

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL WRIT PETITION NO. 166 OF 2022

XYZ

... PETITIONER

---VERSUS---

1. State of Maharashtra,
through its Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
2. State of Maharashtra,
Through Police Station Officer,
Police Station, Dabki Road,
District Akola
3. Chief Medical Officer,
Govt. Medical College and Hospital,
Akola

...RESPONDENTS

Shri A.S. Thotange, Advocate for petitioner.

Shri M.K. Pathan, Additional Public Prosecutor for respondents.

**CORAM : V. M. DESHPANDE AND
AMIT BORKAR, JJ.**

DATE : 30th MARCH, 2022 .

JUDGMENT : (PER - AMIT BORKAR, J.)

1. Heard.

2. **Rule.** Rule made returnable forthwith.

3. By this petition under Articles 227 and 227 of the Constitution of India the petitioner is seeking a direction to the Medical Board to terminate the pregnancy of the petitioner. The petitioner has lodged report against one Siddhant Anil Chandak for an offence punishable under Sections 376, 376(2) (n) of the Indian Penal Code and under Sections 3, 4 and 5(j)(2) of the Protection of Children from Sexual Offences Act, 2012 with respondent no.2-Police Station.

4. It is alleged in the First Information Report (FIR) that out of love relationship between the accused and petitioner, on the pretext of marriage the accused had sexual intercourse resulting into her pregnancy. It is alleged that thereafter accused started avoiding the petitioner. With the result, she lodged FIR against the accused.

5. After registration of FIR, the petitioner was referred to the Government Medical College and Hospital, Akola and she was admitted from 15.02.2022 to 20.02.2022. After examination of the petitioner by Doctor at the said hospital, it was communicated

to the petitioner that she is pregnant of 12 to 13 weeks. However, in view of provisions of the Medical Termination of Pregnancy (Amendment) Act, 2021 unless there is an order of the Court, her pregnancy cannot be terminated. The petitioner therefore filed the present writ petition seeking direction against the respondent no.3 to terminate medical pregnancy of the petitioner.

6. This Court by order dated 21.03.2022 directed the respondent no.3-Chief Medical Officer, Government Medical College and Hospital, Akola to constitute a Board in accordance with law to examine the petitioner and give detailed report giving clear opinion as to whether pregnancy can be safely terminated.

7. Accordingly, respondent no.3- Dr. Aparna Whane, Professor and Head of Department, Obgy. and Gynecology, Government Medical College and Hospital, Akola has filed affidavit-in-reply stating that the case of petitioner is not required to be considered by the Board as provisions of Medical Termination of Pregnancy (Amendment) Act, 2021 require the pregnancy beyond 24 weeks to be examined by the Board and in the facts of the present case the petitioner's pregnancy is being of

12 weeks, constitution of Board is not necessary. The respondent no.3 clearly stated in paragraph 5 of the affidavit that she has conducted relevant examinations of the petitioner and as per her opinion pregnancy of the petitioner can be safely terminated.

8. Shri M.K. Pathan, learned Additional Public Prosecutor placed on record the copies of examination papers of petitioner and the documents to show various investigations done by the respondent no.3. The said documents are taken on record and collectively marked as “Exhibit-X” for identification.

9. After having considered the provisions of Medical Termination of Pregnancy Act, 1971 and the clear opinion rendered by the respondent no.3 – Chief Medical Officer, in our opinion, there is no impediment in directing the respondent no.3 to perform the necessary procedure for medically termination of pregnancy of petitioner. Considering, however, that the pregnancy in the present case has been result of alleged rape, which has led to filing of FIR, appropriate directions for preservation of tissue and blood sample of fetus for carrying out requisite medical tests

including DNA finger printing/mapping would have to be passed.

We, therefore, pass the following order:

- i. Petitioner is permitted to undergo the procedure of medically termination of pregnancy as per opinion of respondent no.3. The respondent no.3 shall carry out the necessary procedure for termination of pregnancy of petitioner as early as possible and in accordance with law.
- ii. The blood sample and tissue sample of the fetus shall be preserved for the purpose of carrying out necessary medical tests including DNA and other tests, as may be ordered.
- iii. The respondent no.2/investigating officer shall collect the blood samples of accused for the purpose of sending the same for DNA examination.

The petition stands disposed of. Rule is made absolute in above terms.

Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE

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