

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

CIVIL WRIT PETITION NO. 13849 OF 2024

A (Mother of X)

.....Petitioner

Versus

The State of Maharashtra,
Through GP & Ors.

.....Respondents

Mr. Ashley Cusher a/w Ms. Priyanka S. Tiwari, Advocate for the
Petitioner.

Smt. M. P. Thakur, A.G.P. for the Respondent-State.

**CORAM : SARANG V. KOTWAL AND
DR. NEELA GOKHALE, JJ.**

DATE : 10th OCTOBER 2024.

P.C.:-

1. This Petition is preferred by the mother of a 14 years & 10 months old girl, who is the survivor of an offence attracting the provisions under Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 64 & 64(2)(m) of the Bharatiya Nyaya Sanhita, 2023. She had suffered sexual assault from a known person, of about 40 years of age. C. R. No. 1095 of 2024 is registered at Manpada Police Station, Thane City on 1st October 2024. As a result of the sexual assault, the survivor girl became pregnant. The pregnancy has crossed the

permissible period of 24 weeks provided under the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the Act'). In the result, she has approached this Court for permission to medically terminate the pregnancy.

2. This Petition is filed through her mother as mentioned earlier. It is mentioned in the Petition that the girl belongs to a poor section of society. Her mother i.e. the Petitioner is a daily wages labourer and resides with her husband, mother and five daughters. The Petitioner's husband and mother, both are working as daily wages labourers. The whole family depends on the income of Petitioner and her husband. On 30th September 2024, the Petitioner's daughter suddenly got stomach pain and she started crying uncontrollably. The Petitioner took her in confidence. She revealed that she had missed her menstrual cycle for a few months and that she was feeling uneasy. On further questioning, the Petitioner was told by her daughter about the incident of sexual assault on her that took place in July 2024. The act was also repeated subsequently. Since the Petitioner's daughter was scared, she did not reveal anything to anybody. The F.I.R. came to be lodged on 1st October 2024.

After registration of the F.I.R., when the Petitioner's daughter was medically examined, it was revealed that she was pregnant. Thus, this fact came to the knowledge of Petitioner only after 1st October 2024. It was found that by that time, the length of pregnancy was 27 weeks & 2 days. The Petitioner had taken her daughter to Central Hospital, Ulhas Nagar, Thane. The Medical Officers attached to that hospital opined that medical termination of pregnancy could not be carried out due to the restrictions of the Act. In these circumstances, the Petitioner has approached this Court for permission to carry out the procedure for medically terminating the pregnancy.

3. We have heard Mr. Ashley Cusher, learned counsel for the Petitioner and Smt. M. P. Thakur, learned A.G.P. for the Respondent-State.
4. Looking at the urgency, the matter was taken on board on 7th October 2024 and we had directed the Medical Board constituted under the Act to carry out the necessary tests and submit their report in a sealed envelope before the Court. Accordingly the report dated 9th October 2024 is tendered in the Court. The Medical Board consisted of 7 doctors attached to Sir

J. J. Group of Hospitals, Mumbai. They were from the Departments of Obstetrics and Gynecology, Pediatrics, Psychiatry, Radiology, Medicine, Anaesthesia and Clinical Psychology.

5. We have perused the report. The learned A.G.P for the State of Maharashtra as well as the learned counsel for the Petitioner have also perused the report.

6. The opinion of Committee is as under :-

“After thorough investigation and examination of the patient, the committee has found that at present the mother is 14 year old, unmarried with 29.1 weeks of gestational age with no congenital anomalies in the fetus.

As the patient has filed a complaint under sections 64 & 64(2)(m) of Bhartiya Nyaya Sanhita and under sections 4, 8 & 12 of POCSO Act 2012 and sought High court Order for the opinion of the Medical Termination of Pregnancy, the committee is of the opinion that if the mother undergoes termination of pregnancy now, it will bear the same risk and complications for the mother if the pregnancy is continued till term.

However, if the pregnancy is terminated now, the fetus will be born alive and will require intensive neonatal care. The fetus may be affected by the complications due to its preterm birth.

Considering the above facts and since the patient is physically and medically fit, patient can continue pregnancy. Hence, the committee is of the opinion that the mother should not undergo Medical Termination of Pregnancy at present.”

7. As is seen in the Report, the Committee is of the opinion that the mother should not undergo medical termination of pregnancy at present. They have also opined that if the mother undergoes medical termination of pregnancy now, it will bear the same risk and complications for the mother if the pregnancy is continued till term.
8. In the light of this opinion, we sought specific submissions from the learned counsel for the Petitioner. He submitted that inspite of this opinion, the fact remains that the Petitioner's daughter is of tender age of only 14 years & 10 months. Completion of term of pregnancy is still at least around 8-9 weeks away. Therefore considering her tender age, there is always a serious and grave risk to her own life for the next 8-9 weeks. This possibility cannot be overlooked and therefore to eliminate any grave risk to her own life, it is necessary to consider granting the permission for termination of her

pregnancy.

9. We have considered these submissions very seriously inspite of the opinion given by the Medical Board.
10. Learned A.G.P for the State of Maharashtra expressed her concern for the child, who is likely to be born alive. That aspect also we have taken into consideration. From that point of view, we deemed it necessary to have discussion with the Petitioner and her daughter. Therefore we interviewed the Petitioner in our Chambers and we also discussed the same issue with the survivor/the pregnant girl specifically seeking her desire whether she wanted to continue her pregnancy or whether she wanted to terminate the pregnancy. In our opinion the desire and safety of the survivor is of utmost importance than any other consideration.
11. As a result of our interview with the Petitioner and her daughter, both of them categorically and emphatically stated that they wished to terminate the pregnancy and reiterated the prayer to medically terminate the pregnancy.
12. Learned counsel for the Petitioner invited our attention to the judgment of the Hon'ble Supreme Court in the case of 'A'

(Mother of X) Vs. The State of Maharashtra and Another dated 29th April 2024 in Civil Appeal No. 5194 of 2024 as reported in [2024]5 S.C.R. 470. Paragraph no. 28 of the said judgment is relevant and reads thus,

“28. The MTP Act has removed the restriction on the length of the pregnancy for termination in only two instances. Section 5 of the MTP Act prescribes that a pregnancy may be terminated, regardless of the gestational age, if the medical practitioner is of the opinion formed in good faith that the termination is immediately necessary to save the life of the pregnant person. Section 3(2-B) of the Act stipulates that no limit shall apply on the length of the pregnancy for terminating a fetus with substantial abnormalities. The legislation has made a value judgment in Section 3(2-B) of the Act, that a substantially abnormal fetus would be more injurious to the mental and physical health of a woman than any other circumstance. In this case, the circumstance against which the provision is comparable is rape of a minor. To deny the same enabling provision of the law would appear prima facie unreasonable and arbitrary. The value judgment of the legislation does not appear to be based on scientific parameters but rather on a notion that a substantially abnormal fetus will inflict the most aggravated form of injury to the pregnant person. This formed the basis for this Court to exercise its powers and allow the

termination of pregnancy in its order dated 22 April 2024. The provision is arguably suspect on the ground that it unreasonably alters the autonomy of a person by classifying a substantially abnormal fetus differently than instances such as incest or rape. This issue may be examined in an appropriate proceeding should it become necessary.”

The above observation of the Hon’ble Supreme Court guides us in passing this order.

13. For reference, the entire Section 3 of the Act is reproduced as under :-

“3. When pregnancies may be terminated by registered medical practitioners. -

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

[(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner;-

(a) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such

category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are,

of the opinion, formed in good faith, that-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

Explanation 1.- For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.- For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancies shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2-A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(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.

(2-C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2-D) The Medical Board shall consist of the following, namely:-

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.]

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4)(a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a [mentally ill person], shall be terminated except with the consent in writing of her

guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

14. Sub-section 3 of the Section 3 of the Act is particularly relevant, which refers to her actual or reasonable foreseeable environment.

15. In another case, a different Division Bench of this Court had an occasion to deal with a similar issue in Civil Writ Petition No. 12348 of 2023. That Petition was decided on 9th October 2023. In that case the pregnancy had advanced to 29 weeks. The order dated 9th October 2023 mentions that the victim in that case had suffered sexual assault and had become pregnant. Her pregnancy had reached to 29 weeks and at that stage, she had approached this Court for termination of her pregnancy. There were circumstances necessitating to approach this Court for permission. The victim was physically and intellectually challenged. In these circumstances, this Court (***Coram : Revati Mohite Dere & Gauri Godse, JJ.***) vide order dated 9th October 2023 passed in Civil Writ Petition No. 12348 of 2023 had permitted to get medical termination of pregnancy done.

16. In that context, it must be noted that the survivor is of a very tender age. She discovered her condition at a very late stage which is quite possible considering that her condition is a result of a sexual assault. Her financial condition is very poor. She is not in a position to raise a child. Her actual environment also supports her desire for termination of the pregnancy.
17. As mentioned earlier, what has weighed in our mind, is the safety of survivor girl as the most important deciding factor. She is only 14 years & 10 months old. Every passing day of pregnancy is important. We have to consider the mental trauma she has undergone due to the assault and future trauma if pregnancy continues. Her express desire to terminate the pregnancy is also important consideration.
18. Learned counsel for the Petitioner further states that the Petitioner is willing to undergo the procedure to be carried out at Sir J. J. Group of Hospitals, Mumbai. According to him, the said hospital is covered under the Act where such procedures can be performed.
19. As a result of this discussion, we are inclined to permit the victim girl to undergo the procedure for termination of her

pregnancy in accordance with the Act. Hence the following order:-

ORDER

- a. The Petitioner's daughter is permitted to undergo the procedure for medical termination of pregnancy at Sir J. J. Group of Hospitals, Mumbai.
- b. The procedure shall be carried out by the qualified medical practitioners in accordance with the Act and the Rules and Regulations framed under the Act.
- c. The tissue samples of child or fetus shall be preserved for DNA testing and other analysis required for investigation of the offence registered vide C. R. No. 1095 of 2024 dated 1st October 2024 registered at Manpada Police Station, Thane City.
- d. If the child is born alive, all the necessary facilities be provided to the fetus/child to save his life.
- e. The State of Maharashtra shall take necessary steps to take care of the child and if necessary, to give the child in adoption by following the due procedure, as per the desire of the survivor girl and her mother.
- f. The Hospital shall also provide post-delivery care to the girl

including Neo-natal care for the baby, if born alive and so required. Considering that the girl is a victim of sexual assault, the Hospital authorities shall also provide for counseling, post delivery.

20. With these observations, the Petition is disposed of accordingly.

(DR. NEELA GOKHALE, J.)

(SARANG V. KOTWAL, J.)

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