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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.6466 OF 2023

ABC

...Petitioner

V/s.

State of Maharashtra

...Respondent

Ms.Ruchita Padwal with Ms.Aditi Saxena and Ms.Bhoomika Vyas for
the Petitioner.

Mrs.Reema Salunkhe, AGP for the Respondent.

CORAM : R.D. DHANUKA, CJ &
G.S. KULKARNI, J.
DATE : 29TH MAY, 2023.
(VACATION COURT)

P.C. :-

1. Rule. Mrs.Salunkhe, learned AGP waives service for the Respondent. Rule is made returnable forthwith. By consent of parties, the Writ Petition is heard finally.
2. By this Petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for a writ of mandamus directing the Respondent to constitute a Medical Committee for examination of the Petitioner and for seeking permission for Medical Termination of Pregnancy.

3. The Petitioner a married woman and has approached this Court, praying for termination of Medical Pregnancy having a 24 weeks fetus. The Petitioner has annexed the report of Orange Diagnostic Centre, as also two reports from the Jaslok Hospital which indicates that microcephaly is an evolving foetal abnormality and neurological development for the baby can be affected and for which the parents have intended medical termination of pregnancy.

4. In pursuance of the order dated 26 May, 2023 passed by a Co-ordinate Bench of this Court, a Medical Board was constituted with a direction to submit a report. In pursuance of the said order, the Medical Board constituted by Sir J.J. Group of Hospitals & Grant Government Medical College, Mumbai has submitted a report dated 26 May, 2023. The Committee is of the opinion that the present case is a fit case for Medical Termination of Pregnancy, which bears same risks and consequences as that of delivery at term. It is opined as under :

“AFTER CAREFUL EXAMINATION, ULTRASONOGRAPHY REPORTS AND INVESTIGATION, IT IS CONFIRMED THAT FETUS HAVE MICROCEPHALY MAY BE DUE TO GENETIC CAUSE, SYNDROME OR INFECTION (TORCH).

MICROCEPHALY LATER ASSOCIATED WITH MENTAL RETARDATION, INTELLECTUAL DISABILITY, SEIZURES, CEREBRAL PALSY, HEARING AND VISION DEFICIT CAUSING SUBSTANTIAL RISK OF PHYSICAL HANDICAP WITH INCREASED MORBIDITY AND OCCASIONAL MORTALITY.

THE COMMITTEE HAS FOUND THAT AT PRESENT THE MOTHER IS FIT FOR MEDICAL TERMINATION OF PREGNANCY WHICH BEARS SAME RISKS AND CONSEQUENCES AS THAT OF DELIVERY AT TERM.

MOTHER WAS EXAMINED BY PSYCHIATRIST. THE MOTHER IS FIT FOR MEDICAL TERMINATION OF PREGNANCY.

IF THE PREGNANCY IS TERMINATED NOW, THE FOETUS MAY BE BORN ALIVE REQUIRING NEONATAL INTENSIVE CARE.

THE MOTHER AND HER RELATIVES HAVE BEEN MADE AWARE OF THE SAME.

IF THE COURTS PERMITS, THE PETITIONER CAN UNDERGO MEDICAL TERMINATION OF PREGNANCY AT ANY INSTITUTE SHE DESIRES.

HOWEVER, THE FINAL OPINION REGARDING THE FITNESS CAN BE DECIDED UPON DEPENDING ON THE CLINICAL CONDITION OF THE MOTHER AT THE TIME OF PROCEDURE.”

5. The opinion submitted by the Committee is taken on record and marked “X” for identification. Learned counsel for the Petitioner on instructions make a request that if this Court is of the opinion that the Petitioner can be permitted to Terminate Pregnancy, the Petitioner shall be allowed to go for subsequent procedure at Jaslok Hospital. She further states that her client is ready and willing to follow the procedure as prescribed in the Guidance Note for Medical Termination of Pregnancy of more than 20 weeks. Statements are accepted.

6. Learned AGP has also perused the report submitted by the Committee and states that if this Court permits the Petitioner for Medical Termination of Pregnancy, sufficient safeguards shall be provided in the order.

7. We have perused the recent judgment of the Supreme Court in case of **“X vs. The Principal Secretary, Health & Family Welfare Department, Government of CT of Delhi & Anr.**, dated 29 September, 2022 **(2022 SCC OnLine SC 905)**. The Supreme Court considering the provisions of Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971, has observed in the context of the rights of a woman and the autonomy and control she would have over her body and more particularly in matters relating to reproductive decisions. It is held that the decision to have or not to have an abortion is borne out of complicated life circumstances, which only the woman can choose on her own terms without external interference or influence. It is held that reproductive autonomy requires that every pregnant woman has the intrinsic right to choose to undergo or not to undergo abortion without any consent or authorization from a third party. The relevant paragraph of the Supreme Court reads thus :

“98. To this, we may add that a woman is often enmeshed in complex notions of family, community, religion, and caste. Such external societal factors affect the way a woman exercises autonomy

and control over her body, particularly in matters relating to reproductive decisions. Societal factors often find reinforcement by way of legal barriers restricting a woman's right to access abortion. The decision to have or not to have an abortion is borne out of complicated life circumstances, which only the woman can choose on her own terms without external interference or influence. Reproductive autonomy requires that every pregnant woman has the intrinsic right to choose to undergo or not to undergo abortion without any consent or authorization from a third party.

99. The right to reproductive autonomy is closely linked with the right to bodily autonomy. As the term itself suggests, bodily autonomy is the right to take decisions about one's body. The consequences of an unwanted pregnancy on a woman's body as well as her mind cannot be understated. The foetus relies on the pregnant woman's body for sustenance and nourishment until it is born. The biological process of pregnancy transforms the woman's body to permit this. The woman may experience swelling, body ache, contractions, morning sickness, and restricted mobility, to name a few of a host of side effects. Further, complications may arise which pose a risk to the life of the woman. A mere description of the side effects of a pregnancy cannot possibly do justice to the visceral image of forcing a woman to continue with an unwanted pregnancy. Therefore, the decision to carry the pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman."

8. In the aforesaid circumstances, we are clearly of the opinion that this is a fit case where we ought to permit the petitioner to undergo medical termination of pregnancy accepting the opinion of the Medical Board of the Sir. J. J. Hospital as constituted by this Court. We accordingly pass the following order :-

a). The Petitioner is permitted to undergo Medical Termination

of Pregnancy as per the report dated 26 May, 2023 at Jaslok Hospital, Mumbai.

b). Jaslok Hospital, Mumbai shall ensure that the procedure is performed at a place which satisfies all the requirements of law for undertaking Medical Termination of the Petitioner's pregnancy and the procedure shall be conducted by the Medical Practitioner (s) who satisfies the conditions laid down under the rules.

c). Jaslok Hospital, Mumbai shall follow the Guidance Note for Medical Committee for Medical Termination of Pregnancy beyond 20 weeks while carrying out further procedure.

d). In case the child is born alive, the Medical Practitioner who conducts the procedure will ensure that all necessary medical facilities are made available to such child for saving life.

e). The Writ Petition is allowed. Rule is made absolute in aforesaid terms.

f). The Petitioner has agreed to remain present before Jaslok Hospital, Mumbai for the purpose of completing the procedure of Medical Termination of Pregnancy tomorrow i.e. 30 May, 2023 at 11:00 am.

g). Parties as well as Jaslok Hospital, Mumbai to act on the authenticated copy of this order.

(G.S. KULKARNI, J.)

(CHIEF JUSTICE)