

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

203

CWP-20120-2020

Decided on : 01.12.2020

Vandana Yadav & another

... Petitioners

Versus

U.T.Chandigarh & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Ms.Dhivya Jerath, Advocate, for the petitioners.

Ms.Mayuri Lakhanpal Kalia, Advocate, for respondents No.1, 2 & 4.

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

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. Sandhawalia, J. (Oral)

Present writ petition, filed under Articles 226/227 of the Constitution of India, is for issuance of writ of mandamus directing respondent No.3 or any Medical Organization for conducting the medical termination of pregnancy of petitioner No.1 on account of medical complications as detailed out in the writ petition beyond the period stipulated under Section 3 of the Medical Termination of Pregnancy Act, 1971 (for short, the 'Act').

On 25.11.2020, the following order was passed:

“Inter alia contends that petitioner No.1 is having pregnancy of around 20 weeks and as per the report of Government Multispeciality Hospital, Sector-16, Chandigarh (Annexure P-1) there is physical deformity in the head of the fetus and there is a strong possibility that child will not survive in future and recommendation for abortion has been made. It is submitted that as per similar report dated 10.11.2020 (Annexure P-2) of Diagnostic Centre, the skull vault is absent with over hanging brain parenchyma. Another similar report dated 20.11.2020 (Annexure P-3) has been obtained from respondent No.3-PGIMES, Chandigarh. It is further submitted that since time period of 20 weeks has elapsed and the doctors have expressed their inability to carry out abortion though they are agreement in principle.

Notice of motion.

Mr. Amit Jhanji, Advocate has put in appearance on behalf of respondent No.3-PGIMES.

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

203

CWP-20120-2020

-2-

Respondent Nos.1, 2 and 4 be served through Senior Advocate, Mr. Pankaj Jain, Standing Counsel for UT, Chandigarh.

Mr. Jhanji informs the Court that physical examination of petitioner No.1 can be conducted on 27.11.2020 by the Permanent Medical Board for Medical Termination of Pregnancy beyond 20 Weeks, in order to verify the said condition of petitioner No.1.

Accordingly, counsel for the petitioners undertakes that the petitioner will appear on 27.11.2020 at 09:00 a.m. before the said Superintendent of respondent No.3 for further examination by the Medical Board.

Adjourned to 01.12.2020.

Report of the Board be submitted on the next date of hearing.”

Pursuant thereto, petitioner No.1 has been examined by the Medical Board on 27.11.2020 and the report of the Medical Board has been submitted by Mr.Jhanji. Following observations have been made in the said report:

“1. Her period of gestation by LMP is 23 weeks however as per USG done on 27/11/2020, her period of gestation is 20 wks and 5 days She has a single live intrauterine fetus with absent cranial vault with deformed and overhanging brain tissue. This is a congenital malformation of the fetal brain suggestive of Anencephaly which is not compatible with normal life.

2. The patient is anaemic with a Hemoglobin of 8 gm/l and requires to be evaluated.

3. The patient is distressed due to carrying a pregnancy with congenital fetal malformation and does not wish to continue this pregnancy.

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 Anencephaly in the fetus. Also, the medical termination of pregnancy at gestation of 20 weeks + 5 days carries more than the usual risks which have been explained to patient.”

From the above, it is apparent that even the Permanent Medical board has recommended that the patient is distressed due to carrying a pregnancy with congenital fetal malformation. The fetal's brain is suggestive of

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

203

CWP-20120-2020

-3-

Anencephaly which would go on to show that the baby's brain would be under-developed brain with incomplete skull which is a defect in the formation of a baby's newel tube during development. The child, thus, may be still born or survive only for a few hours or days after birth. In such circumstances, keeping in view the recommendations of the Medical Board, this congenital malformation is not compatible with normal life and there is a substantial risk that the child, if born, would suffer from such physical or mental abnormalities as to be seriously handicapped and would fall under Clause 3(2)(b)(ii) of the Act. The present petition is, thus, liable to be accepted.

Accordingly, petitioner No.1 shall present herself before the PGIMER, Sector 12 authorities, within the next 3 days. Upon her appearance, the authority shall admit her and carry out the procedure for medical termination of the pregnancy under the supervision of a Senior Member of the concerned faculty. The said authority shall also do what is needful for the course and procedure and provide all facilities to the petitioner.

With the above-said directions, the present writ petition is disposed of. Copy of this order be supplied to counsel for the petitioners, under the signatures of Special Secretary of this Court.

DECEMBER 01, 2020

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**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No