

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

CWP No. 9192 of 2020
Date of Decision: 08.07.2020

Kamini and another

-Petitioners

Versus

State of Punjab and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjeev Sharma, Legal Aid Counsel,
for the petitioners.
Ms. Anu Pal, D.A.G., Punjab.
Mr. Amit Jhanji, Advocate,
for respondent No.2.

RAJ MOHAN SINGH, J. (Oral)

The case has been taken up for hearing through video-conferencing.

Petitioners have preferred the present writ petition for issuance of an appropriate writ in the nature of mandamus, directing respondent No.2 to terminate the pregnancy of the child in the womb of petitioner No.1 which is of more than 20 weeks in consonance with the report (Annexure P-1) as well as report submitted by respondent No.2 i.e. Post Graduate Institute of Medical Science and Research (PGIMER), Sector 12, Chandigarh.

As per medical record, following characteristics were noticed in the fetal ultrasound:-

“Single live fetus is noted in an enlarged gravid uterus. Fetal cardiac activity is normal.

Fetal shows gross congenital malformation.

Fetal head is not seen.

Fetal cranial vault is not seen. Fetal face is seen with fetal brain is deformed and lying in amniotic fluid as irregular mass- features are s/o Exencephaly.

Fetal spine also shows gross kyphoscoliotic deformity. Fetal limbs are seen.

FETAL AGE

	<i>CM</i>	<i>Weeks</i>	<i>Days</i>
<i>F.L</i>	3.86	22	3
<i>H.L.</i>	3.78	23	2

LIQUOR AMNI is relatively excess.

Largest pocket 3.8 cm.

IMPRESSION:

- . Single Live Fetus with Exencephaly.*
- . Approximate Gestational Age 22 weeks + 1 Weeks.*

Please Correlate Clinically.

(DR. BALJIT KAUR)”

There is non-visualization of Skull with extrusion of brain parenchyma which falls under the term “ANENCEPHALY” and the continuation of pregnancy would cause grievous injury to the child of petitioner No.1 and is also unsafe and dangerous for the life of the child as well as petitioner No.1.

The present writ petition came up for hearing before this Court on 03.07.2020 and following order was passed:-

“The case has been taken up for hearing through video conferencing.

The present writ petition has been filed for issuance of an appropriate direction to respondent No.2 to terminate the pregnancy of petitioner No.1, which is of 22 weeks as on date.

Notice of motion.

Ms. Monika Chibber, Sr. DAG, Punjab accepts notice on behalf of respondent No.1 and Mr. Amit Jhanji, Advocate accepts notice on behalf of respondent No.2. Since the pregnancy is stated to be of more than 20 weeks, therefore, in view of embargo envisaged under Section 3 of the Medical Termination of Pregnancy Act, 1971, the Chairperson of Permanent Medical Board at Post Graduate Institute of Medical Education and Research (PGIMER) is requested to have petitioner No.1 examined on 06.07.2020 positively and furnish an opinion as regards the prayer of petitioner No.1 for medical termination of pregnancy, which is of more than 20 weeks. Petitioner No.1 is also directed to appear before the office of Medical Superintendent, Post Graduate Institute of Medical Education and Research

(PGIMER), Chandigarh on 06.07.2020 at 9:00 A.M.

Adjourned to 08.07.2020.

Let a report be sent to this Court in a sealed cover by the adjourned date.”

In compliance of the aforesaid order, Mr. Amit Jhanji, Advocate representing respondent No.2 has forwarded a report of Medical Board dated 07.07.2020 in a sealed cover. The report has been placed on record after opening the sealed cover. The report of Medical Board reads as under:-

“Report of the Medical Board

Subject: CWP No.9192 of 2020 titled as Kamini and Another vs State of Punjab and another regarding patient Mrs. Kamini, age 21 years female Cr. No.202002491486.

With reference to the directions received from the Hon'ble High Court dated 03/07/2020 received in the MS office on 04/07/2020 in which the Permanent Medical Board has been asked to examine the petitioner Mrs. Kamini and submit the requisite medical examination report.

The petitioner pt Kamini appeared in the O/o Medical Superintendent on 06/07/2020 and was medically evaluated by the Medical Board at PGIMER, Chandigarh on dated 06/07/2020. Following are the observations:

1. *As per USG done on 06/07/2020 the POG is 23 wks + 4 days. She has a single live intrauterine fetus with Acrania with exencephaly.*
2. *It is a severe congenital malformation in which the fetal skull and brain are poorly formed and is incompatible with life.*
3. *The patient has been examined and has been found to be clinically fit. However, she is under mental stress due to carrying of pregnancy in which the fetus if affected with Acrania with exencephaly.*
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 anomaly. However, medical termination of pregnancy at an advanced gestation of 23 weeks carries more than usual risks which have been explained to patient.*

Sd/- Dr. Kirti Gupta (Member)	Sd/- Dr. Tulika Singh (Member)	Sd/- Prof. Kanya Mukhopadhaya (Member)
Sd/- Dr. Manoj Goyal (Member)	Sd/- Dr. Ruchita Shah (Member)	Sd/- Dr. Basant Kumar (Member)
Sd/- Dr. Sahajal Dhooria (Member)	Sd/- Dr. Anupriya Kaur (Member)	Sd/- Dr. Shefali K. Sharma (Member)
Sd/- Prof. Rashmi Bagga (Chairperson)	Sd/- Prof. Y.S. Bansal (Member)	Sd/- Dr. Ranjana Singh (Convener)"

Perusal of the aforesaid report would show that petitioner No.1 Kamini was medically evaluated by the Medical Board in PGIMER. She has a single live intrauterine fetus with Acrania with

exencephaly. It is a case of severe congenital malformation in which the fetal skull and brain are poorly formed and is incompatible with life. The Board has also opined that the patient has been found to be clinically fit. However, she is under stress due to pregnancy with the aforesaid status. The Board has recommended that the patient may undergo medical termination of pregnancy at this stage due to severe congenital anomaly. The medical termination of pregnancy at an advanced gestation of 23 weeks carries more than usual risk which has been explained to petitioner No.1.

Section 3 of the Medical Termination of Pregnancy Act, 1971 prescribes the following provision:-

“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.”

The case of the petitioner would fall under the aforesaid provisions.

In view of unambiguous opinion given by the Permanent Medical Board, it would be just and appropriate to accord permission to petitioner No.1 to undergo medical termination of pregnancy in PGIMER, Sector 12, Chandigarh.

For the reasons recorded hereinabove, the writ petition is allowed. Respondent No.2 – Director, PGIMER, Chandigarh is requested to get the pregnancy of petitioner No.1 namely Kamini terminated under the supervision of Head of Department (Obstetrics and Gynecology Department).

Needless to say that all the necessary facilities for such procedure be afforded to petitioner No.1 at the earliest and as per the schedule to be fixed by the doctors.

Petitioner No.1 is directed to approach the Medical Superintendent of PGIMER, Chandigarh within two days. Since the petitioners are poor persons and could not afford to engage their private Advocate in this Court and have been provided a Legal Aid Counsel, therefore, respondent No.2 may consider the waiving of hospital and medical charges as per norms in accordance with law.

July 08, 2020

Jyoti Sharma

(RAJ MOHAN SINGH)

JUDGE

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|------------------------------|---|--------|
| 1. Whether speaking/reasoned | : | Yes/No |
| 2. Whether reportable | : | Yes/No |