

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

WRIT PETITION NO. 4861 OF 2023

XYZ through her Legal Guardian .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Shrikrashna B. Solunke, Advocate for the Petitioner.
Shri D. R. Kale, Incharge G.P. for Respondent Nos. 1 and 2.

**CORAM : NITIN W. SAMBRE AND
 S. G. CHAPALGAONKAR, JJ.
DATE : 28TH APRIL, 2023.**

ORDER :

. The petitioner who was born on 24th January, 2010 since was subjected to sexual assault lodged a complaint on 21st April, 2023 resulting in registration of an offence bearing Cr. No. 99/2023 with the Police Station Ambajogai (Rural) for the offences punishable U/Sec. 376, 376(2)(n), 376(2)(F) of the Indian Penal Code and Section 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012.

2. In the aforesaid background of the factual matrix narrated in the F.I.R., since victim/petitioner was discovered carrying pregnancy of about 30 weeks, present petition is moved having regard to the provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971 (for the sake of brevity hereinafter

referred as to the “M.T.P. Act”).

3. As the victim is a tender age minor girl, this Court vide order dated 25th April, 2023 permitted her to appear before the Medical Board of Swami Ramanand Teerth Rural Government Medical College and Hospital, Ambajogai on 26th April, 2023 and we had requested the Dean of the said Medical College and Hospital to submit report of the medical board as to whether permission can be granted for termination of the pregnancy.

4. During the course of hearing of the present petition, incharge Government Pleader Mr. Kale has placed on record the report of the Medical Board in Form – D, which reads thus :

“Form D

(See sub-clause (ii) of clause (b) of rule 3A)

Report of the Medical board for Pregnancy Termination Beyond 24 weeks

- 1) Name of the woman : XYZ
- 2) Age : 13 Years
- 3) Registration/Case Number : 7/10393 (MLC No. NHP2047/2023 dated - 24/04/2023)
- 4) Available reports and investigations

S. No.	Report	Opinion on the findings
1	Obstetrics USG report Date 21/04/23 Krishna Sonography Centre, Dr. Sumit U. Gulbhile, MBBS, DMRE, REG. NO. 2014/05/1933	Single Live Intra Uterine Pregnancy of average maturity 30 weeks 01 day with adequate liquor normal growth interval and

	closed internal os.
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5) Additional Investigations (if done) :

S. No.	Investigations done	Key findings
1	CBC	HB 7.8 g/dl
2	No complaints general condition moderate, Afebrile, pulse rate 80 pr min pressure 110/70 millimeters of Mercury, no edema/iterus P/A – FH 28-30 WKS FHS – 140 BPM REGULAR, UTERUS relaxed	

- 6) Opinion by Medical Board for termination of pregnancy :
A-Allowed
B-Denied[✓]

Justification for the decision :

According to Gazette of India CG-DL-E-12102021-230390 Ministry of health and family welfare Notification, NEW DELHI, 12TH OCT 2021 G.S.R. 730 (E) Rule 3A (I)

For the given case termination of pregnancy not possible on following grounds.

- A. Patient came to OPD at 30 weeks and 1 day of gestational age.
- B. Section 3, Sub Section -2b in MTP act says if pregnancy is beyond 24 weeks and foetus has anomaly which is incompatible with life or child born would suffer from serious physical and medical handicapped.

-In this case No gross congenital anomaly given in ultra sonography.

- C. Today she is 31 weeks by gestational age termination of pregnancy at this stage is not safe for the patient.
- D. If termination recommended question of fetal right of survival arises.
- E. In India, viability age for fetus considered 28 weeks and hence the chances of survival of born child is more, as baby weight is 1483 grams on ultra sonography report.
- 7) Physical fitness of woman for the termination of pregnancy :

Yes

No^v

5. In the aforesaid background, learned counsel for the petitioner submits that the petitioner has approached this Court seeking permission for termination of the pregnancy having regard to the provisions of the M.T.P. Act. He would urge that the pregnancy is for more than 30 weeks. The petitioner is seeking permission from this Court having regards to the mental trauma that the petitioner is undergoing because of the pregnancy caused due to sexual assault. According to him in case if permission for termination of pregnancy is not granted, not only the petitioner, but entire family of the petitioner will suffer social blames. He would further urge that if pregnancy is permitted to be continued the same shall cause serious injury on the mental health of the petitioner. It is also claimed that there is inherent risk to her life at such a tender age of 13 years.

6. So as to substantiate his claim that this Court may permit termination of pregnancy at the risk of the petitioner, he would

urge that petitioner is ready and willing to take the risk if prayer for termination of pregnancy is granted contrary to the opinion of expert body i. e. Medical Board and same shall be at the risk and peril of the petitioner and her parents. He would urge that father of the petitioner, who is personally present in the Court is willing to furnish an undertaking to that effect to this Court.

7. In order to substantiate the claim, learned counsel for the petitioner has drawn support from judgment **dated December 10, 2019 passed by the the Division Bench of this Court at Principal Seat at Bombay in Writ Petition No. 1249 of 2019** in the matter of **'X' Vs. The State of Maharashtra**.

8. While countering aforesaid submissions, Mr. Kale, learned Incharge Government Pleader for respondent Nos. 1 and 2 has invited attention of this Court to the provisions of Section 3 of the M.T.P. Act. According to him no doubt, the Court has every power to direct the permission of termination of pregnancy in the given set of factual matrix. However, he would urge that this Court needs to be cautious while substituting its opinion to that of opinion of Expert Body. Apart from above he would invite attention of this Court to the reasons furnished by the Medical Board.

9. We have appreciated aforesaid submissions.

10. This Court is quite sensitive to the very factual matrix viz

tender age of the victim girl, the trauma that she will be undergoing particularly about her mental health she being carrying pregnancy at the age of 13 years. This Court is also sensitive to the fact that she is subjected to sexual assault resulting in registration of offence as reflected above. However, when this Court has perused reasons in support of negative opinion furnished by the Expert Medical Board, what can be noticed is clause "C" and "D" of the report reads thus :

"C. Today she is 31 weeks by gestational age termination of pregnancy at this stage is not safe for the patient.

D. If termination recommended question of fetal right of survival arises."

11. As such what can be inferred is even if termination of pregnancy is permitted, in case if fetus survives same will give rise to unforeseen complication in the life of petitioner. The fetus is of more than 30 weeks, chances of survival of born child is informed to be more, particularly having regard to the weight of the child. Such opinion of experts is based on the report of sonography.

12. In the aforesaid background, even if parents of the petitioner are willing to furnish an undertaking of willing to expose the kid/victim of losing her life, the chances of the live child being born cannot be ignored. The fact remains that the medical board has opined that the medical termination of pregnancy at this stage is not safe for the patient, as the

pregnancy has reached at a much advance stage.

13. In this background, we are not inclined to substitute our opinion to the opinion tendered by the expert body i. e. Medical Board.

14. In view of above, if we analyze the directions issued by the Division Bench of this Court in the matter of **'X' Vs. The State of Maharashtra** cited supra, in the factual matrix of said case, it was noted that victim was carrying pregnancy of 20 weeks, whereas in the case in hand pregnancy is of more than 30 weeks. If we compare opinion and reasoning given by the Expert Medical Board in the said case and in the present case, in the case in hand a categorical opinion is tendered by the Medical Board as reproduced hereinabove. In this background, even judgment cited supra will be of no assistance.

15. As such prayer for grant of permission for termination of medical pregnancy stands rejected.

16. Pursuant to directions issued by this Court learned Incharge Government Pleader Mr. Kale has appeared and produced investigation papers. We have gone through the investigation papers.

17. Learned counsel for the petitioner submits that, this Court may pass an order in line with order dated 14th September, 2022

passed in Writ Petition No. 9223 of 2022. According to him the petitioner can be kept at Chairman, Child Welfare Committee, Snehalaya/Balgruha, Ahmednagar, Dist. Ahmednagar.

18. In this background, we have requested Mr. Kale, learned Incharge Government Pleader to establish contact with the said institution. Mr. Kale on instructions informs that Chairman, Child Welfare Committee, Snehalaya/Balgruha, Ahmednagar, Dist. Ahmednagar is willing to accept the petitioner and shall provide all the necessary facilities as shall be required.

19. In this background, we deem it appropriate to pass following order.

(i) We direct the District Woman and Child Development Officer, Ahmednagar to be in contact and to have regular interaction with the victim in order to monitor her mental health/condition while being lodged with the Chairman, Child Welfare Committee, Snehalaya/Balgruha, Ahmednagar, Dist. Ahmednagar.

(ii) Apart from medical assistance and other facilities as are normally made available to the inmates of the said institution, particularly to the pregnant woman, we deem it appropriate to direct that such other facilities as shall be necessary and prescribed by the District Woman and Child Development Officer, the doctor under whose aegis the victim shall be kept be

forthwith made available. In case of any short fall, the requisition shall be made to the Collector, Ahmednagar, who shall attend the same on top priority basis.

(iii) Appropriate arrangements for transportation of the victim girl shall be made by the Superintendent of Police, Beed, who shall depute appropriate lady escort with the victim girl at the time of her shifting to aforesaid institution at Ahmednagar.

(iv) At Ahmednagar all the necessary medical facilities shall be made available to the victim girl by the Women and Child Development Officer.

(v) Aforesaid order is passed in view of consent extended by the learned counsel for the petitioner on instructions of the parents of the victim girl.

(vi) Shifting of the victim girl to the aforesaid institution shall be completed on or before 22nd May, 2023 by intimating in writing about shifting programme to the parents of the victim girl.

20. Petition accordingly stands disposed of.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE , J.]