

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

202

CWP-10226-2021
Date of decision: 27.05.2021

PREETI BALA

...PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Pranav Chamoli, Advocate, Legal Aid Counsel (HCLSC)
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab for State-respondent No.1.

Mr. Amit Jhanji, Advocate
for respondent No. 2.

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SUVIR SEHGAL, J. (ORAL)

On 25.05.2021, this Court passed the following orders:-

The Court has been convened through video conferencing due to Covid-19 pandemic.

Instant petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing PGIMER, Chandigarh-respondent No. 2 to medically terminate the pregnancy of the petitioner as there is a genetic defect in the fetus, which is similar to the disorder in the previous child of the petitioner, who is suffering from Metachromatic Leukodystrophy, a rare genetic disorder resulting from mutation in the ARSA gene.

Counsel for the petitioner urges that the gestation period of the fetus is 24 weeks and 5 days and though the

petitioner had requested for Medical Termination of Pregnancy (MTP) but during her visit to the Institute-respondent No. 2 on 19.05.2021, the doctor declined to do so and advised her to approach the Court.

Notice of motion.

On asking of the Court, Ms. Anju Sharma Kaushik, DAG, Punjab accepts notice on behalf of the State-respondent No. 1. Mr. Amit Jhanji, Advocate with Mr. Abhishek Premi, Advocate, who has been served with an advance copy of the petition, appears on behalf of the Institute-respondent No. 2 and accepts notice. He submits that a Medical Board has already been constituted in the Institute for examination of requests for medical termination of pregnancy and in case the petitioner appears before the Board, she will be duly examined.

Let the petitioner appear before the Medical Superintendent of the Institute-respondent No. 2 on 26.05.2021 at 10:00 A.M., who will ensure that the Medical Board after examining the petitioner, gives its Assessment Report regarding the termination of the pregnancy of the petitioner.

Report be submitted before this Court in a sealed cover on the next date of hearing.

Copy of the order be sent by e-mail to the Medical Superintendent, PGIMER, Sector 12, Chandigarh immediately to ensure its compliance.

List on 27.05.2021.”

In compliance of the said order, the Permanent Medical Board has submitted its report dated 26.05.2021 in a sealed cover. The sealed cover is ordered to be open, the report has been perused and is taken on record. The report reads as under:-

“ Report of the Medical board

Subject:- CWP No. 10226 of 2021 Preeti Bala Vs. State of Punjab and another regarding patient Ms. Preeti Bala, age 33 years, female W/O Sh. Bhagwant Singh, CR No. 2021 0106 7089, R/O Roorkee, Punjab.

With reference to the directions from the Hon'ble Punjab and Haryana High Court, Chandigarh dated 25/05/2021 received in the MS office on 25.05.2021 from the Legal cell, PGIMER, Chandigarh wherein the Permanent Medical Board has been asked to medically examine the petitioner Ms. Preeti Bala and thereafter furnish an assessment report regarding the termination of the pregnancy.

The petitioner Ms. Preeti Bala appeared in the O/o Medical Superintendent on 26.05.2021 and was medically evaluated by the Medical Board at PGIMER, Chandigarh on dated 26.05.2021. Following are the observations:

- 1. As per USG done on 26.05.2021, her period of gestation is 24 wks and 6 days. She has a single live intrauterine fetus with weight 750 ± 111 gms with no gross congenital malformation.*
- 2. The amniotic fluid fetal DNA is showing the same mutations as have been seen in the previous affected child with **Metachromatic Leukodystrophy**. Hence, the fetus is likely to be affected with same disorder. This is a neurological disorder with lifelong problems such as difficulty in motor functioning, intellectual disability, speech and behavioral issues with no cure available as of now.*
- 3. The patient is psychologically distressed due to*

*carrying a pregnancy with a fetal DNA showing genetic disorder in the fetus. In light of no cure available for the same and one child suffering from severe disability (due to **Metachromatic Leukodystrophy**), she does not wish to continue this pregnancy.*

- 4. The patient has been clinically examined and found to be medically fit.*
- 5. The medical termination of pregnancy at an advanced stage of 24 weeks and 6 days with previous two caesarean sections carries more than the usual risks. If the abortion does not take place via the natural route, she may require an abdominal operation (similar to caesarean section) to complete the process. This has been explained to the patient.*
- 6. As per the Royal College of Obstetricians & Gynecologists (RCOG) guidelines (Termination of pregnancy for fetal abnormality, 2010), in cases where medical abortion is being performed after 21 weeks + 6 days of gestation for fetal abnormalities, to prevent a live birth, ultrasound guided injection of Potassium Chloride in the fetal heart is advised prior to abortion.*
- 7. Keeping in view the above, the Permanent Medical Board recommends that this patient may undergo medical termination of pregnancy at this stage due to **Metachromatic Leukodystrophy** which is a neurological disorder in the fetus.”*

From the report submitted by the Permanent Medical Board, it is clear that the fetus shows the same mutations as in the child of the

petitioner born earlier. It has been observed that the fetus is likely to be effected by Metachromatic Leukodystrophy, a neurological disorder with lifelong problems. Accordingly, the Permanent Medical Board has opined that the petitioner may undergo medical termination of pregnancy at this stage due to the disorder.

Counsel for the Institute-respondent No. 2 has informed the Court that the Permanent Medical Board is headed by Prof. Rashmi Bagga, who is the head of the Department of Obstetrics & Gynaecology and the Convener of the Board is Dr. Ranjana Singh, who is the Head of the Department of Hospital Administration. Counsel submits that both of them along with six other Doctors, who have medically examined the petitioner, have signed the report and are of the unanimous opinion.

Section 3 of the Medical Termination of Pregnancy Act, 1971 (for short “the Act”) as amended by virtue of notification dated 25.03.2021 is as under:-

“3.(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under the Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,—

(a) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty

weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the opinion, formed in good faith, that—

- (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or*
- (ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.*

Explanation 1.—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.—For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed

by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:—

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be."

This Court is of the view that the case of the petitioner will fall under Section 3 (2) (ii) of the Act, though the pregnancy of the petitioner is 6 days beyond the period of 24 weeks mentioned therein. In the light of clear recommendation given by the Permanent Medical Board in its above-reproduced report, this Court is of the view that permission to terminate the pregnancy cannot be denied despite the statutory embargo.

Accordingly, the Institute-respondent No. 2 is requested to admit the petitioner, extend all facilities to her and to terminate her pregnancy at the earliest possible under the supervision of the Head of the Department of Obstetrics and Gynaecology.

Counsel for the petitioner submits that the petitioner is poor and even the instant petition has been filed by her through a Legal Aid Counsel.

It is expected that respondent No. 2 shall keep in mind the economic condition of the petitioner and not charge her with the expenses for her stay, medicines and procedure.

Copy of the order be sent immediately to the Institute-respondent No. 2 by e-mail.

Writ petition is disposed of.

27.05.2021
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No