

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15605 OF 2022

XYZ and Anr.

..Petitioners

V/s.

The Dean, Dr. Vaishampayam
Memorial Government Medical College
and Chhatrapati Shivaji Maharaj General
Hospital and Ors.

..Respondents

Mr. Prosper D'Souza for the Petitioner.

Mr. A. P. Vanarase, AGP for the Respondent/State.

CORAM : R.D.DHANUKA, AND
M.M.SATHAYE, JJ.

DATE : 20 DECEMBER 2022

P.C.

. Not on board. Mentioned and taken up in view of urgency.

2. By this petition, the Petitioner No.1 is praying for permission to the Respondent No. 1 to take steps for termination of pregnancy of Petitioner No.1, which is stated to be 28 weeks. It is the case of the Petitioner No.1 that the foetus that she is carrying, is likely to be born with deformities and abnormalities.

3. In view of the urgency in the matter, by our order dated 16.12.2022, we had directed the medical examination of the

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Petitioner No.1 by Medical Board consisting of medical experts as suggested by Respondent No.1. The Petitioner No.1 appeared before the medical board and report has been issued.

4. The learned counsel for the Petitioners placed on record a medical report dated 17.12.2022 of the Medical Board of Respondent No.1. The same is taken on record.

5. Perusal of the said medical report shows that the Board has found the Petitioner 29 weeks into pregnancy but, has recommended medical termination of pregnancy and has also given certain additional findings and observations which read as follows:

14. *Additional findings and observations:*

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 29 weeks 02 days, so, if decision of termination is taken, following complications can occur during delivery-

1) Delivery time is prolonged as she is 29 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 17/12/2022, the gestational age is 29 weeks 02 days with EFW-1441 gms 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.

The Physical fitness and recommendation is reported to be as follows:

15. Physical fitness for termination: Yes.

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 100 mcg per vaginally 6 hourly.

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

Decision of termination of pregnancy may be taken on grounds of fetal congenital anomaly.”

6. The learned counsel for the Petitioners placed reliance on the order of this Court passed in Writ Petition No. 15057/2022

dated 13.12.2022. In the said order this Court has also considered similar order dt. 28/09/22 passed by this Court in ***Writ Petition (L) No. 30453 of 2022*** in which medical termination of 32 weeks pregnancy was allowed as also a Judgment of the Division Bench of this Court in ***Writ Petition No. 10835 of 2018***¹

7. Heard Mr. Vanarase, the learned AGP for the State.

8. We have perused the report submitted by the medical board along with additional findings and recommendation. We have also perused the judgments relied upon by the Petitioners.

9. On a specific query put to the learned counsel for the Petitioners, it is stated that the Petitioner No.1 who is an adult, has expressed her desire to terminate her pregnancy voluntarily and she is well informed about the nature and condition of foetus and all possible outcomes and risks involved in the procedure. The statement is accepted.

10. We accordingly pass following order:

(i) The Petitioner No.1 is permitted to terminate the pregnancy at Respondent No.1 Dr. Vaishampayam Memorial Government Medical College and Chhatrapati Shivaji Maharaj General Hospital in Solapur.

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(ii) The medical team who would be performing the termination of pregnancy shall take utmost care while carrying out the termination and more particularly regarding the findings and observation made by the Board.

(iii) In the event, the child being born alive, the medical team conducting procedure shall ensure all the necessary facilities are made available for saving his/her life.

(iv) In the event, the child being born alive, the Petitioner No.1 and her husband shall take full responsibility for such child.

(v) Petition is allowed in above terms.

11. The learned AGP to convey this order to Respondent No.1.

M.M.SATHAYE, J.

R.D.DHANUKA, J.