IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202

CWP No.13974 of 2021
DATE OF DECISION : 3rd AUGUST, 2021

Kaveri & another

…. Petitioners

Versus

State of Punjab & others

…. Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

==========
In virtual Court
==========

Present : Mr. Balram Prashar, Advocate for the petitioner.

Ms. Abhishek Kumar Premi, Advocate
for respondents No.2 and 3.

Mr. S. P. Jain, Additional Solicitor General of India with
Ms. Shweta Nahata, Senior Penal Counsel
for respondent No.4.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Article 226 of the Constitution of India seeking issuance of writ in the nature of mandamus directing the respondents No.2 & 3 to medically terminate the pregnancy of petitioner No.1, along with certain other prayers.

Vide order dated 28.07.2021, this Court had requested the Permanent Medical Board, PGIMER, Chandigarh (PGI) to carry out the medical examination of petitioner with following request:

"The petitioner No.1 is directed to appear before the Permanent Medical Board constituted at PGIMER, Chandigarh, tomorrow i.e. 29.07.2021 at

11.00am, for medical examination. The Board is requested to furnish its opinion qua the development and problem of the fetus and also qua desirability of the termination of the pregnancy; within three days."

Pursuant to the above said order, the report has been received from the PGI, which has categorically recommended the medical termination of the pregnancy in view of the conditions of the foetus. The report, prominently reads as under:-

1. *The patient is aged 23 yrs and is a second gravida with previous abortion. As per the USG done on 29/07/2021 the period of gestation is 23 weeks with single live intrauterine pregnancy with moderate ascites (accumulation of fluid in the fetal abdomen) with septation and echogenic bowel. There is a high probability of* ***meconium peritonitis with associated loss of small bowel****. Hence, the fetus has poor prognosis, not compatible with normal life.*
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 medically examined and found to be medically fit to undergo the procedure. However, in view of her deranged LFT (Liver function test – blood investigation done to provide information about the state of patient's liver), opinion from hepatologist has been taken and they have advised that she requires monitoring of liver function tests and evaluation of toxoplasmosis as her blood tests suggest this infection. Some of the features in the mother and*

fetus can be explained by maternal toxoplasmosis like cholestasis, increased bile acids and increased transaminases, and fetal ascites with septations. There can be additional severe CNS findings developing in the fetal brain and may not be compatible with normal life. Fetal toxoplasmosis testing can be done after abortion and feta DNA can be stored for further studies if necessary later. Fetal genetic testing can also be done, if required. The board advises further evaluation for APLA (anti phospholipid antibodies) in the patient on follow up visits as her beta-2 glycoprotein (blood test for coagulation) is positive and may require treatment in a subsequent pregnancy..

4. *The board advises ultrasound guided injection of Potassium Chloride (KCI) into the fetal heart prior to abortion. This is as per the Royal College of Obstetricians & Gynaecologists (RCOG) guidelines (Terminal of pregnancy for fetal abnormality, 2010). As per this, when medical abortion is performed after 21 weeks +6 days of gestation for fetal abnormalities, ultrasound guided injection of Potassium Chloride into the fetal heart is advised prior to abortion to prevent a live birth.*

5. *In view of the above the Permanent Medical Board recommends that this patient may undergo medical termination of pregnancy at this stage due to* ***fetal ascites, meconium peritonitis with associated loss of small bowel*** *which is not compatible with normal life. We also wish to bring to the knowledge of the Hon'ble High Court that the medical termination of pregnancy at an advanced gestation of 23 weeks carries more than the usual risks which have been explained to the patient.*

A perusal of the report of the Permanent Medical Board of the PGIMER, Chandigarh suggests that the patient may undergo medical termination of pregnancy at this stage due to fetal ascites, meconium peritonitis with associated loss of small bowel, which is not compatible with normal life.

The petitioner No.1 is permitted to get the pregnancy terminated. The respondent No.2-PGIMER, Chandigarh may proceed further by adopting all the safety measures and procedural protocol, as recommended by the Medical Board.

Let the necessary procedure be carried out at the earliest possible so as to avoid any further complications and danger to the life of petitioner.

This court also appreciates the efforts made by the Mr. S. P. Jain, Additional Solicitor General for getting the Amendment Act notified for enforcement. Mr. Jain has informed the Court that the Amendment Act, generalizing the provision and giving the final authority to the medical boards for this purpose; is likely to be notified for enforcement in near future. This court sincerely hopes that Union of India shall make earnest effort in expediting the process of enforcement of the Amendment Act so that the benefit of the same reaches to the common people as well; and their sufferings are mitigated.

Disposed of.

3rd AUGUST, 2021 **(RAJBIR SEHRAWAT)**
'raj' **JUDGE**

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*