

PatilSR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13791 OF 2022

XYZ ...Petitioner
Versus
State of Maharashtra Through Principal Secretary ...Respondent

Ms Megha S Bajoria, for the Petitioner.
Mrs SS Bhende, AGP, for the Respondent-State.

CORAM G.S. Patel &
Sharmila U. Deshmukh, JJ.
DATED: 22nd November 2022

PC:-

1. This is a Petition seeking order of the Court for termination of a late pregnancy. The Petition was originally affirmed by the husband of the gravid lady. There is now a notarised Petition obtained through the local District Legal Services Authority seeking the same prayers and which has been affirmed by the lady in question. The Petition that is given to us has personally identifying the information. This Petition affirmed by the mother is taken on record but it has to remain in seal with the Registrar General and cannot be unsealed without the specific order of the Court.

2. The facts of the case are that the mother conceived a child from a marriage. Very late in the pregnancy, upon doing a routine check up, at the time when the fetus was nearly 26 weeks in the

pregnancy, it was found that the fetus had severe abnormalities. These included a hydrocephalus, a club foot and substantial indications of malformation. These results indicated that there was a significant risk to the life and continued health of the child if born.

3. By the time the Petition was moved before this Court, the mother was well beyond the 24 week period specified in Section 3 of the Medical Termination of Pregnancy Act, 1971. On 17th November 2022, a Division Bench of this Court referred the matter to the statutory committee at the District Hospital Satara for an examination. The report was required to state whether the continuance of pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical and mental health or there was substantial risk that, if the child were born, it would suffer any serious physical or mental abnormality.

4. The mother was examined on 18th November 2022 by the Committee. There was a report of that date. This reconfirms the initial diagnosis. In addition, it notes that there is no impediment to the mental health condition of the mother. The considered opinion of the medical board is that the termination should be allowed. The justification provided is that the baby has gross abnormalities. The report also specifically notes that the mother is physically fit for the termination of pregnancy.

5. Accordingly, we issue Rule and forthwith make Rule absolute in terms of prayer clause (a) and (b)(ii) which read thus:

- “a) That this Hon’ble Court may pass appropriate orders/writ/directions and directing that the case of the Petitioner is a fit case for ensuring termination of pregnancy under Sec. 3(2)(b) and sec.5 of the Medical Termination Pregnancy Act, 1971.
- b) For a Writ of Mandamus or any other Writ/Directions in the nature of Mandamus directing the Respondent to :
 - i) Constitute a Medical Committee for the examination of the Petitioner to assist this Hon’ble Court in arriving at a decision on the plea of the Petitioner
 - ii) Allow the Petitioner to undergo Medical Termination of the Pregnancy at a medical facility at Satara.”

6. Prayer clause (b) (ii) has been covered by the previous order of 17th November 2022.

7. The medical personnel, surgeons and staff at the District Hospital Satara are required to carry out the procedure at the earliest possible, and, in any event before 24th November 2022.

8. A copy of this order may be uploaded ensuring that the name of the Petitioner in the original Petition is not disclosed but only described as "XYZ".

9. All concerned to act on production of ordinary copy of this order. None of the staff of the hospital is to insist on the authenticated copy of this order. In any case, certified copy expedited.

10. Petition disposed of in these terms.

(Sharmila U. Deshmukh, J)

(G. S. Patel, J)