

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

**CWP No. 15920 of 2020
Date of decision: 06.10.2020**

Monika Bhatt & Anr.

...Petitioners

Versus

**The Post Graduate Institute of Medical
Education and Research through Its Director & Ors.**

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Kshitij Sharma, Advocate
for the petitioners.

Mr. Amit Jhanji, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this writ petition, filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of Mandamus directing the official respondents to terminate the pregnancy of petitioner No. 1, in view of medical record dated 01.09.2020 (Annexure P-3).

On 30.09.2020, the following order was passed:

“Notice of motion.

Mr. Amit Jhanji, Advocate, who is appearing through video conferencing, accepts notice on behalf of respondent No.1.

List again on 13.10.2020.

In the meantime, the petitioner No.1 is directed to appear in the office of Medical Superintendent, PGIMER, Chandigarh either on 01.10.2020 or on 05.10.2020 at 10:00 AM, who will further produce her before the Medical Board, PGIMER, Chandigarh, constituted under the Medical Termination of Pregnancy Act, 1971, for her medical examination.

A copy of this order be supplied to counsel for the

petitioners under the signatures of Court Secretary attached to this Bench, through WhatsApp or e-mail.”

In pursuance to aforesaid order, learned counsel for the respondents-PGIMER has submitted a report of the Medical Board, which, after examination of petitioner No. 1, has given the following report:

“7. Keeping in view the above, the Permanent Medical Board recommends that this patient may undergo medical termination of pregnancy at this stage due to partial Molar pregnancy and associated congenital malformation in the fetus. We also wish to bring to the knowledge of the Hon'ble High Court that doctors will 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 23 weeks carries more than the usual risks which have been explained to patient.

**Sd/-
Prof. Nandita Kakkar
(Member)**

**Sd/-
Prof. Prema Menon
(Member)**

**Sd/-
Prof. Kanya Mukhopadhyay
(Member)**

**Sd/-
Dr. Anupriya Kaur
(Member)**

**Sd/-
Dr. Ruchita Jain
(Member)**

**Sd/-
Dr. Basant Kumar
(Member)**

**Sd/-
Dr. Shefali Sharma
(Member)**

**Sd/-
Dr. Meenakshi Rohilla
(Member)**

**Sd/-
Dr. Tulika Singh
(Member)**

**Sd/-
Dr. Sujata Siwach
(Special Invitee)**

**Sd/-
Prof. Rashmi Bagga
(Chairperson)**

**Sd/-
Prof. Y. S. Bansal
(Member)**

**Sd/-
Dr. Ranjana Singh
(Convener)**

A perusal of aforesaid report would affirm the assertions made by petitioner No. 1 as regards the partial molar pregnancy in view of which the 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.”

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, i.e. 23 weeks, but since the fetus is opined to not compatible with life and the Board has recommended termination of the said pregnancy, the present petition is allowed.

Accordingly, petitioner No. 1 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 petitioner No. 1 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 petitioner as may be required.

06.10.2020

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No