

CWP-10795-2021

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

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Date of Decision: 21.06.2021

MAHUA BHATTACHARYA SINGH AND ANOTHER

...Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sunny Kumar Singla, Advocate
for the petitioners.

Mr. Navdeep Chhbra, D.A.G. Punjab.

HARNARESH SINGH GILL, J.(Oral)

Case is taken up for hearing through video conferencing.

The petitioners couple has approached this Court for termination of petitioner No.1's 23 weeks and 04 days' foetus as on 31.05.2021, on the ground that the medical tests have confirmed the foetus being Down Syndrome afflicted.

Vide order dated 07.06.2021, a Coordinate Bench of this Court, while issuing notice of motion, had directed petitioner No.1 to appear before the Director, Medical College, Amritsar (respondent No.2) on 09.06.2021, who was further directed to get petitioner No.1 examined by the Board of Doctors to ascertain the feasibility of proposed termination of the pregnancy.

In compliance with the aforesaid directions, respondent No.2 had constituted a Medical Board consisting of four Doctors of the ranks of Associate and Assistant Professors. Such Board after having examined the investigation

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reports of petitioner No.1 and the statements of the petitioners, submitted its report on 09.06.2021. The said report was forwarded by the Director Principal, Government Medical College, Amritsar, to this Court on 11.06.2021. The said report having been received, was perused by a Coordinate Bench on 17.06.2021.

Today, this Court has gone through the contents of the report. The same is taken on record and marked as Annexure A-1. The extracts from the said report, being relevant, would read as under:-

“..... According to amniocentesis report on 26.05.2021, FISH Test is indicative of trisomy 21 in the foetus.

According to the Nelson Textbook of Paediatrics, 20th Edition (Annexure 4) a child born with trisomy 21 universally suffers from developmental delay but cognitive impairment is variable, 50 percent prone to congenital heart defects, 18-38% psychiatric comorbidity and many more health hazards like infections, malignancies, metabolic diseases, hearing and visual impairment etc.

According to MTP Act 1971, Section 3 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 twelve weeks if such medical practitioner is, or
(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of 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 physical or mental health; or*
- (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.*

Considering the Diagnosis of Down Syndrome in the fetus and the statement given by applicant and her husband (Annexure 2) both the above mentioned indications b.(i) and b.(ii) are being fulfilled for considering MTP in this case, but the gestational age is beyond 20 weeks of gestation.

As per the D.C. Dutta Textbook of Obstetrics, 9th Edition (Annexure 5) and Dr. J.B. Sharma textbook of Obstetrics, 2nd Edition, (Annexure 6), the rate of complications are much less if termination is done before 8 weeks and the complications are about 5 times more in mid-trimester termination (with

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mortality incidence about 5 per 1,00,000).

Also considering the history of previous caesarean section, there is 0.2-1.5% risk of scar rupture. If there is failure of induction, patient may have to undergo a hysterotomy which further increases the risk of complications in future pregnancies (Annexure 6).

Considering the above observations, the board is of the opinion that if, Mrs. Mahua Bhattacharya Singh is willing to undergo medical treatment of pregnancy at this advanced gestation with the knowledge of above mentioned complications, at her own risk, the same may be allowed on eugenic grounds.....”

A perusal of the aforesaid report would show that the Medical Board has reached the conclusion that the termination of the pregnancy of petitioner No.1 at this advanced gestation can only be performed at her own risk and on eugenic grounds. Such conclusion precedes the opinion of the Medical Board that the previous history of petitioner No.1 is of caesarean section and, therefore, in case of failure of induction, she may have to undergo a hysterotomy which further increases the risk of complication in future pregnancies.

The aforesaid conclusion of the report has duly been brought to the notice of the learned counsel for the petitioners. He, however, states that he has fully understood the contents of the report submitted by the Medical Board and has also made the petitioners understand the contents thereof. He further submits that despite being aware of the complications involved in the procedure, petitioner No.1 is ready and willing to give her consent before respondent No.2 for the termination of her pregnancy, at her own risk.

The Medical Board's report opines the procedure at hand being troubled one involving high risk complications. Further, the statutorily prescribed period for termination of the pregnancy is already over. But, in view

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of the ready and willingness of petitioner No.1 and further in view of the law laid down in similar judgments of the Coordinate Bench passed on 20.9.2019 in CWP No.25996-2019 titled as 'Marjina and another Vs. State of Punjab and others', and passed on 24.04.2020 in CWP-7279-2020, titled as 'Monika Bawa and another Vs. State of Punjab and another', this Court considers it appropriate to request respondent No.2, Director Principal, Government Medical College, Amritsar, to get the pregnancy of petitioner No.1 terminated under the supervision of Head of the Department of (Obstetrics and Gynaecology), on receiving the requisite consent from petitioner No.1. The procedure be performed at the earliest keeping in view the urgency of the matter.

With these observations, the present petition is hereby allowed.

A copy of this order downloaded from the website of this Court shall be accepted as evidence of the order and action shall be taken in accordance therewith.

21.06.2021

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>