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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WP NO.LD/VC/10 OF 2020

Ms.X ... Petitioner

vs.

State of Maharashtra ... Respondent

Mr.Sangram Chimappa i/b Ms.Aditi Saxena for the Petitioner.
Ms.Jyoti Chavna, AGP for the State.

**CORAM : NITIN JAMDAR &
N.R.BORKAR, JJ.**

DATE : 26th May, 2020.
(Through Video Conferencing)

P.C.:

The Petitioner has filed this Writ Petition praying for medical termination of pregnancy of her minor daughter aged 13 years.

2] The Petitioner contends that the minor, while she was residing with her aunt at Thane, was sexually abused by her father which has led to her being pregnant. An FIR was lodged at Thane Police Station on 17th May 2020. On 19th May 2020, the minor had sonography

done when she was found to be twenty-two weeks pregnant. The Petitioner took her to J.J. Hospital, Mumbai where she was informed that as the fetus is over 20 weeks old, medical termination of pregnancy was not permissible under the Medical Termination of Pregnancy Act, 1971. Hence, the present Petition is filed.

3] The Division Bench of this Court by order dated 22nd May 2020 directed the minor to remain present before the Medical Board at Sir J.J. Group of Hospitals, Mumbai on 23rd May 2020. Board was directed to examine the minor and submit the report before this court as to whether it was advisable to permit the medical termination of pregnancy. The report is submitted, and the Petition is placed on board today.

4] The minor was examined by the Medical Board consisting of:

1] Dr.Amrita Jain, Associate Professor, Dept. of Obstetrics and Gynecology, Grant Government Medical College and Sir JJ Group of Hospitals, Mumbai.

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

3] Dr.Nita Sutay, Professor and Head, Dept. of Paediatrics, Grant Government Medical College and Sir J.J. Group of Hospitals,

Mumbai.

4] Dr.Shilpa Domkundwar, Professor & Head, Depot of Radiology, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

The opinion of the Medical Board is:

“After taking detailed history, careful examination, ultrasonography and psychiatric evaluation, the committee has come to the opinion that at present no lethal abnormality is detected in the fetus and the pregnant minor mother. Pregnant minor does not want to continue pregnancy and she is anguished with the pregnancy. She is minor 13 years old and pregnancy is caused by rape.

Continuation of pregnancy in minor may lead to pregnancy related complications like anaemia, pregnancy induced hypertension as well as and complications during labour. It is also going to have will also have psychological impact on pregnant minor with uncertain future.

Pregnant minor and her mother have expressed desire to terminate the pregnancy and are made aware of know the dangers of continuation of pregnancy, as well as and termination of pregnancy.

Since the pregnancy has advanced to 23 weeks, well beyond legal limit of termination of pregnancy i.e. 20 weeks, the termination can only be done be done only with Hon’ble High Court permission.

At 23 weeks of gestation, termination of pregnancy carries risk

to pregnant minor. Also continuation of pregnancy will have physical and mental stress to minor mother. Hence it is advisable to terminate the pregnancy at any convenient hospital of her choice”.

We have gone through the opinion of Medical Board. The Petitioner and the minor have expressed their wish not to continue with the pregnancy.

5] Having considered the opinion of the Medical Board that the continuation of the pregnancy will be a physical and mental stress for the minor mother, the stand the Petitioner and the minor, and the circumstances leading to the pregnancy, it would be necessary to permit the medical termination of pregnancy. An FIR has been filed, and thus the tissues, blood sample of the fetus need to be preserved for the requisite medical test, including DNA Fingerprinting/mapping.

6] The Petitioner is accordingly permitted to go ahead with the medical termination of the pregnancy of her minor daughter as per the Medical Board's opinion dated 25th May 2020. The Petitioner will present her daughter at Sir J.J. Group of Hospitals, Mumbai on 29th May 2020 at 11.00 a.m. for the requisite procedure. The Sir J.J. Group of Hospitals, Mumbai shall thereupon carry out the procedure of medical termination of pregnancy of the minor.

7] The hospital shall preserve the blood sample and tissue sample of the fetus to carry out necessary medical tests, including DNA and other tests, as ordered. The investigating officer shall ensure that the samples are forwarded to the Forensic Science Laboratory and preserved for trial.

8] In case the child born out of this procedure is alive, the Medical Practitioner conducting the procedure shall ensure that all necessary facilities are provided to such child for saving its life. If the child born is alive and Petitioner and her daughter are not willing to or not in a position to take responsibility of such child, the State and its agencies will have to assume full responsibility for such child.

9] Writ Petition disposed of in the above terms.

10] This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[N.R.BORKAR, J.]

[NITIN JAMDAR, J.]

