

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

Wednesday, the 2nd day of November 2022 / 11th Karthika, 1944

WP(C) NO. 34104 OF 2022(K)

PETITIONER:

XXXXXXXXXX

RESPONDENT:

1. THE UNION OF INDIA REPRESENTED BY ITS SECRETARY, MINISTRY OF WOMEN AND CHILD DEVELOPMENT, SASTHRI BHAVAN, NEW DELHI, PIN - 110001.

AND 7 OTHERS

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the Respondents 3 to 6 to constitute a Medical Board in the 6th respondent hospital, to examine the petitioner and advise on: (i) whether the continuance of the pregnancy would involve risk to the life of the pregnant woman or of grave injury to her mental and physical health; (ii) whether there is a substantial risk that if the child were born, it would suffer from serious physical or mental abnormalities and if so, the nature of abnormalities; (iii) whether, having regard to the advanced stage of pregnancy, there is any danger other than usual danger which arises even in spontaneous delivery at the end of full term) if the pregnant mother is permitted to undergo induced pregnancy at present stage; (iv) the medical process best suited to terminate the pregnancy and the possibility of child being born alive; and (v) any other issues, which the Medical Board regards relevant in such matters, so as to enable her to do the Medical Termination of Pregnancy at the earliest, pending disposal of the Writ Petition(Civil).

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 27-10-2022 and upon hearing the arguments of M/S. AKASH S., GIRISH KUMAR M.S, V.S.VARALEKSHMI & NEETHU S., Advocates for the petitioner, the court passed the following:-

P.T.O.

V.G.ARUN, J.

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W.P.(C) No.34104 of 2022

Dated this the 2nd day of November, 2022

ORDER

The petitioner, a 23 year old MBA student, is pregnant by 26 weeks. The petitioner conceived from a consensual relationship with a classmate of her's. According to the petitioner, she became pregnant due to failure of the contraceptives used. The petitioner became aware of her pregnancy only when an ultra sound scan was conducted on the advice of the doctor whom the petitioner had visited complaining about irregular menstrual periods and other physical discomforts. It is the petitioner's case that she had been suffering from Polycystic Ovarian Disease, a condition characterized by irregular menstrual periods. Hence, she had no clue about her pregnancy till the scan report was received

on 25.10.2022. On realizing that she is pregnant, the petitioner became mentally and emotionally disturbed. Adding to the petitioner's woes, the classmate, with whom she was in relationship, left the country for higher studies. The petitioner therefore wishes to medically terminate the pregnancy as she is convinced that continuing with the pregnancy will aggravate her stress and mental agony and would impact her education and ability of earning a livelihood.

2. The pregnancy having crossed 24 weeks, none of the hospitals are prepared to terminate the pregnancy, in view of the interdiction contained under the Medical Termination of Pregnancy Act, 1971. Hence, this writ petition seeking the following reliefs;

"a. issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents to allow the Petitioner to undergo Medical Termination of Pregnancy at the earliest.

b. issue a writ of mandamus or any other appropriate writ, direction or order directing the Respondents 3 to 6 to take immediate steps to examine the Petitioner and to permit her to undergo Medical Termination of Pregnancy at the 7th respondent hospital, at the earliest.

c. grant such other reliefs which this Honourable Court may deem fit and proper in the interest of justice."

3. When the writ petition came up for admission on 26.10.2022, the Medical Superintendent of the Government Medical College Hospital, Kalamassery was directed to constitute a Medical Board and to examine the petitioner and make available the opinion of the Medical Board. The Medical Board examined the petitioner on 28.10.2022 and has made available its opinion, the relevant portion of which reads as under;

"To examine the patient and advise on the list of queries as per the above order.

1. Continuation of pregnancy will not cause risk to the life of pregnant

woman or her physical health, but considering the indication for requested MTP, it may cause her severe mental agony as patient already have acute stress disorder.

2. According to the ultra sound scan report at Medical Trust Hospital, Kochi on 25/10/2022, the fetus does not appear to have any identifiable abnormalities (Single live foetus of 26 W4D). Copy of the ultra sound scan report attached.

3. As the pregnancy has reached 26 W + and it's a live fetus, the process of MTP will be more prolonged as the uterus is not ripe enough for delivery. She may require multiple doses of drugs both oral and vaginal. There may be chance of premature rupture of membranes, failure of uterine contraction, chance of infection, or even chance of surgical evacuation (Hysterotomy) and blood transfusion.

4. The procedural protocol to terminate the pregnancy of this lady in this institution comprises of methods to attain a vaginal delivery which may take some time. However as the baby has crossed the period of viability, the baby may be alive as remote possibility.

According to the scan taken on 25.10.2022 baby is 858 gm and almost 27 weeks gestation. It is possible that baby may be born alive and may require prolonged ICU admission as the baby will be premature and having complication including prolonged ventilation and neurological disabilities.

5. The woman/patient is having an acute stress reaction and continuation of pregnancy may cause an exacerbation of her mental distress which could cause risk to the life of the patient. She would require medications and it is advised that treatment will need to be continued even after termination of pregnancy.

Conclusion: May proceed with 2nd trimester pregnancy MTP with risks associated to mother and baby."

4. A careful scrutiny of the opinion shows that the petitioner is having acute stress reaction and continuation of the pregnancy may cause an exacerbation of her medical distress which may entail risk to the petitioner's life. The Medical Board has opined in favour of

conducting the second trimester pregnancy (MTP) and also alerted about the risks involved to mother and baby may be proceeded with.

5. I heard Adv. Akash Sathaynathan for the petitioner and Adv.P.S.Appu, learned Government Pleader for the respondents.

6. Learned Counsel for the petitioner submitted that considering the petitioner's physical and mental stress, her social isolation, as also the need for continuing her education, the petitioner is willing to face the risks associated with the termination of pregnancy.

7. Learned Government Pleader highlighted the possible risks pointed out by the Medical Board, to both mother and baby.

8. There can be no restriction on a woman's right to exercise her reproductive choice to either procreate or to abstain from procreating. A woman's right to make reproductive choice being a dimension of her personal liberty, as

understood under Article 21 of the Constitution of India, has been declared in **Suchita Srivastava v Chandigarh Admn [2009(9) SCC 1]**. In this context, it is also apposite to note the decision of the Apex Court in **x v Principal Secretary, Health and Family Welfare Department and another [2022 SCC OnLine SC 905]**. Therein, while dealing with a similar situation, it is held as under;

“14. On the submission that Rule 3B, insofar as it excludes an unmarried woman, is violative of Article 14 of the Constitution, the High Court has issued notice on the writ petition. However, it held that as of the date of its order, it was not open to it to traverse beyond the provisions of Rule 3B in the exercise of the jurisdiction under Article 226 of the Constitution.

15. Prima facie, quite apart from the issue of constitutionality which has been addressed before the High Court, it appears that the High Court has taken an unduly restrictive view of the provisions of clause (c) of Rule 3B. Clause (c) speaks of a change of marital

status during an ongoing pregnancy and is followed in parenthesis by the words "widowhood and divorce". The expression "change of marital status" should be given a purposive rather than a restrictive interpretation. The expressions "widowhood and divorce" need not be construed to be exhaustive of the category which precedes it.

16. *The fundamental principle of statutory interpretation is that the words of a statute must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act and the intent of the legislature. Parliament by amending the MTP Act through Act 8 of 2021 intended to include unmarried women and single women within the ambit of the Act. This is evident from the replacement of the word 'husband' with 'partner' in Explanation I of Section 3(2) of the Act."*

The following erudite observations of the Bombay High Court in **High Court on its own Motion v. State of Maharashtra [(2016) SCC OnLine Bom 8426]** are also relevant;

“14.A woman’s decision to terminate a pregnancy is not a frivolous one. Abortion is often the only way out of a very difficult situation for a woman. An abortion is a carefully considered decision taken by a woman who fears that the welfare of the child she already has, and of other members of the household that she is obliged to care for with limited financial and other resources, may be compromised by the birth of another child. These are decisions taken by responsible women who have few other options. They are women who would ideally have preferred to prevent an unwanted pregnancy, but were unable to do so. If a woman does not want to continue with the pregnancy, then forcing her to do so represents a violation of the woman’s bodily integrity and aggravates her mental trauma which would be deleterious to her mental health.”

Taking into consideration the recommendation of the Medical Board and its opinion that, continuation of the pregnancy may cause risk to the petitioner's life, the following directions are issued as an interim measure;

(i) The petitioner is permitted to get her pregnancy terminated at the Government Medical

College Hospital, Kalamassery or any other Hospital having the facilities mandated by the Medical Termination of Pregnancy Act and the Rules thereunder.

(ii) On production of this order, the Hospital concerned shall constitute a medical team and conduct the procedure expeditiously.

(iii) The petitioner shall file an undertaking, authorising the medical team to conduct the surgery at her risk.

(iv) If the baby is alive at birth, the hospital shall ensure that the baby is offered the best medical treatment available.

Post after ten days.

Sd/-

V. G. ARUN
JUDGE

Scl/