhyay
Member*

*-sd-
Prof. Nandita Kakkar
Member*

*-sd-
Dr. Sahajal Dhooria
Member*

*-sd-
Dr. Raman Sharma
Convener*

*-sd-
Prof. Rashmi Bagga
Chairman”*

A bare perusal of the above report would show that the Medical Board is of the view that the petitioner No. 1-Baljinder Kaur may undergo medical termination of pregnancy at this stage due to severe congenital malformations.

Learned counsel appearing on behalf of respondent No. 3-

PGIMER, Chandigarh states that in case petitioner No. 1 Baljinder Kaur present herself and if directed by this Court, the appropriate procedure for terminating the pregnancy can be undertaken at the earliest.

After hearing learned counsel for the parties and keeping in view the report of the Medical Board, which is an expert body, this Court directs that petitioner No. 1 Baljinder Kaur can undergo medical termination of the pregnancy. Direction is issued to the PGIMER authorities (Medical Superintendent of the PGIMER) to admit petitioner No. 1 Baljinder Kaur, within a period of next two days so as to carry out the procedure of the medical termination of the pregnancy, in case she present herself for undergoing the said procedure at the said institute, in accordance with law keeping in view the recommendations, which have been submitted by the Medical Board, reproduced above.

Writ petition is, accordingly, disposed of.

June 09, 2020
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	✓ Yes/No
Whether reportable?	✓ Yes/No