

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 411 OF 2021

Sunita Chetan Patil

... Petitioner

Vs.

The State of Maharashtra

... Respondents

.....

Ms. Rachita Padwal for the Petitioner.

Mrs. A. A. Puray, AGP for the Respondent.

.....

**CORAM: A. A. SAYED AND
MADHAV J. JAMDAR, JJ.**

DATE : 3rd FEBRUARY, 2021.

P. C:-

1. On 28th January, 2021, we had passed following order:-

1. *The Petitioner is stated to be in her 24th week of pregnancy. It is the case of the Petitioner that pursuant to the medical tests conducted it was found that there are some anomalies in the fetus and she has been advised to terminate the pregnancy.*

2. *Learned Counsel for the Petitioner states that the Petitioner would like to undergo medical tests at the Grant Government Medical College & Sir J.J Group of Hospitals, Mumbai.*

3. *By way of interim measure, we direct that a Medical Board be constituted by the Dean of Grant Government Medical College & Sir J.J. Group of Hospitals, Mumbai, comprising of the following Doctors:-*

(a) The Dean (himself);

(b) Professor & Head of Obstetrics and Gynecology Department;

(c) Professor & Head of Department of Radiology;

(d) Professor & Head of Department Pediatrics (or such Doctor from this Department who specializes in Neurology)

4. *We direct the Medical Board to examine the Petitioner and submit a report about permitting medical termination of pregnancy*

of the Petitioner to this Court on 1st February, 2021.

5. *The Petitioner shall present herself before the Medical Board within two days from today.*

6. *List the Petition on 1st February, 2021, **First on Board.***

7. *All concerned to act on authenticated copy of this order.*

2. Pursuant to the aforesaid order, the learned AGP has tendered the Report of the Medical Board. The Medical Board has given its opinion in the following terms:-

“AFTER CAREFUL EXAMINATION AND STUDY OF SONOGRAPHY REPORTS, IT IS CONFIRMED THAT THE FOETUS SUFFERS FROM SERIOUS CARDIOVASCULAR AND OTHER ABNORMALITIES IN THE FORM OF COMPLEX CYANOTIC CONGENITAL HEART DISEASE “VENTRICULAR SEPTAL DEFECT AMOUNTING TO SINGLE VENTRICLE WITH TRANSPOSITION OF GREAT ARTERIES AND SINGLE UMBILICAL ARTERY, NON-VISUALIZATION OF FUNDUS OF STOMACH AND SPLEEN, AORTO-PULMONARY DISCORDANCE FEATURES S/O. HETEROTAXY SYNDROME LIKELY RIGHT ISOMERISM”

THE CONDITION OF THE FOETUS FULFILLS THE CRITERIA OF “SUBSTANTIAL RISK OF SERIOUS PHYSICAL HANDICAP WITH VERY HIGH MORBIDITY AND MORTALITY.”

THE WOMAN IS WELL AWARE AND WELL INFORMED ABOUT THE CONDITION OF THE FOETUS AND ITS OUTCOME. SHE IS ANGUISHED WITH THE CONDITION OF THE FOETUS IN UTERO. SHE HAS EXPRESSED HER DESIRE TO TERMINATE THE PREGNANCY.

SINCE THE PREGNANCY HAS ADVANCED TO MORE THAN 26 WEEKS AND IS BEYOND 20 WEEKS CUT OFF OF THE MEDICAL TERMINATION OF PREGNANCY ACT, SHE HAS APPROACHED HONOURABLE COURT FOR TERMINATION OF PREGNANCY.

THUS, IF THE COURT PERMITS, THE PREGNANCY CAN BE TERMINATED AS DESIRED BY THE PREGNANT WOMAN WITH

DUE RISK IN ANY TERTIARY CENTRE AS DESIRED BY THE PREGNANT WOMAN.

THE HONOURABLE COURT IS HEREBY REQUESTED TO INSTRUCT THE PARENTS TO TAKE THE RESPONSIBILITY OF THE CHILD IF BORN ALIVE.”

3. In view of the Report of the Medical Board, we allow the Petitioner to undergo medical termination of her pregnancy. Since, the Petitioner is in her 26th week of pregnancy, in the event child is born alive and if parents of such child are not willing to or are not in a position to assume the responsibility for such child, then, the State and its agencies will have to assume full responsibility for such child and offer such child medical support and facilities as may be reasonably feasible, adhering always to the principle of best interests of such child as well as the Statutory provisions in the Juvenile Justice Act.

4. The Petitioner shall present herself before the Dean of Grant Medical College & Sir J. J. Groups of Hospitals, Mumbai by tomorrow i.e. 4th February, 2021 at 11.00 a.m. Petition is disposed of in view of the aforesaid terms.

(MADHAV J. JAMDAR, J.)

(A. A. SAYED, J.)