
HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4704 of 2021

Date of decision:03.03.2021

Hardeep Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Ravinder Singh Bassi, Advocate,
for the petitioner.

Ms. Simran Grewal, AAG, Punjab,
for respondent no.1-State.

Mr. Prateek Gupta, Advocate,
for respondent no.2-PGI.

(The proceedings were conducted through video
conferencing, as per instructions.)

G.S. Sandhawal, J. (Oral)

In the present writ petition, filed under Article 227 of the Constitution of India, direction is sought to respondent no.2, to conduct abortion of the child due to complications, as advised by the doctors of respondent no.2-PGI. The said prayer is on account of the medical complications as detailed out in the writ petition, which are beyond the period stipulated under Section 3 of the Medical Termination of Pregnancy Act, 1971 (for short, the 'Act').

On 26.02.2021, the following order was passed:-

“Counsel for the petitioner, *inter alia*, contends that the fetus, which the wife of the petitioner, namely, Naresh Kumari is carrying, is not fully developed and will pose a threat to the life and liberty of the child. As per the ultrasound report dated 01.02.2021 (Annexure P-4), the age of the fetus is 20.2 weeks and reference is made to the report, Annexure P-4 to show that the cranial bones, brain and nasal bones are not visualized.

It is, thus, submitted that the wife of the petitioner would have to be examined by a Medical Board for the opinion whether there is a substantial risk that if the child is born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Notice of motion.

Mrs. Sudeepti Sharma, Addl. A.G., Punjab, accepts notice on behalf of respondent no.1-State and Mr. Amit Jhanji, Advocate, accepts notice on behalf of respondent no.2-PGI.

Keeping in view the above, the petitioner is directed to produce his wife Naresh Kumari before the Medical Superintendent of respondent no.2-PGI on 01.03.2021 at 10.00 am. The Medical Superintendent of respondent no.2-PGI, shall constitute a Medical Board to examine Naresh Kumari which will give its opinion as to the condition of the fetus and the chances of the fetus to survive in view of the ultrasound report Annexure P-4.

The report of the Medical Board shall be produced by Mr. Amit Jhanji, Advocate, before this Court on 03.03.2021.

Pursuant thereto, Naresh Kumari, wife of the petitioner, has been examined by the Medical Board on 01.03.2021 and the report of the Medical Board has been submitted by Mr. Prateek Gupta, Advocate. The following observations have been made in the said report:-

“1. As per the USG done on 01.03.2021, the period of gestation is 26 wks with single live intrauterine pregnancy with findings S/o Anencephaly. It is a developmental defect in which the brain and bones of the skull are not formed properly.

2. The patient is mentally stressed due to carrying a pregnancy wherein the fetus is affected with congenital malformation and does not wish to continue this pregnancy.
3. The patient has been examined and found to be medically fit.
4. The medical termination of pregnancy at an advanced gestation of 26 weeks with previous one caesarean section carries more than the usual risks. If the abortion does not take place via the natural route she may require an abdominal operation (Hysterotomy), similar to caesarean section) to complete the process. This has been explained to the patient.
4. In view of the above the Permanent Medical Board recommends that this patient may undergo medical termination of pregnancy at this stage due to single live intrauterine fetus with Anencephaly which is not compatible with life.”

From the above, it is apparent that even the Permanent Medical Board has recommended that the patient is mentally stressed due to carrying a pregnancy where the fetus is affected with congenital malformation and does not wish to continue the pregnancy. The fetus is suggestive of Anencephaly which is not compatible with life and as noticed earlier, in the absence of formation of cranial bones, brain and nasal bones, which are not visualized as per the ultrasound report, there is defect in the formation of baby's development.

In such circumstances, keeping in view the recommendations of the Medical Board and there being substantial risk that the child, if born, would suffer from such physical or mental abnormalities as to be seriously handicapped and would fall under Clause 3(2)(b(ii) of the Act, the present writ petition is liable to be accepted.

Accordingly, Naresh Kumari, wife of the petitioner, shall present herself before respondent no.2-PGI authorities, within the next two days.

Upon her appearance, the authority shall admit her and carry out the procedure for medical termination of the pregnancy under the supervision of a Senior Member of the concerned faculty. The said authority shall also do what is needful for the course and procedure and provide all facilities to her.

With the above-said directions, the present writ petition is disposed of. Copy of this order be supplied to counsel for the petitioner, under the signatures of the Special Secretary of this Court.

March 03, 2021
vinod*

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No