

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1160 OF 2021

XYZ Since Minor through

Her mother and father

... Petitioner

Vs.

The State of Maharashtra & Anr.

... Respondents

.....

Mr. Kuldeep U. Nikam for the Petitioner.

Mrs. Ashwini A. Purav, AGP for the Respondent-State.

Mr. D. P. Singh for the Respondent-UOI.

.....

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

DATE : 26th APRIL, 2021.

(THROUGH VIDEO CONFERENCE)

P C:-

1. Pursuant to the order dated 22nd April, 2021, the learned AGP has produced the report dated 24th April, 2021 of the Medical Board.

2. The findings of the Medical Board are as follows:-

“AFTER TAKING HISTORY, CAREFUL EXAMINATION, ULTRASONOGRAPHY EXAMINATION AND PSYCHIATRIC EVALUATION, THE COMMITTEE HAS COME TO THE OPINION THAT AT PRESENT NO ABNORMALITY IS DETECTED IN THE FOETUS OR THE PREGNANT MINOR MOTHER. PREGNANT MINOR AND HER PARENTS DO NOT WISH TO CONTINUE THE PREGNANCY. THE MINOR (13 YRS OLD) IS ANGUISHED WITH THE PREGNANCY.

CONTINUATION OF PREGNANCY IN MINOR MAY LEAD TO PREGNANCY RELATED COMPLICATIONS LIKE ANAEMIA, PREGNANCY INDUCED HYPERTENSION AS WELL AS COMPLICATIONS AND INCREASED OPERATIVE INTERFERENCE DURING LABOUR. IT IS ALSO GOING TO HAVE PSYCHOLOGICAL IMPACT ON PREGNANT MINOR WITH UNCERTAIN FUTURE.

TERMINATION OF PREGNANCY AT 22 WEEKS WILL CARRY RISKS SIMILAR TO DELIVERY AT TERM.

PREGNANT MINOR AND HER PARENTS HAVE EXPRESSED THEIR DESIRE TO TERMINATE THE PREGNANCY AND ARE MADE AWARE OF THE DANGERS OF CONTINUATION OF PREGNANCY, AS WELL AS TERMINATION OF PREGNANCY.

SINCE THE PREGNANCY HAS ADVANCED TO 22 WEEKS, WELL BEYOND LEGAL LIMIT OF TERMINATION OF PREGNANCY I.E. 20 WEEKS, THE TERMINATION CAN ONLY BE DONE WITH HONOURABLE HIGH COURT'S PERMISSION.

THOUGH AT 22 WEEKS OF GESTATION, TERMINATION OF PREGNANCY CARRIES SUBSTANTIAL RISK TO PREGNANT MINOR, CONTINUATION OF PREGNANCY WILL HAVE BOTH PHYSICAL AND MENTAL STRESS TO MINOR. HENCE, IT IS ADVISABLE TO TERMINATE THE PREGNANCY IN WHICHEVER INSTITUTE THE MINOR AND HER PARENTS DESIRE."

3. In view of the above, we permit the minor girl to terminate pregnancy. The minor girl shall present herself before the Dean of J.J. Hospital by tomorrow at 9. 00 a.m.

4. Since the minor girl who is victim of sexual assault, we also issue following directions:-

(i) The blood sample and tissue sample of the fetus shall be

preserved for the purpose of carrying out necessary medical tests including DNA and other tests.

- (ii) The Investigating Officer conducting investigation shall ensure that the samples are forwarded to Forensic Science Laboratory and the samples shall be preserved for the purpose of trial of the offence.
- (iii) In case, if the child is born alive, the Medical Practitioner who conducts the procedure will ensure that all necessary medical facilities are made available to such child for saving its life.
- (iv) In case, if the child is born alive and if the minor girl and her parents are not willing or are not in a position to take responsibility of such a child then the State and its agencies will have to assume full responsibility for such child.
- (v) Respondents also shall take care of the minor girl and provide all necessary medical facilities and medicines after such procedure is performed.
- (vi) The Respondent-State is directed to immediately place the FIR, medical report and other papers, including statement of the minor girl under Section 164 of the Criminal Procedure Code, before the District Legal Services Authority (DLSA) for payment of amounts to her under the Government Resolution

dated 01.08.2017 i.e. “The Manodhairya Scheme” in accordance with law.

- (vii) Upon receipt of such papers, DLSA is directed to immediately process the said papers for payment of compensation to the minor girl at various stages contemplated under the aforesaid scheme. It shall be ensured that such payments are made at the earliest and without any delay in the matter.

5. The Petition is disposed of in the aforesaid terms.

6. All concerned to act on an authenticated copy of this order.

(MADHAV J. JAMDAR, J.)

(A. A. SAYED, J.)