

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15389 OF 2024

XYZ & Anr.

...Petitioners

Versus

State of Maharashtra,
through the Principal Secretary,
Public Health Dept.

...Respondent

Ms. Kanchan T. Pawar for Petitioners.

Ms. Dhruvi Kapadia, AGP for Respondent-State.

CORAM : Sharmila Deshmukh,
Jitendra Jain, JJ.

DATED : 31 October 2024.
(Vacation Court)

PC.:-

1. This petition has been filed by Petitioner No.1 who is a minor girl aged about 11 years through her guardian, i.e., her father seeking permission to terminate 30 weeks pregnancy.

2. The case of the Petitioners is that Petitioner No.1 is a victim of sexual assault and an FIR No.0419 has been registered under Section 65(2) of Bhartiya Nyay Sanhita and under Section 4 of the POCSO Act, 2012. The said FIR is now transferred to the Bhayandar Police Station and Registered as FIR No.0342 against an unknown person. The Petitioners had approached this Court and at the time of filing of the

petition, the Petitioner No.1 is 30 weeks into her pregnancy. By order dated 29 October 2024 of the Co-ordinate Bench of this Court, the Petitioner No.1 was directed to undergo medical examination before the Medical Board of Sir J.J. Group of Hospitals. The report of the medical board has been submitted to this Court. The conclusion of the committee reads as under:-

“As the patient has filed a complaint under section 64(2) of Bhartiya Nyaya Sanhita and under section 4 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 risks and complications for the mother if the pregnancy is continued till term. However, if the pregnancy is terminated now, the fetus has a probability of being born alive and will require intensive neonatal care. The fetus maybe affected by the complication due to it's preterm status.

If the Honorable High Court permits termination of pregnancy, then the mother can undergo Medical Termination of Pregnancy at any tertiary institute of her desire. 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 of the mother at the time of procedure.”

3. It is settled that this Court under Article 226 of the Constitution of India can permit the medical termination of the pregnancy even in respect of the cases where the length of the pregnancy exceeds 20 weeks in the contingencies which are set out in Clauses (i) and (ii) of Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971. In light of the fact that Petitioner No.1 who is a

minor girl is a victim of sexual assault and considering the opinion of the Medical Board who has examined Petitioner No.1, the Petitioner No.1 is permitted to undergo medical termination of pregnancy as per the Medical Board's opinion, dated 30 October 2024 of Sir J.J. Group of Hospitals and Grant Government Medical College, Mumbai.

4. The blood sample and the tissue sample of the fetus shall be preserved for the purpose of carrying out DNA or other tests which may be required during the trial of the criminal case. The Investigating Officer to ensure that samples are preserved for the purpose of trial of the offence. If the child is born alive and the Petitioner No.1 and her parents are not willing or are not in a position to take responsibility of the child, the State and its agency will assume full responsibility of the child. All medical facilities should be made available for saving the child's life.

5. The Petitioner No.1 to be admitted in the hospital by 4:00 p.m. today and the procedure to be carried out by the concerned Gynaecologist. The Petitioner No.1 to be ensured all medical facilities at the hospital by the State.

6. Petition is disposed of in the above terms.

(Jitendra Jain, J.)

(Sharmila U. Deshmukh, J.)