IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.13848 OF 2024

XYZ .....Petitioner

Versus

The State of Maharashtra
and others .....Respondents

Ms. Manisha S. Jagtap, Advocate for the Petitioner.
Smt. M.P. Thakur, AGP for the Respondent-State.

CORAM : SARANG V. KOTWAL &
DR.NEELA GOKHALE, JJ.

DATE : 11th OCTOBER, 2024

P.C. :

1. The Petitioner is a married lady and is in the 27th week of pregnancy. She seeks permission to medically terminate the pregnancy on the ground that there is a risk of mortality and morbidity to the fetus as the child may be born associated with other congenital anomalies.

2. By order dated 10.10.2024, this Court directed the Medical Board constituted under the Medical Termination of Pregnancy Act, 1971 (for short, 'MTP Act') by Sir J.J. Hospital, Mumbai to examine the Petitioner. The Board was requested to

submit a report to this Court and give its opinion after evaluating the physical and emotional well being of the Petitioner as well as to ascertain the viability of the fetus regarding anomalies as reported by the Petitioner.

3. Accordingly, the Medical Board has placed a report dated 11.10.2024 before us through the learned A.G.P.. The opinion of the Medical Board reads as under :

> "**COMMITTEE OPINION**
>
> After careful evaluation of the patient and perusal of ultrasonography reporting, it is confirmed that the fetus suffers from congenital anomaly associated with lung abnormalities in the form of fetal hydrops with bronchial atresia/ congenital pulmonary amway malformation type 3.
>
> The condition of the fetus fulfils the criteria of "substantial risk of serious physical handicap, with high morbidity and mortality.
>
> Termination of pregnancy at 26 weeks of gestation carries the same risk to the pregnant woman which is not likely to be more than delivery at term. The congenital anomaly is associated with increased risk of mortality and morbidity to the child. Hence Medical termination of pregnancy may be permitted with due risk discussed with parents.
>
> Termination of pregnancy at 26 weeks of gestation will result in the fetus being born alive. The preterm viable baby will require intensive care management. Prior intrauterine feticide

can be done at a place where facilities for the same are available."

4. The gist of the opinion of the Medical Board is that the entire right lung of the fetus is echogenic and expanded and the left lung is not well visualised and is likely to be hypoplastic. The concluding paragraph of the opinion has also advised termination of pregnancy of the Petitioner. The Medical Board has, however, opined that termination of pregnancy at this stage carries some risk to the Petitioner which is not likely to be more than delivery at the full term. The Medical Board has also commented and opined on the health and fitness of the Petitioner to undergo the said procedure. The Medical Board has opined that the Petitioner is fit to undergo the procedure of medical termination of her pregnancy.

5. We have considered the report and having heard learned counsel for the Petitioner as well as learned A.G.P., we are of the opinion that as provided under Section 3(2-B) of the MTP Act, this is a fit case for granting permission to medically terminate the pregnancy of the Petitioner. Section 3(2-B) of the

MTP Act reads as under :

> "**3. When pregnancies may be terminated by registered medical practitioners. -**
>
> xxxxx
>
> xxxx
>
> (2-B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board."

6. Further more, the Medial Board while taking into account and exercising its power under Rule 3-A of the Medical Termination of Pregnancy Rules, 2003 have also considered the fitness of the Petitioner to undergo the said procedure.

7. We are satisfied that granting permission to the Petitioner is in the interest of the Petitioner.

8. Hence, the following order:

:: O R D E R ::

i. The Petitioner is permitted to medically terminate the pregnancy.

ii. The Petitioner has shown her inclination and desire to undergo the procedure in J.J. Hospital, Mumbai. We accordingly permit her to get the procedure done in J.J. Hospital, Mumbai in accordance with the provisions, Rules and Regulations of the Act.

iii. The hospital is also directed to provide post delivery care to the Petitioner, including the neo-natal care for the baby, if born alive and if so required.

iv. In the event the Petitioner desires to place the child for rehabilitation by way of adoption after the delivery, the State and its agencies will assume the responsibility of the child and will take all necessary steps to rehabilitate the child, including giving the child in adoption. This direction shall, however, not be binding on the Petitioner; and if she, at that stage, desires to keep the child with her, she will be entitled to do so.

v. The Petition is allowed in the aforesaid terms.

(DR.NEELA GOKHALE, J.) **(SARANG V. KOTWAL, J.)**