

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-8017-2020 (O&M)
Date of decision:17.6.2020

MAMTA

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM : HON'BLE MR.JUSTICE GURVINDER SINGH GILL

Present: Mr. Saurabh Arora, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab
for respondent No.1.

Mr. Amit Jhanji, Advocate
for respondent No.2.

*(the aforesaid presence is being recorded through video
conferencing since the proceedings are being conducted in Virtual
Court)*

GURVINDER SINGH GILL, J. (ORAL)

CM-5240-CWP-2020

Allowed as prayed for subject to all just exceptions.

Main Case

1. The petitioner who is carrying a pregnancy of about 23 weeks seeks issuance of direction to respondent No.2-Post Graduate Institute of Medical Education and Research (P.G.I.M.E.R), Sector-12, Chandigarh to terminate her pregnancy as same has been advised by the Doctors who had examined her at Post Graduate Institute of Medical Education and

Research (P.G.I.M.E.R), Sector-12, Chandigarh.

2. While issuing notice of motion on 12.6.2020, this Court had directed the petitioner to appear before the Medical Superintendent, Post Graduate Institute of Medical Education and Research (P.G.I.M.E.R), Sector-12, Chandigarh and the Medical Superintendent P.G.I.M.E.R. had been directed to get her examined from a specially constituted Board and so as to give a definite opinion as regards termination of her pregnancy.
3. Sh. Amit Jhanji, Advocate counsel for P.G.I.M.E.R. has today filed a reply of Medical Board in a sealed cover which has been opened. The report reads as follows:-

“With reference to the directions received from the Hon’ble Punjab and Haryana High Court dated 12.6.2020 regarding the above mentioned subject, received in the MS office on 15.6.2020, wherein the Permanent Medical Board has been asked to examine petitioner Mamta as regards her pregnancy and give a definite opinion as regards termination of the same. This report is to be submitted to the Court in sealed cover.

The petitioner Ms. Mamta appeared before the medical Board on 15.06.2020 and was medically evaluated by the Medical Board at P.G.I.M.E.R., Chandigarh on dated 15.6.2020. Following are the observations:

1. As per the USG done today the period of gestation is 23 weeks 3 days. She has a single live intrauterine fetus and bilateral renal agenesis and solid cystic lesion in relation to lowermost part of sacral spine. Due to these severe multiple congenital anomalies, the fetus is not compatible with life.
2. The patient has been examined and has been found to be clinically fit. She is under mental stress due to carrying a fetus with severe malformation.
3. It is observed that pt. Is having hypertension, hence she should be started on treatment and the hypertension should be controlled prior to and during the process of termination.

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 malformation.

-sd-
Dr. Kirti Gupta
(Member)

-sd-
Dr. Tulika Singh
(Member)

-sd-
Prof. Kanya Mukhopadhaya
(Member)

-sd-
Dr. Aastha Takkar
(Member)

-sd-
Dr. Ruchita Shah
(Member)

-sd-
Dr. Himanshu Gupta
(Member)

-sd-
Dr. Sahajal Dhooria
(Member)

-sd-
Dr. Anupriya Kaur
(Member)

-sd-
Dr. Shefali K. Sharma
(Member)

-sd-
Prof. Rashmi Bagga
(Member)

-sd-
Prof. Y.S. Bansal
(Member)

-sd-
Dr. Ranjana Singh
(Convener)

4. A perusal of aforesaid report would affirm the assertions made by the petitioner as regards the poor prognosis of fetus in view of which the Board has recommended that the patient may undergo medical termination of pregnancy at this stage.

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

“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 4 [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.”

6. In the light of medical report submitted by Medical Board, this Court is of the considered opinion that the case of the petitioner would fall under Section 3(2)(b)(ii). Although the pregnancy of the petitioner is more than

20 weeks but since the fetus is opined to not compatible with life and the Board has recommended termination of the said pregnancy, the petition, as such is accepted. The petitioner shall present herself before the Post Graduate Institute of Medical Education and Research (P.G.I.M.E.R), Sector-12, Chandigarh authorities within next three days and upon her appearance the P.G.I.M.E.R. authorities shall admit the petitioner and carry out the procedure for medically terminating her pregnancy under supervision of Head of Department (Obstetrics and Gynecology Department). In case for any reason the Head of the Department is not available then the procedure shall be supervised by the next senior most Doctor of the Department concerned. The P.G.I.M.E.R. authorities shall do all that is needful for the aforesaid procedure and shall extend all the facilities to the petitioner as may be required.

7. The petition stands accepted in the above-mentioned terms.

(GURVINDER SINGH GILL)
JUDGE

17.6.2020
Gaurav Sorot

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