IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11057 OF 2024

Mrs. XYZ
Aged-15 years,
Mumbai ...Petitioner

Vs.

The State of Maharashtra
Through The Principal Secretary
Public Health Department,
Mantralaya, Mumbai-23 ..Respondent

Ms. Shilpa Pawar, for the Petitioner.
Ms. M.P. Thakur , AGP, for Respondent -State.
Mother of Petitioner present.

CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.

RESERVED ON : 9th AUGUST 2024
PRONOUNCED ON : 12th AUGUST, 2024.

JUDGMENT: (*Per Dr. Neela Gokhale, J.*)

1) The Petitioner is a minor. She is in her 26th week of pregnancy and is a victim of child abuse.

2) By Order dated 5th August 2024, this Court had directed the Authorities of Sir J.J. Group of Hospitals and Grant Medical College, Mumbai to constitute a Medical Board in terms of Section 3(2D) of the Medical Termination of Pregnancy (Amendment) Act of 2021 ('MTP Act') to examine the Petitioner and submit a report to this Court. The Medical Board

while forming its opinion was also requested to evaluate Petitioner's mental health.

3) Accordingly a Medical Board was constituted and its report dated 7th August 2024 is placed before us. It is taken on record and marked 'X' for Identification. The Report is unanimous.

3.1) The findings and opinion of the Doctors are as under:

(a) Observations of Dr. Preeti F. Lewis, (Associate Professor & Head of Unit, Dept. of Obstetrics & Gynecology)

> '1. Provisional Diagnosis: 15 yr old unmarried Primigravida with BD:23.1 BS: 27.1 wks for committee opinion for medical termination of pregnancy.
> 2. The pregnancy has advanced to 26-27 wks of gestation and bears the same risk and complications for the mother if the pregnancy is continued till terms or terminated now.
> 3. However, if the pregnancy is terminated now, the fetus has a probability of being born alive and will require intensive neo-natal care. The fetus may be affected by the complication due to its preterm status.'

(b) Observation of Dr. Sharad Malvadkar (Professor, Department of Radiology)

> 'Single live intrauterine gestational sac of mean gestational age 26 weeks and 6 days (+/-2 weeks) with no lethal congenital anomaly at present scan.'

(c) Opinion of Dr. Bela Verma, (Professor, Dept. of Pediatrics)

'15 yr old unmarried primigravida unmarried referred for opinion for termination of pregnancy.

USG (6/8/24) showed single live gestational sac of mean gestational age 26 wks 6 day (+/-2 weeks) with no lethal anomaly with EFW 1023G. As patient is minor and under POCSO Act 2012, medical termination of pregnancy can be considered. Parents and patient have been counseled that the fetus can be born alive and will require NICU care.

Patient to counseled by psychiatry department regarding the impact of the medical termination of pregnancy.'

(d) Opinion of Dr. Maithili Umate (Associate Professor, Dept. of Psychiatry)

'Patient referred for psychiatry evaluation for medical termination of pregnancy. No behavioral complaints noted.

No H/O psychiatric illness in family/past.

No H/O substance abuse.

No H/O major medical/surgical illness.

Mental Status Examination: within normal limits.

Adv:

1. Nil active psychiatry and fit for medical termination of pregnancy from psychiatry side.

2. Psychology testing for IQ. HTP.'

(e) Opinion of Dr. Vinayak Sarwadekar (Professor & HOU, Dept. of Medicine)

'Patient and relatives have been explained about the risks and

complications of the procedure and final decision to be taken by patient (herself) and relatives. If willing for MTP, patient can be taken for MTP with high risk.'

(f) Opinion of Dr. Usha Badole (Professor & Head, Dept. of Anesthesia)

'Advice: Patient is fit with due risk from anesthesia side.'

(g) Opinion of Mrs. Zainab Khan (Clinical Psychology, Dept. of Psychiatry)

'Advice: IQ-90, Average intelligence
HTP Findings: No significant psychopathology observed'

4) The conclusive opinion of Committee is as under:-

'After thorough investigation and examination of patient, the Committee has found that at present the mother is 15 years old, unmarried with 27.2 weeks of gestational age with no congenital anomaly in the fetus.

As the patient has filed a complaint under Section IPC 376, 376(2)(N), 376(2)(L), 354, 506 with POCSO Act 4,6,8 and sought High Court Order for the opinion of the Medical Termination of Pregnancy, the committee is of the opinion that as mother is underage and a case of POCSO, carrying unwanted pregnancy to term will cause metal stress to the mother.

Hence, the mother can undergo Medical Termination of Pregnancy at any tertiary institute of her desire if the court permits.

At present the mother is physically and mentally fit to undergo medical termination of pregnancy.

However, the final opinion regarding fitness will be decided

depending upon the clinical condition at the time of procedure.'

5) We have perused the Report.

5.1) Ms. Shilpa Pawar, learned counsel appears for the Petitioner and Ms. M.P.Thakur, learned AGP represents the State.

6) Ms. Thakur brought to our attention the finding of the Committee to the effect that if the pregnancy is terminated now, there is probability of the fetus being born alive and will require intensive neo-natal care. The fetus may be affected by the complication due to its pre-term status. Ms. Thakur thus, submitted that, considering the advanced stage of pregnancy and the chances of the fetus being affected by complications, the Court may consider refusing medical termination of pregnancy at this stage. We thus, requested Ms. Pawar to explain the ramifications of the Report and opinion of the Committee Members to the mother of the Petitioner as well as the Petitioner herself. We also requested Ms. Pawar to ascertain the wishes of the Petitioner. Ms. Pawar sought one day's time to take further instructions from the Petitioner and her mother. Hence, the matter was kept today for further hearing.

7) When the matter was taken up for hearing in the morning session, Ms. Pawar informed the Court that, the Petitioner and her mother were agreeable to continue the pregnancy and carry the same to its full term. Considering the changed desire of the Petitioner and her mother, we

deemed it appropriate to interact directly with the Petitioner and her mother to ascertain their wishes and confirm as to whether they had understood the contents and ramifications of the Report of the Medical Board.

8) Accordingly, one of us, (Dr. Neela Gokhale, J.) interacted with the Petitioner (by V/C) and her mother in the presence of both the counsels. The Petitioner appeared to be well informed and came across as an intelligent person and was able to communicate coherently. During the interaction, the Petitioner and her mother shared their wish to continue the pregnancy with an option to give away the child in the care and custody of State agencies for the purpose of its rehabilitation by way of adoption or any other means. The findings and opinion of the Medical Board were explained to the Petitioner and her mother and they have understood the same properly. It is confirmed that they also understood the ramifications of the proceeding with the medical termination as well as continuing with the pregnancy.

9) Notwithstanding that the Petition was filed seeking permission to medically terminate the pregnancy of the Petitioner but considering her changed stance and wishes and also conscious of the right of the Petitioner to reproductive freedom, her autonomy over the body and her right to choice, we deem it appropriate to leave the decision of continuance of the pregnancy entirely upto the wishes of the Petitioner. At the same time, we permit the Petitioner to medically terminate the pregnancy, if she so desires.

10) Ms. Thakur on behalf of the State has agreed to facilitate the Petitioner to reside at Kasturba Mahila Vastigriha, Mahila Bhikshekari Sweekar Kendra, Chembur till the delivery of the child. The Petitioner and her mother have indicated their desire that, the delivery procedure, etc. to be done in Sir J.J. Group of Hospitals, Mumbai. In these facts and circumstances, we pass the following order:

i) We permit the Petitioner to medically terminate the pregnancy, if she so desires.

ii) The Petitioner shall be offered shelter and stay at the Kasturba Mahila Vastigruha, Chembur till the delivery or till such time, the procedure for termination of the pregnancy is carried out, as per the choice and decision of the Petitioner. The Home shall permit the Petitioner to reside there till her delivery.

iii) In the event that the Petitioner chooses to continue the pregnancy, delivery of the Petitioner shall be at State's expense.

iv) The Hospital shall also provide post-delivery care to the Petitioner including neo-natal care for the baby, if so required. Considering that, the Petitioner is a victim of sexual abuse, the Hospital Authorities shall also provide for counseling, post-delivery.

v) Given that there is an allegation of sexual assault, the Authorities will need to preserve the appropriate tissue/DNA sample of the fetus/child after its birth and forward the same 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 by the Petitioner at the appropriate stage.

11) Petition is allowed in the aforesaid terms.

12) All the concerned to act on an authenticated copy of this order.

(DR NEELA GOKHALE, J.) (A.S. GADKARI, J.)