

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1991 OF 2021**

X Y Z] Petitioner

Vs.

Dean of B.J Government]

Medical College and Sassoon]

Hospital, Pune and others.] Respondents

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Mr. Tejesh Dande a/w Bharat Gadhavi i/b Tejesh Dande & Associates,
for Petitioner.

Dr. Smt. K.R. Kulkarni, A.G.P for Respondent-State.

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**CORAM : UJJAL BHUYAN &
PRITHVIRAJ K. CHAVAN, JJ**

**DATE : 19th JUNE, 2021.
[Through Video Conferencing]**

P.C.

1. Heard Mr. Dande, learned counsel for the petitioner and Dr. Smt. K.R. Kulkarni, learned A.G.P for respondent-State.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction to respondent No.1 to constitute a medical board for her medical examination and thereafter to allow her to terminate her pregnancy as she has alleged that her pregnancy is an outcome of rape and sexual abuse suffered by her.

3. On 15th June, 2021, this Court had passed the following order;

“2. Petitioner has alleged that she has suffered rape and sexual abuse at the hands of the accused in C.R. No.107 of 2021 registered with Shrirampur Police Station in the district of Ahemdnagar. It is stated that the petitioner is 24 weeks’ pregnant but since the pregnancy is the result of sexual assault, she would not like to continue the pregnancy and abort the same.

3. Considering the above, we direct the Professor and Head of the Department, Gynecology and Maternity Department, Sassoon General Hospital, Pune to constitute a medical board for examination of the petitioner. Let the petitioner appear before the Dean of B.J. Government Medical College and Sassoon Hospital, Pune within 48 hours whereafter the medical board shall examine her and submit report to the Court in sealed cover by the next date.

4. Stand over to 19.06.2021, High on Board.”

4. Today when the matter is called upon, report of the medical board of B.J. Government Medical College and Sassoon Hospital, Pune dated 17th June, 2021 has been placed before us. We have perused the report. The report shows that on clinical and ultrasonographic examination neither mother nor fetus suffer any major medical or obstetric complications. However, petitioner being a victim of sexual assault, her pregnancy constitutes a grave injury to her mental health. Therefore, medical board has recommended medical termination of her pregnancy.

5. Section 3 of the Medical Termination of Pregnancy Act, 1971 deals with situations when pregnancies may be terminated by registered medical practitioners. As per 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. Thus, it is a ground for permitting medical termination of pregnancy.

6. Mr. Dande, learned Counsel for the petitioner submits that he had a talk with the petitioner and that the petitioner has categorically told him that in the unlikely event of her giving birth to a live child despite the attempt to terminate pregnancy, she would not like to maintain such a child.

7. After hearing learned Counsel for the parties and upon thorough examination of all relevant materials on record including the report of the medical board, we grant liberty to the petitioner

to undergo medical termination of her pregnancy at a hospital of her choice having adequate facilities which should be carried out without further delay. However, since it is a case of alleged rape and sexual abuse, we direct that the concerned hospital shall preserve the DNA samples of both mother and fetus and to hand over the same to the investigating agency as and when called upon.

8. Further, in the event petitioner gives birth to a live child, considering the statement made by the petitioner to Mr. Dande, learned counsel, we direct that State Government shall take over and look after the well being of the child.

9. With the above directions, writ petition is disposed of.

[PRITHVIRAJ K. CHAVAN, J.]

[UJJAL BHUYAN, J.]