

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2281 OF 2021**

ABC] Petitioner

Vs.

Union of India and another.] Respondents

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Mr. Kuldeep U. Nikam, for Petitioner.

Ms. Anusha P. Amin, for Respondent No.1-Union of India.

Ms. A.A. Purav, A.G.P, for Respondent No.2-State.

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

**DATE : 3rd JULY, 2021.
[Through Video Conferencing]**

P.C.

1. Heard learned counsel for the parties.
2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction for constitution of a medical board to examine her pregnancy and thereafter to grant her permission to undergo medical termination of her pregnancy on the ground that she is a minor and was subjected to sexual assault.
3. It may be mentioned that sexual assault on the petitioner is being investigated in C.R. No.603 of 2021 registered with Dharavi Police Station, Mumbai under sections 376 (3) and 506 (2) of the

Indian Penal Code r/w sections 4, 6, 8, 10 and 12 of the Protection of Child from Sexual Offences Act, 2012.

4. When the writ petition was moved on 29th June, 2021, we had directed Dean, Sir J.J. Group of Hospitals, Mumbai to constitute a medical board for examination of the petitioner, further directing that the petitioner should appear before Dean, Sir J.J. Group of Hospitals, Mumbai within forty eight hours. Dean was also directed to submit report of the medical board post examination of the petitioner before this court in a sealed cover.

5. Today, when the matter is called upon, report of the medical board dated 2nd July, 2021 has been placed before us which we have perused. Recommendations of the medical board read as under;

COMMITTEE OPINION

“ After taking history, careful examination, ultrasonography examination and psychiatric evaluation the committee has come to the opinion that there is no abnormality detected at present in the fetus and the pregnant minor. But the pregnant minor does not want to continue her pregnancy as the pregnancy is caused by sexual assault. She is minor of 15 years of age.

Continuation of pregnancy in minor may lead to pregnancy related complications like Anaemia, pregnancy induced hypertension as well as complications during labour. It is also going to have

psychological impact on pregnant minor with uncertain future and continuation of pregnancy will have physical and mental stress to minor mother.

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 29 weeks well beyond the legal limit of termination of pregnancy i.e 20 weeks, the termination can only be done with Hon'ble High Court permission.

Thus if this court permits, the pregnancy can be terminated at any tertiary care hospital as desired by the woman. The Hon. High Court is however requested to instruct the parents to bear responsibility of the child and the required neonatal management if born alive”.

6. On perusal of the recommendations, we find that as per medical board pregnancy has been caused because of sexual assault on the petitioner who is a minor of fifteen years of age. As per the medical board, continuation of pregnancy may lead to complications besides having psychological effect on the pregnant minor and her parents with uncertain future. Medical board has also noted that both the pregnant minor and her parents have expressed their desire to terminate the pregnancy which has in the meanwhile advanced to twenty nine weeks.

7. After hearing learned counsel for the parties and on due consideration and also having regard to the provisions of Explanation I to section 3 of the Medical Termination of Pregnancy Act, 1971, we permit the petitioner to undergo medical termination of her pregnancy in a hospital of her choice having adequate facilities expeditiously without any loss of time.

8. However, since the pregnancy has been caused due to alleged sexual assault, DNA samples of the petitioner and fetus should be preserved by the hospital authorities and handed over to the investigating agencies as and when requisitioned.

9. We also clarify that in the event pregnancy results in the birth of a live child and having regard to the fact that the petitioner and her parents have made it clear that they would like to terminate the pregnancy, we direct that State of Maharashtra should step in and look after the well being of the child.

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

[PRITHVIRAJ K. CHAVAN, J.]

[UJJAL BHUYAN, J.]