**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

**247**

**CWP-23929-2022**
**Date of decision: 21.10.2022**

ANAMIKA LAMBA AND ANOTHER .....Petitioners

VERSUS

STATE OF HARYANA AND OTHERS .....Respondents

**CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

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Present:- Mr. Sandeep Verma, Advocate
for the petitioners.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Abhishek K. Premi, Advocate
for respondent No.2.

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**VINOD S. BHARDWAJ, J. (Oral)**

1. The instant petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Mandamus directing the respondent No.2-Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh though its Director to terminate the pregnancy of the child which is about 29 weeks and 05 days. Reliance in this regard was placed to the Medical Report dated 12.10.2022 (Annexure P-2) as well as other medical record which shows “Prognosis in view of dysplasia kidneys as a result whereof continuation of the pregnancy would cause grave injury to the child of the petitioner No.1 and is also unsafe and dangerous to the life of the petitioner No.1 herself.

2. Learned counsel appearing on behalf of the petitioners refers to the pleadings and contends that the petitioners got married to each other on 10.12.2020 and the petitioner No.1 conceived on 25.03.2022. During the course of her regular medical check up, the petitioner No.1 was examined by Dr. Shreyasi Sharma, MBBS, MD (ObGyn) and during examination, congenital anomalies were found i.e. dysplasia kidneys which has caused lower urinary tract obstruction. The medical report of the petitioner No.1 had been appended alongwith instant petition as Annexure P-2.

3. That on the basis of the aforesaid medical report, the petitioners sought a second opinion and the said opinion given earlier on 12.10.2022 was affirmed. As per the opinion of the treating physician, the bladder of the foetus is distended, kidneys has dysplasia, cystic change.

4. Upon filing of the present petition, notice was issued to the respondents. Counsel appearing on behalf of respondent No.2 had entered appearance and the petitioner was subjected to examination by the Board constituted for the medical termination of the pregnancy.

5. Pursuant to the said order dated 17.10.2022, the petitioner appear before the Board constituted under Rule 3-A of the Medical Termination of Pregnancy Act, the petitioner No.1 was subjected to medical/physical examination by the aforesaid Board comprising of 07 doctors. The report and opinion on the findings of the Board is extracted as under:

| **Sr. No.** | **Report** | **Opinion on the findings.** |
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| 1 | The patient is primi gravida. As per the ultrasound done on 19.10.2022, the period of gestation is 29 weeks 3 day with single live intra uterine fetus weighing 1432+212 grams with anhydramnios with bilateral hydroureteronephrosis (R> L) with bladder outlet obstruction. The right kidney shows moderate hydronephrosis (AP diameter of pelvis 24mm), left Kidney shows mild hydronephrosis. Bilateral ureters are prominent. | Amniotic fluid is progressively reducing in the last 4 weeks. The life time risk of developing CKD is 30% in fetuses with lower urinary tract obstruction who survive till birth. Also there is severe fetal bladder outflow obstruction causing anhydramnios which can cause early loss of function of kidneys. Absent amniotic fluid will affect the lung development. Hence MTP is advised due to absent amniotic fluid, chances of pulmonary hypoplasia, thereby poor prognosis. Also long term chances of CKD (chronic kidney disease) |
| 2 | Opinion of the faculty Internal Medicine | Patient has been examined and found to be medical fit. |
| 3. | Opinion of faculty psychiatry | Patient is stressed since the time she got to know about the malformation (possible) in the fetus which is associated with prolonged medical and surgical treatment for the family and fetus and doubtful optimal outcome for the fetus. Hence she wants to discontinue the current pregnancy. |

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| 4. | Other Recommendations | As per the Royal College of Obstetricians and Gynecologists (RCOG) guidelines (Termination of pregnancy for fetal abnormality, 2010), in cases where medical abortion is being performed after 21 weeks +6 days of gestation for fetal abnormalities, to prevent a live birth, ultrasound-guided injection of Potassium Chloride in the fetal heart is advised before the abortion. |
| 5. | | The board advises that the genetic tests may be performed on fetus to assess any genetic syndrome which may help to counsel her in future pregnancy. The Board also recommends that the procedure should be carried out in PGIMER, Chandigarh. |

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| 6. | Opinion of faculty Pediatric Surgery | PGI USG dated 19/10/22 shows nil liquor and bilateral hydroureteronephrosis. Bladder is distended with keyhole sign. It can be due to posterior urethral valve, urethral atresia, neurogenic bladder etc. Severe fetal bladder outflow obstruction causing anhydramnios can cause early loss of function of kidneys. Absent amniotic fluid will affect the lung development hence MTP can be considered due to no amniotic fluid chances of pulmonary hypoplasta and thereby poor prognosis. Also long term chances of CKD (Chronic kidney disease). |

5. Additional Investigations (if done):

| S.No. | Investigation done | key findings |
|---|---|---|
| 1 | BP | 120/80 |
| 2 | Pulse | 88 per min. |
| 3 | Hb | 10.5 g/dl |

*6. Opinion by Medical Board for termination of pregnancy:*

***a) Allowed Termination of pregnancy is allowed.***

*Justification for the decision:*

*1. The permanent medical board recommends that this patient may undergo MTP at this stage, severe fetal bladder outflow obstruction causing anhydramnios which can cause early loss of function of kidneys. Also, absent amniotic fluid will affect the lung development.*

*2. Medical termination of pregnancy at an advanced gestation of 29 weeks 3 day carries more than usual risks which have been explained to the patient.*

*3. We also wish to bring to the knowledge that doctors will perform the procedure of Potassium Chloride injection in the fetal heart under ultrasound guidance before termination of pregnancy, to prevent the fetus from being born alive.*

*4. Physical fitness of the woman for the termination of pregnancy:*

*a. Yes: Physically fit.*

6. The aforesaid report dated 20.10.2022 is ordered to taken on record as Mark 'A'. As per the recommendation made by the Board of Directors, the petitioner No.1 can be subjected to medical termination pregnancy even though it might involve more than usual risks which have already been explained to the patient. The procedure required to be undertaken for performing the termination of the pregnancy has also been set out in the recommendations made by the Medical Board.

7. Learned counsel appearing on behalf of the petitioners consents to the aforesaid recommendation made by the Board and reiterates her willingness to undergo the procedure for seeking medical termination of the pregnancy at Post Graduate Institute of Medical Education and Research (PGIMER), Sector-12, Chandigarh.

8. The relevant statutory provisions dealing with termination of pregnancy are enshrined in Section 3 of the Medical Termination of Pregnancy Act, 1971 and reads as follows:

Section 3 of the Medical Termination and Pregnancy Act, 1971 reads as follows:

*"**3. When pregnancies may be terminated by registered medical practitioners.-***

*1. Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.*

*2. Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-*

*(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or*

*(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that-*

*(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or*

*(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Explanation 1.-Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. Explanation 2.- Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.*

*3. In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is*

*mentioned in sub-section (2), account may be taken to the pregnant woman's actual or reasonable foreseeable environment.*

*4. (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a 4 [mentally ill person], shall be terminated except with the consent in writing of her guardian.*

*(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman."*

9. In the considered view of this Court, case of the petitioner would fall under Section 3(2)(b)(ii) but for the time period embargo of 20 weeks. The clear opinion given by the Permanent Medical Board constituted at PGIMER, Chandigarh, as per report at Mark 'A' is that the foetus is not likely to survive on account of congenital anomaly noticed in the report itself. Under such circumstances it would be difficult for this Court to refuse permission to the petitioners to undergo medical termination of pregnancy. There would be no basis for this Court to not accept the recommendations made by the Permanent Medical Board and the constitution of which was approved by the Director, PGIMER, Chandigarh.

10. For the reasons recorded above, the writ petition is allowed.

11. The Director, PGIMER, Chandigarh is requested to get the pregnancy of petitioner No.1, namely, Anamika Lamba terminated under the supervision of the Head of the Department (Obstetrics and Gynecology), PGIMER, Chandigarh. The petitioner No.1 may appear before the Head of the Department (Obstetrics and Gynecology),

PGIMER, Sector-12, Chandigarh during the course of the day whereupon the necessary date and time for carrying out procedure may be so determined by the Head of the Department (supra).

12. Needless to observe that all the necessary facilities for undertaking such procedure be afforded in favour of the patient.

13. A copy of this order be furnished to counsel for the parties under the signatures of the Bench Secretary to ensure necessary and immediate compliance.

Disposed of.

**(VINOD S. BHARDWAJ)**

**OCTOBER 21, 2022**

*Vishal sharma*

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No