

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7165 OF 2024

Miss. XYZ

} **..Petitioner**

: Versus :

The State of Maharashtra through
the Principal Secretary, Public Health Department,
Mantralaya, Mumbai

} **..Respondent**

Ms. Kanchan Tanaji Pawar for the Petitioner.

Mother of the Petitioner present in the Court in person.

Smt. M. P. Thakur, AGP for the Respondent-State.

The following members of the Medical Board are present through VC :

- 1. Dr. Shobhna Chavan, Gynaecologist (Class-I), Civil Hospital at Thane.***
 - 2. Dr. Avinash Padalkar, Radiologist (Class-I), Civil Hospital at Thane.***
 - 3. Dr. Vijay Salunkhe, Psychiatrist (Class-I), Civil Hospital at Thane.***
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***Coram: Sandeep V. Marne &
Dr. Neela Gokhale, JJ.
(Vacation Court)***

Dated: 17th May 2024.

P.C. :

1. The Petitioner is an unmarried 27 years old. She seeks medical termination of her pregnancy.
2. By order dated 15th May 2024, this Court directed the Authorities of City Hospital at Thane to constitute a Medical Board in terms of the Medical Termination of Pregnancy (Amendment) Act, 2021 read with the Medical Termination of Pregnancy Act, 1971, to examine the Petitioner and to submit a report to this Court. The Medical Board while forming its opinion was also requested to evaluate the physical and emotional well-being of the pregnant

person¹ as well as the impact and repercussions of the continuance/termination of pregnancy.

3. Accordingly, a Medical Board was constituted by the V.S. General Hospital at Thane and a report dated 16th May 2024 is submitted before us today. It is taken on record and marked “X” for identification. The report is unanimous. The team constituted by the Hospital to examine the Petitioner comprised of the following doctors :

- (a) Dr. Dhiraj Mahangade, Add. Civil Surgeon, Civil Hospital Thane,
- (b) Dr. Shobhana Chavan, Gynaecologist (Class-I), Civil Hospital Thane,
- (c) Dr. Avinash Padalkar, Radiologist (Class-I), Civil Hospital Thane,
- (d) Dr. Vijay Salunkhe, Psychiatrist (Class-I), Civil Hospital Thane and
- (e) Dr. Siddharth Shah, Paediatrician, Civil Hospital Thane.

4. The Medical Board does not support termination of pregnancy of the Petitioner. Column Nos. 6 & 7 read as thus :

“6) *Opinion by Medical Board for termination of pregnancy*

a) Allowed -

b) Denied - (✓)

Justification for the decision:

After taking history, careful examination by Gynaecologist, Paediatrician, Radiologist and Psychiatrist District Medical Board, Thane has come to the opinion that at present no abnormality is detected in the fetus and the pregnant (victim) mother. She is 27 years old and pregnancy is caused by sexual assault. Pregnant mother and her Parents do not want to continue pregnancy and she is anguished with the Pregnancy.

Continuation of pregnancy may lead to pregnancy related complications like Anaemia, pregnancy induced Hypertensions as well as complication during labour.

1. We use the term ‘pregnant person’ in consonance with the decision of the Supreme Court in the matter of A (mother of X) v. State of Maharashtra & Anr. in Civil Appeal No. 5194 of 2024.

Pregnant mother and her Parents have expressed desire to terminate the pregnancy and are made aware of the dangers of continuation of pregnancy as well as termination of pregnancy.

In the Medical Termination Process, there may be possibility of child being born alive. In the guidelines of GOI, Ministry of Family Welfare, it is mentioned that sexual assault survivor is an indication for termination beyond 24 weeks. As per this guidelines it will be advisable to stop the fetal heart sounds before inducing abortion by a procedure of fetal reduction. Kindly noted that, the fetal Reduction Services is not available in Civil Hospital Thane.

Since the pregnancy has advanced upto 26 weeks and 6 day (by USG Report), well beyond legal limits of termination of pregnancy i.e. 24 weeks.

7) *Physical fitness of the woman for the termination of pregnancy*

a) Yes -

b) No - (✓)"

5. We notice that the Medical Board, relying upon the guidelines of the Government of India, Ministry of Family Affairs has advised to stop the fetal heart sounds before inducing abortion by a procedure of fetal reduction. Thereafter in Column No. 7, the Medical Board opine that the Petitioner is not physically fit for the termination of pregnancy. The Board has unanimously expressed the possibility of the child being born alive. At the same time the report also states that continuation of pregnancy may lead to pregnancy related complications like anaemia, pregnancy induced hypertension as well as completion due to labour. We find certain contradictions in the report.

6. Thus, we decided to interact with the members of Medical Board by video conference in Chambers at 4.00 p.m. Dr. Shobhana Chavan, Gynaecologist, Dr. Avinash Padalkar, Radiologist and Dr. Vijay Salunkhe, Psychiatrist, the 3 members of the Medical Board were present. When we

enquired regarding the anomaly in the report, all three unanimously clarified that their opinion regarding pregnancy related complications in case of continuance of pregnancy were generic observations. They clearly stated that presently the fetus is of 28 weeks and weighs more than 1 kg. They also stated that the baby is fully formed and is likely to be born alive. During the course of the conversation online, the doctors said that the Petitioner would have to be induced for delivering the child and such delivery could be detrimental to the mental and physical health of the new born. Inducing a delivery at this advanced stage of pregnancy may have real risks of a deformed child as a result of premature birth.

7. Upon our specific query to the doctors regarding the comparative degree of risks to the fetus if the pregnancy is terminated prematurely and in case it is carried to full term, they clearly stated that the chances of the baby being born healthy and normal are obviously much higher than if the pregnancy is sought to be terminated now.

8. Conscious of the right of the Petitioner to reproductive freedom, her autonomy over her body and her right to choice, we also deemed it necessary to request Ms. Pawar, learned Counsel appearing for the Petitioner to keep the Petitioner present during the interaction with the doctors. Since the Petitioner herself is presently admitted in the City Hospital at Thane, the Petitioner's mother was present during the interaction with the Medical Board. Ms. Pawar and the Petitioner's mother were part of the discussion. They were also apprised of the opinion of the doctors. Ms. Pawar then informed us, on instructions from the Petitioner and her mother that the Petitioner was willing to carry the pregnancy to full term. The Petitioner's mother, present in person agrees. Ms. Pawar however conveyed that the Petitioner would require medical and emotional support.

9. Ms. Thakur, learned AGP representing the State was also present and shared details of various government schemes for victims of sexual assault, domestic violence and other related crisis requiring financial and other assistance from the Government. She further agreed to facilitate the Petitioner to reside at the Kasturba Mahila Vasatigruh, Chembur till the delivery of child. However, she says that the Petitioner can be admitted in the said home only on Tuesday.

10. In the facts and circumstances of this case, we issue the following directions:

- i. The Petitioner shall be admitted to the Kasturba Mahila Vasatigruh, Chembur on Tuesday 21st May 2024. This order will be transmitted to the Superintendent/Matron In-charge of the said home by the Respondent-State forthwith. The home shall permit the Petitioner to reside there till her delivery. The expenditure incurred in this regard shall be borne by the State. In the event that the Petitioner is not comfortable in the home, we request the Authorities of the City Hospital at Thane to permit the Petitioner to remain admitted till her delivery.
- ii. The Hospital shall bear all the expenses in regard to her hospitalization for the past 3 days as well as her readmission at the time of delivery as and when she is required to do so.
- iii. Post-delivery, if any further medical care is required, this should be ensured in the interest of the pregnant person including neonatal care for the baby.
- iv. Considering the circumstances of the pregnant person, authorities of the Hospital shall provide for her counseling post delivery.

- v. Given that there is an allegation of sexual assault, the Authorities will need to preserve the appropriate tissue sample of the fetus and DNA sample and forward these to the Investigating Officer for the ensuing criminal trial.
- vi. In the event that the Petitioner desires to give the child in adoption after the delivery, the State and its agencies will assume responsibility of the child and take such steps as necessary to rehabilitate the child including exercising the option of placing the child in foster care/adoption by following the due legal process. This shall not however be construed as a direction of this Court binding the Petitioner and the State shall abide by the wishes as expressed at the appropriate stage.
- vii. All concerned will act on production of a digitally signed copy of this order.

11. List the matter on 1st August 2024 for compliance report.

12. While concluding, sincere thanks and compliments deserve to be placed on record for both the Counsels for facilitating a resolution to the sensitive matter. We also commend the role of the Legal Aid Counsel Ms. Kanchan Pawar for her assistance as well as the team of the Medical Board in promptly interacting with us on short notice.

[*Dr. Neela Gokhale, J.*]

[*Sandeep V. Marne, J.*]