

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

**WRIT PETITION NO.6434/2022**

Smt. Minakshi w/o Atish Bhoyar,  
aged about 30 years, Occ. Housewife,  
r/o Chintaman Colony, Ward No.7,  
Deoli, Dist. Wardha, Maharashtra. ....**PETITIONER**

**...V E R S U S...**

1. Union of India, through its  
Secretary, Health Department,  
New Delhi.
2. State of Maharashtra, through  
its Principal Secretary, Public Health  
Services, Mantralaya, Mumbai-23
3. Government Medical Hospital,  
Through its Medical Officer,  
Wardha, Maharashtra. ....**RESPONDENTS**

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Mr. R. D. Dharmadhikari, Advocate for petitioner.  
Mr. N.S. Deshpande, Deputy Solicitor General of India for  
respondent no.1.  
Mr. N. S. Rao, A.G.P. for respondent nos. 2 and 3.  
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**CORAM:- SUNIL B. SHUKRE & ANIL L. PANSARE, JJ.**  
**DATED :- 18.10.2022**

**ORAL JUDGMENT** (Per: Anil L. Pansare, J.)

Heard. Rule. Rule is made returnable forthwith. Heard  
finally by consent of learned counsel for the parties.

2. The petitioner who is in advanced state of pregnancy of 28 weeks and 4 days, is seeking permission to terminate the pregnancy.

3. Learned counsel for the petitioner submits that when sonography of the petitioner was conducted, it was opined by the doctor that there are anomalies and therefore it is advisable to take opinion from the medical expert. On 10.10.2022, an opinion from the Doctor attached to New Life Hospital was taken. It was opined that there are certain anomalies with the fetus and one part of the brain of the fetus is underdeveloped. The petitioner, thereafter, approached the neurologist who examined the petitioner. It was found in the examination that the fetus has, 'Antenatal Diagnosis of Corpus Callosum Agenesis', which means that the brain of the fetus is underdeveloped. Accordingly, the Gynaecologist of the petitioner issued a letter to the respondent no.3-Government Hospital, Wardha mentioning therein that the pregnancy is at the advanced stage but requires termination.

4. We had heard this matter on 14.10.2022 and issued directions to the respondent no.3 to constitute a committee of

medical experts and submit its report regarding necessity of carrying out the medical termination of pregnancy, in accordance with law. The report dated 18.10.2022 is before us. The Medical Board consisting of nine doctors has given the finding as follows:

*“Continuation of pregnancy would involve grave injury to physical & mental health of patient and substantial risk that if the child is born would suffer from physical abnormalities and significant morbidity but late termination of pregnancy with this procedure may involve the risk to the life of this patient. So the late termination of pregnancy may be done with the high risk consent of the patient and her relative.”*

5. Learned counsel for the petitioner submits that the law is well settled and that even in advanced stage of pregnancy, permission for termination of the pregnancy can be granted in the best interest of the parties.

6. The petitioner has relied upon the judgment of this Court in the case of **Smt. Gulfsha Wasim Sheikh Vs. The State of Maharashtra & Ors.**<sup>1</sup> This Court has considered the rulings of the Hon'ble Supreme Court to permit the petitioner therein to

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terminate pregnancy of 36 weeks. The rulings were quoted thus:

“5. In Tapasya Umesh Pisal Vs. Union of India, (2018) 12 SCC 57, the Hon'ble Apex Court has held that when the child to be born is likely to remain physically incapacitated and would have limited life span, it was in the interest of the parties that termination of pregnancy was permitted in spite of the fact that the fetus was of about 24 weeks old. Similar is the law laid down in the case of *Mrs. X Vs. Union of India, (2017) 3 SCC 458*.

6. In the case of Meera Santosh Pal Vs. Union of India, (2017) 3 SCC 462, the Supreme Court has held that the right of a mother to preserve her life in view of foreseeable danger in case the pregnancy must be allowed to run its full course.

7. In the Case of Suchita Srivastava V. Chandigarh Admn., (2009) 9 SCC 1, the Hon'ble Supreme Court has held that a woman's right to make reproductive choices is also a dimension of "personal Liberty" as understood in [Article 21](#) of the Constitution and such dimension of a woman's right to personal liberty, requires that a woman is allowed to maintain her bodily integrity, by choosing to terminate her pregnancy, when the continuance of the pregnancy involves a risk to the life of the petitioner and a possible grave injury to her physical or mental health, as envisaged by [Section 3\(2\)\(i\)](#) of the Medical Termination of Pregnancy Act,

1971.

8. All these cases have been followed by Delhi High Court in the case of Priyanka Shukla Vs. Union of India and ors. (supra) and Mahima Yadav Vs. Government of NCT of Delhi and ors. (supra).

9. In the case of Sarmishtha Chakraborty and anr. Vs. Union of India Secretary and ors reported in (2018) 13 SCC 339, the facts indicated that in the opinion of the Medical Board, the mother would suffer mental injury if the pregnancy was continued and that there were multiple problems if the child was born alive and therefore the Medical Board had recommended termination of the pregnancy even though it had crossed the age of 20 weeks. Taking note of these facts, the Hon'ble Apex Court allowed the petitioner to terminate her pregnancy.”

7. We have considered the report of the medical board in the light of the law laid down by the Hon'ble Supreme Court. The report clearly stipulates that the continuation of the pregnancy would involve grievous injury to the physical and mental health of the patient and substantial risk and if the child is born, would suffer from physical abnormalities and significant morbidity. The report also cautions that the delayed termination of the pregnancy

with this procedure may involve the risk to the life of the patient and therefore it may be done with high risk consent of the patient and her relatives.

8. Learned A.P.P. submits that in the light of the opinion given by the medical board, appropriate order may be passed.

9. Having gone through the report of the medical board so also the law laid down by the Hon'ble Supreme Court, we are of the considered view that this is a fit case for grant of permission to terminate the pregnancy.

10. Learned counsel for the petitioner, on instructions, submits that the petitioner's Gynaecologist Dr. Mrs. Meena Daga, has issued a letter that the termination of pregnancy may be carried at Laxmi Hospital, Wardha, which is a private nursing home with all facilities prescribed by the Bombay Nursing Homes Registration Act, 1949.

We accordingly permit the petitioner to terminate the pregnancy at Laxmi Hospital, Wardha in the following terms:

### **ORDER**

The petition is allowed. The petitioner is permitted to medically terminate her pregnancy subject to the conditions mentioned in the report of the Medical Board dated 18/10/2022, in particular the following conditions:

- (1) As per recommendation given by the standard operative protocol by the Rajya Kutumb Kalyan Karyalaya, Pune, the panel recommends that the termination of pregnancy will be done by use of Prostaglandins/Oxytocin, but before termination, ultrasound guided procedure by a skilled/experienced obstetrician or fetal medicine expert may be required so that fetus is not delivered alive. The Royal College of Obstetricians and Gynaecologist (RCOG) recommends 2-3 ml of strong (15%) potassium chloride (KCl) injection in the fetal heart prior to termination. Fetal demise should be confirmed by ultrasound scan after 30 to 60 minutes.

(2) The petitioner and her relatives shall give their consent for undergoing the procedure of medical termination of pregnancy of the petitioner with the understanding that the procedure has high risk involved in it.

(3) Termination of pregnancy be carried out at Laxmi Hospital, Wardha by a competent and experienced doctor.<sup>1</sup>

Copy of this order be given to the learned Counsel for the petitioner.

**(Anil L. Pansare, J.)**

**(Sunil B. Shukre, J.)**

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<sup>1</sup> Condition no.3 is added as per order dated 19.10.2022 passed by Hon'ble Court.