IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15057 OF 2022

X ….. Petitioner

VERSUS

The State of Maharashtra ….. Respondent

Ms.Rebecca Gonsalvez for the Petitioner.

Smt. M.P.Thakur, A.G.P. for the State.

CORAM: R. D. DHANUKA AND
M.M. SATHAYE, JJ.
DATE : 13TH DECEMBER, 2022

P.C:-

By this petition filed under Article 226 of the Constitution of India, the petitioner seeks writ of mandamus directing the respondent to permit the petitioner to terminate her pregnancy in any duly approved and equipped hospital and for other reliefs.

2. The petitioner has approached this Court for permission for medical termination of the pregnancy on the ground that the Foetal echocardiography report shows that foetal echocardiography is S/o hypoplastic LV Asc AO & aortic arch with antegrade flow.

3. By an order dated 6th December, 2022 this Court directed to constitute the Medical Board, directed the petitioner to remain present for the purpose of examination before the Medical Board and directed the Medical Board to submit a report.

4. In pursuance of the said order passed by this Court, the Medical Board has submitted a report before this Court on 8th December, 2022 after carrying out various investigations.

5. The Medical Board recorded additional findings and observations as under :-

> Record additional findings and observations here, if any (Also include any risk to the health of girl/woman in case of continuation of pregnancy as well as termination) :-
>
> On examination gestational age is of 28 weeks, if decision of termination is taken, following complications can occur during delivery-
>
> (1) Delivery time is prolonged as she is 28 weeks gestation.
>
> (2) Patient may require surgical intervention and intra-operative and post-operative complications is similar to other surgeries.

(3) According to USG done on 8th December, 2022, the gestational age is 27 weeks and so, there are chances of survival of fetus requiring NICU admission and management.

(4) For mother in future pregnancy, chances of complications are more likely.

(5) If patient requires surgical intervention, she becomes a High Risk Case of hysterotomy. So, in the next pregnancy, she can have chances of Uterine Scar dehiscence, Scar rupture.

6. The Medical Board after recording the additional findings and observations recommended termination of the pregnancy. The recommendation is as under :-

Recommendation by Medical Board for termination (choose one and provide any additional recommendations of the panel in the box below if any) :-

Recommended – (if yes, please mention the methods) :-

Tab. Misoprostol 200 mcg per vaginally 6 hourly.

Key recommendations of the panel (if any) with justification :-

CONGENITAL ANAMALY – HYPOPLASTIC LV WITH ASCENDING AND AORTIC ARCH ANTEGRADE FLOW.

7. Learned counsel for the petitioner placed reliance on the judgment of Division Bench of this Court in ***Writ Petition No. 10835 of 2018, 2019 SCC OnLine Bom 560*** and submitted that subject to various safeguards after considering atleast similar medical report this Court has framed guidelines as to in what circumstances, Court can permit medical termination of pregnancy. Learned counsel placed reliance on paragraphs 125 to 134 and 138 of the said judgment.

8. Learned counsel for the petitioner also placed reliance on the judgment of this Court in ***Writ Petition (L) No. 31015 of 2021*** delivered on 31st December, 2021, judgment delivered on 26th August, 2021 in ***Writ Petition (L) No. 18582 of 2021***, judgment delivered on 28th September, 2022 in ***Writ Petition (L) No. 30453 of 2022*** and submitted that in those cases though the pregnancy was more than 28 weeks, this Court has granted permission to terminate such pregnancy.

9. Upon raising a query by this Court that the additional findings recorded by the Medical Board indicates that if the patient requires surgical intervention, she becomes a high risk case of hysterotomy and so, in the next pregnancy, she can have chances of Uterine Scar

dehiscence, Scar rupture, learned counsel for the petitioner states that inspite of such additional findings and observations made by the Medical Board, her client is ready and willing to proceed with the termination of pregnancy at her own risk. Statement is accepted.

10. Ms.Thakur, learned A.G.P. for the State opposes this writ petition on the ground that the medical report does not favour such termination of pregnancy and more particularly on the ground that the delivery time is prolonged as she is since 28 weeks gestation.

11. We have perused the report submitted by the Medical Board and also the additional findings and observations made in the said report. We also perused the judgments relied upon by the learned counsel for the petitioner in support of her submission that though in those cases, medical pregnancy was more than 28 weeks, this Court has granted permission for termination of pregnancy subject to various safeguards provided by this Court in the said judgment in ***SCC OnLine Bom 560***.

12. Learned counsel for the petitioner states that the safeguards provided by this Court in the said judgment and the subsequent

judgments placed in service by the learned counsel can be provided in this case also. Statement is accepted.

13. The petitioner has voluntarily expressed her desire to terminate the pregnancy and is well informed about the nature of the condition of foetus and its outcome. It is made clear that the pregnancy can be terminated as desired by the petitioner with due risk.

14. We accordingly pass the following order :-

(a) The petitioner is permitted to terminate the pregnancy at Vaishampyan Memorial Government Medical College, Solapur. The petitioner is already admitted in the hospital and shall remain present for examination tomorrow at 11.00 a.m.

(b) The Medical team who would be performing the termination of the pregnancy shall take utmost care while carrying out the termination and more particularly in view of the additional findings and observations made by the medical team.

(c) In the event of child being born alive, the Medical Practitioner conducting the procedure shall ensure that all necessary facilities are available to such child for saving his/her life.

(d) In the event of the child being born alive and the petitioner and her husband are not willing to take responsibility of such child, the State and its agencies will have to assume full responsibility for such child.

15. We have observed that though this Court by an order dated 31st December, 2021 in Writ Petition (L) No. 31015 of 2021 directed the State of Maharashtra to forthwith proceed to constitute Medical Boards, as the same will result in providing efficacious redressal to women seeking medical termination of pregnancy with foetal abnormalities, no steps are taken by the State Government till date in compliance with the said order and section 3(2C) of the Medical Termination of Pregnancy Act, 1971. As a result of not constituting the Medical Board, a large number of women are required to face hardship.

We accordingly direct the State Government to constitute the Medical Boards in compliance with the order dated 31st December, 2021 and in compliance with section 3(2C) of the said Act within eight weeks from today without fail.

16. Writ petition is disposed of in the aforesaid terms. No order as to costs. The parties to act on the authenticated copy of this order.

17. Ms.Thakur, learned A.G.P. for the State agrees to communicate this order immediately to the hospital for complying with the order passed by this Court.

[M. M. SATHAYE, J.] **[R. D. DHANUKA, J.]**