



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2794 OF 2024

1. Mrs. XYZ
Age. 24 years, Occu: Nil.

2. Mr. XYZ
Age. 34 years, Occu: Nil.

.....Petitioners

Vs.

The State of Maharashtra,
Public Health Department,
Mantralaya, Mumbai

.....Respondent

Ms. Manisha Devkar, for the Petitioners.

Smt. Anamika Malhotra, Addl.PP, for Respondent No.1-State.

CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.

DATE : 3rd JULY, 2024.

ORAL JUDGMENT (Per Dr. Neela Gokhale, J.) :-

1) The Petitioner No.1 is a married adult and the Petitioner No.2 is her husband. She is over 24 weeks in her pregnancy and undergoing treatment for cancer. Hence, she seeks permission for medial termination of her pregnancy.

2) Vide Order dated 1st July 2024, this Court directed the authorities of King Edward Memorial Hospital, Mumbai to constitute a Medical Board in terms of the Medical Termination of Pregnancy (Amendment) Act, 2021 to examine the Petitioner No.1 and to submit a report to this Court. We had referred a letter dated 26th June 2024 of Dr.

Aniket Baraskar of the Tata Memorial Centre addressed to OBGY, KEM/Wadia Hospital, Mumbai wherein it was stated that the Petitioner No.1 was suffering from CA tail of pancreas with multiple liver metastasis and was unfit for palliative chemotherapy on account of her pregnancy. We had also requested the Medical Board to evaluate the physical and mental well-being of the Petitioner No.1.

3) Accordingly, a Medical Board was constituted by the KEM Hospital, Mumbai.

3.1) Smt. Anamika Malhotra, learned APP placed the report of the Medical Board dated 2nd July 2024 before us today. The said report is taken on record and marked 'X' for identification. The report is unanimous. The team constituted by the Hospital to examine the Petitioner No.1 comprised of the following doctors :

1. Dr. Padmaja Samant, Professor and Unit Head, Head of Department Obstetrics & Gynecology, KEM Hospital & Seth G.S. Medical College;
2. Dr. Hemangi Kansaria, Professor and Unit Head, Obstetrics & Gynecology, KEM Hospital & Seth G.S. Medical College;
3. Dr. Namrata Tiwari, Assistant Professor, Obstetrics & Gynecology, KEM Hospital & Seth G.S. Medical College;
4. Dr. Karishma Rupani, Assistant Professor, Psychiatry, KEM Hospital & Seth G.S. Medical College;

5. Dr. R. Prabhu Additional, Professor, Gastro-intestinal Surgery,
KEM Hospital & Seth G.S. Medical College.

4) The relevant portion of the Report of the Medical Board reads
as under:

“Based on the above findings, the board has concluded that:

- 1. Current pregnancy is about 25-26 weeks by patient's clinical and sonographic evaluation.*
- 2. The diagnosis of stage 4 pancreatic cancer has been made based on frozen section of liver and ultrasonography. Biopsy report of pancreas is awaited.*
- 3. The long-term survival of the patient is not affected by medical termination of pregnancy. The condition is likely to be fatal even if she receives chemotherapy.*
- 4. The baby born at near term/term may have better prognosis rather than when born preterm. (24-26 weeks of gestation)*
- 5. If the pregnancy is terminated at 26 weeks, the baby may be born alive. The neonatological guidelines allow nonresuscitation in only 2 conditions, Anencephaly and Trisomy 13. This means that this neonate in question that Mrs. XYZ may give preterm birth to, will be resuscitated, and may live for variable length of time. In that case, parents cannot abandon the child. The management may be modified accordingly. The doctors will face an ethical dilemma in deciding for or against*

intervention. If the neonate dies due to problems of prematurity, the death will have to be reported to the authorities as per current procedural guidelines. (reporting deaths of babies of more than 500 gms weight).

6. Maternal risks:

Mother is anemic and will require to build up hemoglobin with transfusion before delivery.

- The petitioner Mrs. XYZ requires chemotherapy. However, even with treatment, her prognosis is guarded, and median expected overall survival is approximately 6-12 months (report is based on current literature).*

- Uninduced natural labor is more likely to have smooth progress and fewer complications like excessive contractions, need for surgical intervention, trauma, bleeding, future problems that ensue with scarred uterus. Though the petitioner and her husband are at present distressed with the thought of the near certain fatality, they both have to clearly understand these maternal risks mentioned above.*

- Taking medical oncologist opinion in MTP regarding Chemotherapy in pregnancy into consideration, the board is of the opinion that the pregnancy may be continued and may take its own course and patient may undergo chemotherapy as decided by concerned experts.*

- Psychological counseling is recommended.*

- The board also requests the court to grant immunity from any medico legal liability due to giving opinion as asked by the honorable court.”*

(The name of Petitioner No.1 appearing in the report is replaced with Mrs. XYZ to maintain confidentiality)

5) Ms. Manisha Devkar, learned counsel for the Petitioners also placed on record a letter dated 2nd July 2024 issued by Dr. Prabhat Bhargav and Dr. Anant Ramaswamy, both Consultants, GI-Medical Oncology of Tata Memorial Centre, Mumbai wherein they opined that the Petitioner No.1 can be treated with systemic chemotherapy (eg: Gemcitabine) with ongoing pregnancy with limited effects on pregnancy based on previously published data. He has also certified that the Petitioner No.1 is in Stage 4 of pancreatic cancer and even with treatment, her progress is guarded and medium expected overall survival is approximately 6-12 months.

6) We are thus faced with a letter dated 26th June 2024 of Dr. Aniket Baraskar of Tata Memorial Centre, where he has specifically opined that the general conditions do not allow for chemotherapy. On the other hand, the Medical Board constituted by KEM Hospital pursuant to our request, as well as Dr. Bhargav and Dr. Ramaswamy of the Tata Memorial Centre, Mumbai have opined that the patient can be treated with systemic chemotherapy with ongoing pregnancy, with limited effect on pregnancy.

7) We have gone through the report of the Medical Board and the opinion of the doctors of Tata Memorial Centre carefully. It is emphasized by the Medical Board that the Petitioner No.1 is anemic and will require to

build up hemoglobin with transfusion before delivery. Admittedly the Petitioner No.1 requires chemotherapy. There is nothing in the report to suggest that the procedure of MTP poses a risk to her health, save and except that she is anemic requiring transfusion. We have considered the plea of the Petitioner No.1 as stated in the Petition. She states that she is suffering miserably from the ailment and having unbearable pain. She also states that palliative treatment might help her live longer and more comfortably. We are conscious of the right of the Petitioner No.1 to reproductive freedom, her autonomy over her body and her right of choice. In these circumstances, considering the opinion of the Medical Board, doctors of Tata Memorial Centre and the wishes of the Petitioners, we are inclined to permit her to medically terminate her pregnancy, if the Petitioner No.1 continues to so desire. The concerned doctors are to determine the appropriate time to carry out the M.T.P. procedure, depending upon the health parameters of the Petitioner No.1 as required for the same.

8) In the event that the baby is born alive, the hospital is to provide the neonatal care as required. If the Petitioners desire to give the child in adoption after the delivery, the State and its agency 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 Petitioners and the State shall abide by the wishes as expressed by the Petitioners at the appropriate stage.

9) Pursuant to their request, the Medical Board is hereby granted immunity from medico legal liability, if any arises, for rendering their opinion.

10) Petition is accordingly partly allowed in the aforesaid terms.

11) All the concerned to act on the production of the authenticated copy of this Order.

(DR. NEELA GOKHALE, J.)

(A.S. GADKARI, J.)