

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3663 OF 2024**

1. Ms. XYZ
age: 14 Goregaon, Dist. RaigadPetitioner
- Vs.
1. State Of Maharashtra,
Through its Public Health Department
Having its office at
Madam Cama Road, Hutatma Rajguru
Chowk, Nariman Point, Mumbai-400032
2. Goregaon Police Station,
Alibaug, Raigad
3. District Hospital Alibaug,
Raigad.Respondents

Ms. Manisha S. Jagtap, for the Petitioner.
Smt. M.H.Mhatre, APP for Respondent-State.

**CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.**
DATED : 26th AUGUST, 2024.

PC. :-

- 1) The Petitioner, a minor of 14 years of age, is in the 26th week of pregnancy, being a victim of child abuse. There is a FIR filed against the accused in the said crime. She seeks permission for medical termination of the pregnancy.
- 2) By Order dated 23rd August 2024, this Court had directed the District Surgeon of the District Hospital, Alibaug, Raigad 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 25th August 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:-

"6. Opinion by Medical Board for termination of pregnancy: ALLOWED.

Justification for the decision:

1- (by Gynaecologist) Medical Termination of Pregnancy can be done for this patient after correction of anaemia and availability of cardiologist.

2- (by Psychiatrist) Considering her overall social welfare and Traumatic stress experience it is recommended to terminate pregnancy.

3- (by Physician) Underage.

4- (Pacdiatricion) Child is undernourished and anemic. Can be taken after anemia correction.

5- (by Anaesthetist) patient examine thoroughly,(patient can be taken for surgery under ASA grade I"

5) Ms. Manisha Jagtap, learned counsel appears for the Petitioner and Ms. M.H. Mhatre, learned APP represents the State.

6) Ms. Jagtap states that, the minor being only 14 years of age, is unable and unwilling to take the delivery to its full term. Ms. Mhatre submitted that appropriate orders in the interest of justice may be passed considering the findings and opinion of the Medical Board.

7) Conscious of the right of the Petitioner to reproductive freedom, her autonomy over the body and her right to choice and having considered the findings and opinion of the Medical Board, we permit the Petitioner to medically terminate the pregnancy, if she so desires. The present case squarely falls within the purview of Section 3(2)(b)(i) read with Explanation 2 thereof and Rule 3-B(a) and (b) of the MTP Rules of 2003.

8) The Petitioner has indicated her desire that, the delivery procedure, etc. to be done in the District Hospital, Raigad, Alibaug. In these facts and circumstances, we issue the following directions:

- i) We permit the Petitioner to medically terminate the pregnancy.
- ii) The finding of the Board indicates that the minor-Petitioner is undernourished and anemic and the Board is of the opinion that the MTP can be done after correction of the anemia. In view of this opinion and the fact of the advanced stage of pregnancy, the procedure of medical termination of pregnancy shall be carried out at the earliest and only subject to the medical opinion in respect of correction of anemia of the Petitioner. The procedure shall be carried out at District Hospital, Alibaug, Raigad as per the desire of the Petitioner and her mother since she is

already admitted in the said hospital.

iii) The Hospital shall also provide post-delivery care to the Petitioner including neo-natal care for the baby, if so required. Considering that, the Petitioner is a victim of sexual abuse, the Hospital Authorities shall also provide for counseling, post-delivery.

iv) Given that there is an allegation of sexual assault, the Authorities of the Hospital will preserve the appropriate tissue/DNA sample of the fetus/child after its birth and forward the same to the Investigating Officer for ensuing criminal trial.

v) In the event that the Petitioner desires to give the child in adoption after the delivery, the State and its agencies 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 Petitioner and the State shall abide by the wishes as expressed at the appropriate stage.

9) The Petition is allowed in the aforesaid terms.

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

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)