

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1019 WRIT PETITION NO.792 OF 2022

XYZ THROUGH HER NATURAL GURDIAN
I.E. MOTHER HIRKANI SONU BHOI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner: Mr. Saisagar Ambilwade
h/f. Mr. Harshal Prakash Randhir
AGP for Respondents: Mr. A. R. Kale

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**CORAM: S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, J.**

DATE: 19th JANUARY, 2022

PER COURT:

1. The Petitioner claims to be a minor and victim of sexual assault. The Petitioner seeks medical termination of pregnancy. Under order dated 14.01.2022, the Petitioner was referred to the Expert Committee constituted under Respondent No. 3.

2. The Expert Committee examined the Petitioner and submitted the Report.

3. The relevant part of the Report reads thus-

"The Medical Board committee had meeting on dt.15/1/2022 and discussed the provision of MTP Act 2021. After thorough clinical examination and upon necessary investigations committee concludes as follows:-

1. On clinical & sonographic assessment of the pregnancy of Miss Prerna Sonu Bhoi Age 16 on 15/1/2022 there is no evidence of any obvious structural congenital anomaly in fetus at present.

2. Considering given age of patient at 16 years as notified by Hon. Court the patient is clinically normal and psychologically stable at present. There is no substantial risk the fetus.

3. As pregnancy crossed period of viability, baby alive on USG dated 15/1/2022 (31 weeks & 2 days) termination of pregnancy can not be done."

4. The Medical Board / Expert Committee has opined that pregnancy has crossed period of viability, baby alive on USG dated 15.01.2022. On 15.01.2022, the baby was 31 weeks and 2 days. The Expert Committee opined that termination of pregnancy cannot be done. The matter was placed before the Court yesterday. The same is kept today. The pregnancy today would be almost 32 weeks. Life has been infused in the child / fetus.

5. In cases where the pregnancy is alleged to have been caused by rape, the anguish caused by

such pregnancy is presumed to constitute grave injury to the mental health of the pregnant woman.

6. In addition to the fact that the pregnancy is caused by the rape, as alleged by the Petitioner, the Petitioner is also a minor. In such circumstances, ordinarily, the permission needs to be granted to terminate the pregnancy.

7. However, today if pregnancy is terminated the child would be born live with some deformity or deficiency and that would be harmful for the further life of that child.

8. In light of the above, it will not be possible to allow the Petitioner to terminate the pregnancy today, more particularly, considering the Report of the Expert Committee wherein the Expert Committee opined that the termination of pregnancy cannot be done.

9. According to the learned Counsel for the Petitioner, the Petitioner is a minor. It will not be possible for the Petitioner to bring up the

child in a congenial atmosphere as the person who has committed the alleged act is a criminal, according to the Petitioner.

10. In the present case, the complaint has been lodged by the Petitioner bearing F.I.R. No. 101 of 2021 dated 11.06.2021 with the Bhusawal Taluka Police Station, Bhusawal, District — Jalgaon. In such scenario, the Division Bench of this Court in case of XYZ Vs. Union of India and others (Writ Petition No. 10835 of 2018) with connected Writ Petitions under order dated April 3, 2019 has laid down guidelines. The same can be reproduced as under-

"133. According to us, both the parens patriae doctrine as well as provisions of Juvenile Justice Act obliged the State to assume parental responsibility in relation to such children. Therefore, the State, consistent with the provisions of the Juvenile Justice Act will have to protect and take care of such children, should, such need arise. Mr. Vagyani and Ms. Kantharia, the learned Government Pleaders, on the basis of instructions, have assured this Court, that consistent with the provisions of section 27 of the Juvenile Justice Act, the State Government, where it has not already done so, will by notification in the Government Gazette constitute for every District, one or more Child Welfare Committees (CWC) for

exercising the powers and discharging the duties conferred upon such Committees in relation to children in need of care and protection under the Juvenile Justice Act.

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(i) We further hold that where, this Court, in exercise of its powers under Article 226 of the Constitution of India has permitted medical termination of pregnancy and the child is born alive, if the parents of such child are not willing to or are not in a position to assume the responsibility for such child, then, the State and its agencies will have to assume full responsibility for such child and offer such child medical support and facilities, as may be reasonably feasible, adhering always to the principle of best interests of such child as well as the Statutory provisions in the Juvenile Justice Act;

(j) We direct the State to consider formulating a suitable policy to deal with the cases where despite attempts at medical termination of pregnancy, children are born alive, so that, such children are offered medical support and facilities, as may be reasonably feasible, adhering always, to the principle of best interests of such child as well as the Statutory provisions of the Juvenile Justice Act. The policy could also address the issue of adoption of such children. The Secretary (Health) or the Secretary of the concerned Department, Government of Maharashtra, to file a status report in this regard on 1st July, 2019 in this Court;

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11. The aforesaid directions may be abided by in the present case.

12. However, as the pregnancy is alleged on account of rape and a criminal case is also filed the Hospital where the delivery would be undertaken shall preserve tissue samples, blood samples of the child for carrying out necessary medical tests including DNA, finger printing/mapping. The Petitioner shall also intimate the Investigating Officer the place where the Petitioner would get admitted for the delivery of the child. The Investigating Officer conducting the investigation shall ensure that the samples of the tissue and the blood etc. are forwarded to the Regional Forensic Laboratory, Aurangabad for DNA, finger printing/mapping and for carrying out necessary tests and the samples and the report shall be preserved for the purpose of trial of that offence.

13. The Police Authority / Investigating Machinery may approach the Hospital where the Petitioner would deliver the child.

14. With the aforesaid observations, the Writ Petition is disposed of.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

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