

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION**

WP-LD-VC-150 OF 2020

Deepali Vishal Kambli ... Petitioner

Versus

State of Maharashtra ... Respondent

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Ms. Aditi Saxena alongwith Mr. Niranjn Deshpande for the Petitioner.

Ms. Uma Palsuledesai, AGP for the State-Respondent.

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CORAM : S.J. KATHAWALLA AND**R.I. CHAGLA, JJ.****DATED : JULY 24, 2020.****P.C. :-**

1. The Petitioner who is aged about 31 years has filed the present Writ Petition seeking permission of this Court to terminate her pregnancy on the ground that on 8th July, 2020, during an Obstetric Ultrasound examination conducted at Ashish Maternity and Nursing Home, it was discovered for the first time that the foetus of the Petitioner with a gestational age corresponding to 23.3 weeks suffered from serious structural anomalies.
2. By an order dated 16th July, 2020 this Court passed an interim order directing Sir J.J. Group of Hospitals, Mumbai to constitute a Medical Board to examine the Petitioner and submit a report before this Court setting out whether it would be advisable to terminate the pregnancy of the Petitioner.

3. Accordingly, the Hospital constituted a Medical Board/Committee comprising of the following Doctors :

(i) Dr. Ashok Anand, Professor & Head of Dept. of Obstetrics and Gynecology, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

(ii) Dr. V.P. Kale, Professor & Head, Dept. of Psychiatry, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

(iii) Dr. Shilpa Domkundwar, Professor & Head, Dept. of Radiology, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

(iv) Dr. Varnan Velho, Professor and Head, Dept. of Neurosurgery, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

(v) Dr. Nita Sutay, Professor & Head, Dept. of Paediatrics, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

(vi) Dr. Kamlesh Jagiasi, Professor & Head, Dept. of Neurology, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

4. The Hospital has today submitted its report to this Court. We have gone through the same. The opinion of the Medical Board/Committee is reproduced hereunder :

“AFTER CAREFUL EXAMINATION OF THE PATIENT AND STUDY OF THE ULTRASONOGRAPHY, THE COMMITTEE CONFIRMS THAT THE FETUS HAS NEUROLOGICAL ABNORMALITIES IN THE FORM OF **LEMON SHAPED SKULL, DIALATED BILATERAL**

VENTRICLES WITH SMALL CROWDED POSTERIOR CRANIAL FOSSA, SEVERE KYPHOSCOLIOSIS WITH ASSOCIATED OPEN SPINA BIFIDA NOTED IN LUMBOSACRAL REGION WITH MYELOMENINGOCELE, BILATERAL CONGENITAL TALIPUSEQUINOVRUS (CTEV) NOTED.

THE SAID CONDITION OF THE FETUS FULFILS THE CRITERIA OF “SUBSTANTIAL RISK OF SERIOUS PHYSICAL HANDICAP”.

The WOMAN HAS BEEN EXPLAINED ABOUT THE OUTCOME IN THE LANGUAGE SHE UNDERSTANDS.

THE WOMAN HAS VOLUNTARILY EXPRESSED HER DESIRE TO TERMINATE THE PREGNANCY AND IS WELL INFORMED ABOUT THE NATURE OF THE CONDITION OF THE FETUS AND IT’S OUTCOME.

IN VIEW OF THE FETAL NEUROLOGICAL ABNORMALITIES SHE IS ANGUISHED WITH THE CONDITION OF THE FETUS IN UTERO. HENCE COMMITTEE IS OF THE OPINION THAT IT IS ADVISABLE TO TERMINATE THE PREGNANCY IF COURT PERMITS.

SINCE THE PREGNANCY HAS ADVANCED TO 23 WEEKS AND IS BEYOND 20 WEEKS CUT OF THE MEDICAL TERMINATION OF PREGNANCY ACT, SHE HAS APPROACHED HONOURABLE COURT FOR TERMINATION OF PREGNANCY.

THUS IF THE COURT PERMITS THE PREGNANCY CAN BE TERMINATED AS DESIRED BY THE PREGNANT WOMAN WITH DUE RISK IN ANY TERTIARY CENTRE AS DESIRED BY HER. THE HONOURABLE HIGH COURT IS HOWEVER REQUESTED TO INSTRUCT THE PARENTS TO BEAR RESPONSIBILITY OF THE CHILD AND THE REQUIRED NEONATAL MANAGEMENT IF BORN ALIVE.”

5. Considering the desire of the Petitioner to terminate the pregnancy expressed before this Court, and further considering the report of the Medical

Board/Committee, it is imperative to permit the Petitioner to undergo medical termination of pregnancy.

6. In the premises, the following order is passed :

i. The Petitioner is permitted to go ahead with the medical termination of the pregnancy as per the Medical Board's opinion dated 23rd July, 2020.

ii. The Petitioner shall present herself before the Doctors at Sir J.J. Group of Hospitals, Mumbai on 25th July, 2020 at 11.00 a.m. for the requisite procedure.

iii. The Sir J.J. Group of Hospitals, Mumbai shall thereupon carry out the procedure of medical termination of pregnancy.

iv. In case the child born out of this procedure is alive, the Medical Practitioner conducting the procedure shall ensure that all necessary facilities are made available to such child for saving its life.

v. In case the child born is alive and the Petitioner and her husband are not in a position to take responsibility of such child, the State and its agencies will have to assume full responsibility for such child.

vi. The above Writ Petition is accordingly disposed off.

vii. This order will be digitally signed by the PA/PS of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(R.I. CHAGLA, J.)

(S.J. KATHAWALLA, J.)