

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL WRIT PETITION NO. 11754 OF 2024**

Ms. XYZ

.....Petitioner

Vs.

The State Of Maharashtra
Through the Principal Secretary,
Public Health Department,
Mantralay, Mumbai-400 023.

.....Respondent

Mr. Sheikh M. Anees a/w Ms. Naziya Bhaladar for the Petitioner.
Mrs. M. P. Thakur, A.G.P for the Respondent-State.

**CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.**
DATE : 23rd AUGUST 2024.

PC.:-

- 1) The Petitioner is a minor of 14 years of age. She is in her 26th week of pregnancy and is a victim of child abuse.
- 2) By an Order dated 20th August 2024, this Court had directed the Authorities of Sir J.J. Group of Hospitals and Grant Medical College, Byculla, 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 22nd August 2024 is placed before us. It is taken on record and marked 'X' for Identification. The Report is unanimous.
- 4) The conclusive Committee opinion is as under:-

COMMITTEE OPINION

"After examining the mother with all the investigations, the committee has found that the mother, 14 yr old unmarried primigravida by date? by scan 27 weeks 3 days with Rh Negative pregnancy is fit for Medical Termination of Pregnancy. At present termination of pregnancy bears same risks and consequences as of delivery at term.

If the pregnancy is terminated now, the foetus may be born alive requiring neonatal intensive care with significant comorbidity and mortality.

The mother and her relatives have been made aware of the same.

If the Court permits, the Petitioner can undergo Medical Termination of Pregnancy at any institute of her desire. However, final opinion regarding the fitness can be decided upon depending on the clinical condition of the mother at the time of the procedure."

- 5) We have perused the Report. Mr. Sheikh Anees, learned counsel appears for the Petitioner and Mrs. M.P. Thakur, learned AGP represents the State.

6) Mrs. Thakur brought to our attention the finding of the Committee to the effect that 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 pre-term status. Mrs. 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.

7) Mr. Anees however, states that the minor being only 14 years of age, is unable and unwilling to take the delivery to its full term.

8) Conscious of the right of the Petitioner to reproductive freedom, her autonomy over the body and her right to choice, we permit the Petitioner to medically terminate the pregnancy, if she so desires. The present case squarely falls within the purview of Section 3(2)(b)(i) read with Explanation 2 thereof and Rule 3-B(a) and (b) of the Medical Termination of Pregnancy Rules of 2003.

9) The Petitioner and her mother have indicated their desire that, the delivery procedure, etc. to be done in Sir J.J. Group of Hospitals and Grant Medical College, Byculla, Mumbai. In these facts and circumstances, we issue the following directions:

- i) We permit the Petitioner to medically terminate the pregnancy.
- ii) The procedure of medical termination of pregnancy shall be carried out on Tuesday, i.e., 27th August 2024 at Sir J.J. Group of Hospitals and

Grant Medical College, Byculla, Mumbai.

iii) 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.

iv) Given that there is an allegation of sexual assault, the Authorities will preserve the appropriate tissue/DNA sample of the fetus/child after its birth and forward the same to the Investigating Officer for ensuing criminal trial.

v) 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.

10) The Petition is thus allowed in the aforesaid terms.

11) All concerned parties will act on the production of the authenticated copy of this order.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)