

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2366 OF 2025

ABC

.....Petitioner

Vs.

The State of Maharashtra & Ors.

.....Respondents

Mr. Ashley Cusher, with Ms. Pooja Phagnekar, for the Petitioner.
Mrs. M.P. Thakur, AGP (through V/C) for the Respondent-State.
Dr. Sandeep Pophale, present through V/C.

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

DATE : 20th FEBRUARY 2025.

P.C.:-

1) By this petition, the Petitioner aged 18 years, seeks permission from this Court to terminate her pregnancy, which is currently beyond approximately 28 weeks. According to the Petitioner, the pregnancy is a result of a sexual assault by a person X, who had physical relations with her after promising to marry her and having no intention so to do.

2) Vide order dated 17th February 2025, we directed the Authorities of the Respondent No.3- Sir J.J. Group of Hospitals to constitute a Medical Board to examine the Petitioner. Accordingly, the

constituted Medical Board examined the Petitioner and submitted their Report dated 18th February 2025 to the Court, through the learned Additional Government Pleader. The said Report is received in a sealed cover. It is opened and taken on record.

3) The opinion of the Medical Committee is as under:

“COMMITTEE OPINION

After thorough investigation and examination of the patient, the committee has found that at present the victim is 18 yr old, unmarried with 28 weeks and 6 days of gestational age.

As the patient has filed a complaint u/S 64(1), 64(2) of BNS and Section 4,8, 2 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 victim undergoes termination of pregnancy now, it will bear the same risks and complications if the pregnancy is continued till term. Also, the fetus has a probability of being born alive and will require intensive neonatal care. The fetus maybe affected by the complication due to its preterm status.

If the Honorable High Court permits termination of pregnancy, the victim can undergo Medical Termination of Pregnancy at any tertiary institute of her desire. At present

the victim is mentally fit to undergo medical termination of pregnancy however physical fitness is subject to optimization of Hb>10g/dL

The final opinion at the time of undergoing the procedure regarding fitness will depend on the clinical condition of the mother at that time as gauged by the team of treating physicians.”

4) Mr. Ashley Cusher appears for the Petitioner and Ms. M.P. Thakur, learned AGP represents the State.

5) We have perused the Report. It appears that the Petitioner is mentally and physically fit to undergo the procedure, subject to optimization of her hemoglobin to the required level. The Report is detailed, however, there is no mention regarding the present procedure affecting future pregnancies of the Petitioner or her ability to conceive and give birth. Hence, we deemed it appropriate to interact with one of the Doctors of the Medical Board. Accordingly, at our request, Dr. Sandeep Pophale, Associate Professor, Department of OBGY, GGMC & Sir JJ Hospital, Mumbai joined the proceedings through Video Conferencing (V/C). We held these proceedings with Dr. Pophale in Chambers. The father of the Petitioner was also present through V/C during the proceedings. Similarly, the counsel of both the

parties were also present in the proceedings.

6) We put our query to Dr. Pophale and he informed us that present procedure for medical termination of pregnancy on the Petitioner is not likely to be detrimental to or affect in any manner, future pregnancies of the Petitioner. He also informs us that the Doctors conducting the procedure shall decide the manner of termination of pregnancy which will be in the best interest of the Petitioner. We are satisfied with the clarification given by Dr. Pophale.

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) of the MTP (Amended) Rules of 2003.

8) The Petitioner is already admitted in Sir JJ Hospital and has indicated her desire that the procedure, etc. to be done in Sir JJ Hospital itself. Considering 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 hemoglobin levels of the Petitioner are approximately 10 g/dl. and thus the procedure shall be carried out at the earliest and only subject to the medical opinion in respect of correction of anemia of the Petitioner.

iii) The authorities of the Sir JJ 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 her wishes as expressed at an appropriate stage.

9) It is made clear that the Petitioner shall not be discharged from the Hospital till such time that she has recovered and is medically fit to be discharged.

10) The Petition is allowed in the aforesaid terms.

11) Stand over to **26th February 2025** for reporting compliance on the Supplementary Board at serial no. 1.

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

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)

Digitally
signed by
SHAMBHAVI
NILESH
SHIVGAN
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