

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 12861 OF 2024**

XYZ,
Aged 20 years old,
residing at 501, Acacia,
Hiranandani Estate,
Patlipada, Near Municipal
Commissioner Bungalow,
Off Ghodbunder Road,
Thane West – 400607

.....Petitioner

Vs.

The State of Maharashtra,
Through the Principal Secretary,
Public Health Department,
Madam Cama Road,
Mantralaya Road,
Mumbai- 400 032

.....Respondent

Ms. Meenaz Kakalia, for the Petitioner.
Smt. M.P. Thakur, AGP for Respondent-State.

**CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.**
DATE : 13th September, 2024.

P. C.:-

1) The Petitioner is an adult. She is a 20 years old student, and has found herself in the 25th week of pregnancy arising out of a consensual relationship with her partner. She is unwilling to continue with the pregnancy for the reasons mentioned in the Petition. She seeks permission for medical termination of the pregnancy.

2) By Order dated 9th September 2024, this Court had directed the

Authorities of 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 12th September 2024 is placed before us. We have perused the Report. It is taken on record and marked 'X' for Identification. The Report is unanimous.

4) The conclusive Committee opinion is as under:-

“ After thorough investigation and examination of the patient, the committee has found that at present the mother is 20 yr old, unmarried with 26 weeks of gestation with no congenital anomaly in the fetus.

The committee is of the opinion that mother is an adult who is mentally and physically fit, carrying a healthy pregnancy. The termination of the pregnancy bears the same risk and complications for the mother if the pregnancy is continued till term or terminated now.

However, if the termination is conducted now the child may be born alive and require intensive neonatal care. Also, the baby will be affected by the complication due to it's preterm birth.

Hence, the committee is of opinion that,

termination of pregnancy is not advisable at present.

However, if the court permits termination of the pregnancy, it can be done at any recognized institute of her desire and the final opinion regarding fitness will be decided depending upon the clinical condition at the time of procedure.”

5) Ms. Meenaz Kakalia, learned counsel appears for the Petitioner and Smt. M. P. Thakur, learned APP represents the State.

6) Ms. Kakalia sought time to take instructions from the Petitioner considering the opinion of the Medical Board. At 2.30 pm. In the Second Session, she stated on instructions that the Petitioner being only 20 years of age, is unable and unwilling to take the delivery to its full term. She also reiterated the submissions made by her in the Petition are as follows:

(a) The Petitioner is only 20 years old student and is herself dependent on her parents. She has no independent source of income.

(b) At age 9 itself, she was detected with ovarian torsion in her right ovary and the same had to be surgically removed.

(c) Last six years, she suffers from chronic skin condition known as psoriasis. Due to these additional health issues, she is unwilling to continue the pregnancy.

(d) Ms. Kakalia referred to the guidance note issued by the Union of India in relation to Medical Board's for Termination of Pregnancy beyond 20 weeks of gestation. Clause V(c) provides for stopping of foetal heart beat

that may be required to avoid the fetus being delivered alive. The State Government has also adopted these guide-lines of the Central Government and provided for stopping the heart beat of the fetus in such situation.

7) Smt. Thakur submitted that the guidelines of the Central Government and the State Government can be applied only if the Court permits the termination of pregnancy. She however, prays that appropriate orders in the interest of justice may be passed considering the findings and opinion of the Medical Board.

8) Conscious of the right of the Petitioner to reproductive freedom, her autonomy over the body and her right to choice, the medical condition of the Petitioner and her history of health issues and having considered the findings and opinion of the Medical Board, we permit the Petitioner to medically terminate the pregnancy, if she so desires.

9) The Petitioner has indicated her desire that, the delivery procedure, etc. to be done in a hospital of her own choice. We permit her to do the same. In these facts and circumstances, we permit the Petitioner to medically terminate the pregnancy in a hospital/institution of her own choice.

10) The Petition is allowed in the aforesaid terms.

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

12) In Civil Writ Petition No.12147 of 2024, we have requested Dr.

Abhinav Chandrachud, learned counsel to assist the Court as an *amicus curiae* in our endeavour to determine a suitable mechanism so as to facilitate involvement, accountability and participation of the partner in such matters.

13) The present Petition be tagged with Writ Petition No.12147 of 2024.

14) List on 20th September 2024 for further consideration.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)

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signed by
SHAMBHAVI
NILESH
SHIVGAN
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