

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

**CWP No.13245 of 2020
Date of Decision: 08.09.2020**

Sakshi

.....Petitioner

Vs.

State of U.T., Chandigarh and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ashish Bansal, Advocate,
for the petitioner.

Mr. Aditya Jain, Advocate,
for respondent-U.T., Chandigarh.

RITU BAHRI, J. (ORAL)

Petitioner is seeking direction, in the nature of Mandamus, directing respondent No.2-P.G.I.M.E.R., Chandigarh to medically terminate her pregnancy.

Pursuant to the direction given by this Court on 02.09.2020, petitioner appeared before the Medical Board, constituted by the P.G.I.M.E.R., Chandigarh, on 03.09.2020 and the said Medical Board has given a report under the sealed cover, which reads as under:-

“With reference to the directions from the Hon'ble Punjab and Haryana High Court dated 02/09/2020 received in the MS office on 02/09/2020 from the DDA, PGIMER, Chandigarh in which the Permanent Medical Board has been asked to examine the petitioner Ms. Sakshi Shukla and submit the requisite medical examination report.

The petitioner Pt. Sakshi Shukla appeared in the O/o Medical Superintendent on 03/09/2020 and was medically evaluated by the Medical Board at PGIMER, Chandigarh on dated 03/09/2020.

Following are the observations:

1. As per USG done on 03/09/2020 the period of gestation is 22 wks + 6 days. She has a single live intrauterine fetus with congenital malformation.
2. The Ultrasound done has findings suggestive of **Arnold Chiari malformation (Hydrocephalous & myelomeningocele with kyphoscoliosis)**. This is a developmental defect in the fetal brain and spine which has poor prognosis, not compatible with normal life.
3. As per Royal college of Obstetricians & Gynaecologists (RCOG) guidelines (Termination of pregnancy for fetal abnormality, 2010), feticide should be performed before medical abortion after 22 weeks + 6 days of gestation to ensure that there is no risk of a live birth. Hence, in such cases ultrasound guided injection of Potassium Chloride in the fetal heart is advised prior to abortion to prevent a live birth.
4. Medical termination of pregnancy at an advanced gestation of 22 weeks + 6 days carries more than the usual risks which have been explained to patient.
5. 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 in the fetus. We also wish to bring to the knowledge of the Hon'ble High Court that doctors may perform the procedure of Potassium Chloride injection in the fetal heart under ultrasound guidance before termination of pregnancy, so as to prevent the fetus being born alive. Also, the medical termination of pregnancy at an advanced gestation of 22 weeks + 6 days carries more than the usual risks which have been explained to patient.

-sd-	-sd-	-sd-
Prof. Nandita Kakkar (Member)	Dr. Tulika Singh (Member)	Prof. Kanya Mukhopadhyay (Member)
-sd-	-sd-	-sd-
Dr. Manoj Goyal (Member)	Dr. Swapnajeet Sahoo (Member)	Dr. Basant Kumar (Member)
-sd-	-sd-	-sd-
Dr. Sahajal Dhooria (Member)	Dr. Anupriya Kaur (Member)	Dr. GSRSNK Naidu (Member)
-sd-	-sd-	-sd-
Prof. Rashmi Bagga (Chairperson)	Prof. Y.s. Bansal (Member)	Dr. Ranjana Singh (Convener) ”

A perusal of the above report shows that the assertion made by the petitioner regarding poor prognosis of fetus was correct and the Medical Board has recommended that the patient may undergo medical termination of pregnancy at this stage.

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.”

Keeping in view the above report, as per Section 3 (2) (b) (ii) of the Medical Termination and Pregnancy Act, 1971, even though pregnancy of the petitioner is more than 20 weeks, but as per the opinion of Medical Board, the fetus is not compatible with life and the Board has recommended termination of the said pregnancy, this petition deserves to be allowed.

Accordingly, petitioner in the present case, shall appear 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 Docctor 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.

Disposed of in the above mentioned terms.

(RITU BAHRI)
JUDGE

08.09.2020
ajp

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