

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 857 OF 2021

PETITIONER :- Smt.Gulfsha Wasim Sheikh,
Aged about 24 years, Occupation
Household R/o Ward No.6, Borgoan
Meghe Wardha.

...VERSUS...

RESPONDENTS :-

1. The State of Maharashtra, through
Principal Secretary, Public Health
Department, Mantralaya, Mumbai
32.
2. The Medical Board, Civil Hospital,
Wardha
3. The Dean Government Medical
Hospital, Wardha.

Mr.S.G. Lacharwar, counsel for the petitioner.
Mr. V.A.Thakare, APP for respondent No.1.

**CORAM : SUNIL B.SHUKRE &
ANIL L. PANSARE, JJ.**

DATE : 07.12.2021.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard

finally by consent of the learned counsel appearing for the parties.

3. It is the contention of the petitioner that though the petitioner is in the advanced stage of pregnancy carrying the fetus of about 36 weeks old the continuation of the pregnancy as opined by the expert doctors is likely to cause grave danger to the life of the petitioner and even if the birth of the child takes place, the child to be born is likely to be seriously incapacitated and handicapped and therefore, as held in the cases of *Priyanka Shukla Vs. Union of India and ors. in Writ Petition (C)No. 7080 of 2019* and *Mahima Yadav V. Government of NCT of Delhi and ors reported in WP (C) No.4117 of 2021*, in which Delhi High Court followed the settled law laid down by the Apex Court, this is a fit case for grant of permission to terminate the pregnancy.

4. Shri Thakare, learned Additional Public Prosecutor submits that the Medical Board constituted by this Court has only opined that the patient's pregnancy is of 36

weeks and four days and continuation of pregnancy would involve a grave injury to the mental health of the petitioner and significant morbidity to her child, if born. He therefore, submits that the best interest of justice a suitable order may be passed.

5. In *Tapasya Umesh Pisal Vs. Union of India*, (2018) 12 SCC 57, the Hon'ble Apex Court has held that when the child to be born is likely to remain physically incapacitated and would have limited life span, it was in the interest of the parties that termination of pregnancy was permitted in spite of the fact that the fetus was of about 24 weeks old. Similar is the law laid down in the case of *Mrs. X Vs. Union of India*, (2017) 3 SCC 458.

6. In the case of *Meera Santosh Pal Vs. Union of India*, (2017) 3 SCC 462, the Supreme Court has held that the right of a mother to preserve her life in view of foreseeable danger in case the pregnancy must be allowed to run its full course.

7. In the Case of *Suchita Srivastava V. Chandigarh Admn.*, (2009) 9 SCC 1, the Hon'ble Supreme Court has held that a woman's right to make reproductive choices is also a dimension of "personal Liberty" as understood in Article 21 of the Constitution and such dimension of a woman's right to personal liberty, requires that a woman is allowed to maintain her bodily integrity, by choosing to terminate her pregnancy, when the continuance of the pregnancy involves a risk to the life of the petitioner and a possible grave injury to her physical or mental health, as envisaged by Section 3(2)(i) of the Medical Termination of Pregnancy Act, 1971.

8. All these cases have been followed by Delhi High Court in the case of *Priyanka Shukla Vs. Union of India and ors.* (*supra*) and *Mahima Yadav Vs. Government of NCT of Delhi and ors.* (*supra*).

9. In the case of *Sarmishtha Chakraborty and anr. Vs. Union of India Secretary and ors* reported in (2018) 13 SCC 339, the facts indicated that in the opinion of the Medical

Board, the mother would suffer mental injury if the pregnancy was continued and that there were multiple problems if the child was born alive and therefore the Medical Board had recommended termination of the pregnancy even though it had crossed the age of 20 weeks. Taking note of these facts, the Hon'ble Apex Court allowed the petitioner to terminate her pregnancy.

10. Now, we would have to consider the report of the Medical Board in the light of the law so laid down by the Supreme Court.

11. In this case, the Medical Board constituted for examining the request of the petitioner consisted of ten members. Three members of the Board have categorically found that continuation of pregnancy would involve grave injury to mental health of the petitioner and significant morbidity to her child if born. Fourth member Dr. Vikrant Chikhale, has opined that as per the cardiological evaluation the patient was deemed to be fit to undergo the procedure.

The remaining members, being pediatrician, Radiologist, Pathologist, Anesthetist and Matron, have not given any separate opinion. However, the conclusion commonly drawn by all the members of the Medical Board is that the continuation of pregnancy of the petitioner would involve grave injury to her physical and mental health and substantial risk to the child if born, which may be in the nature of physical abnormality and subsequent morbidity, though, the late termination of pregnancy may involve risk to the life of the patient. The recommendation, therefore, is that if the termination of pregnancy is to be done, prior high risk consent of the patient and relatives be obtained. This conclusion, for the sake of convenience, is reproduced as under :

“Continuation of pregnancy would involved grave injury to physical and mental health of patient and substantial risk that if the child is born would suffer from physical abnormalities and significant morbidity but late termination of pregnancy with this procedure may involve the risk to the life of this patient. So the late termination of pregnancy may be done with the high risk consent of this patient and her relatives”.

12. As the Medical Board has given a categorical

opinion as above, we cannot but permit the petitioner to medically terminate her pregnancy.

13. In the result, the Writ Petition is allowed. The petitioner is permitted to medically terminate her pregnancy subject to the condition that high risk consent of the petitioner and her relatives is obtained. The medical termination of the pregnancy may be done, at Sushrut Hospital, Wardha as referred to in the Medical Board report dated 06.12.2021.

14. Rule is made absolute in the above terms. No costs.

(ANIL L.PANSARE, J.)

(SUNIL B. SHUKRE, J.)