

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 08TH DAY OF FEBRUARY 2021 / 19TH MAGHA,1942

WP(C).No.2869 OF 2021(G)

PETITIONER:

ALFIYA BEEVI .K
AGED 21 YEARS
W/O ASEEM S.
ASEEM MANZIL, NEAR U P SCHOOL, POOLIMOODU,
THOLIKODE P O,
VIA NEDUMANGAD, THIRUVANANTHAPURAM-695541.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, HEALTH AND FAMILY
WELFARE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 THE DIRECTOR OF HEALTH SERVICES
GENERAL HOSPITAL, THIRUVANANTHAPURAM-695035.
- 3 THE DIRECTOR OF MEDICAL EDUCATION
THIRUVANANTHAPURAM-695011.
- 4 THE PRINCIPAL
MEDICAL COLLEGE, THIRUVANANTHAPURAM-695011.
- 5 THE SUPERINTENDENT
SAT, MEDICAL COLLEGE, THIRUVANANTHAPURAM-695011.
- 6 ADDL.R6.THE SUPERINTENDENT,
GOVERNMENT MEDICAL COLLEGE, THIRUVANANTHAPURAM.
ADDL.R6 IS SUO MOTU IMPLEADED AS PER ORDR DATED
04-02-2021.

SMT.PRINCY XAVIER, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08.02.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, who is a 21 year old woman, has filed this Writ Petition producing Exts.P5 to P7 medical reports seeking a direction to the respondents to carry out medical termination of her pregnancy. The scan reports would show severe abnormalities to the fetus viz. 'fetal lips not seen instead Cystic swelling measuring 2.7 X 2.7 cm seen under nose' and 'significant destruction of mandible anteriorly. Middle cleft lip with cleft palate. Moderate hypertelorism' etc. The gestation average age of the fetus was 24 weeks as on 02.02.2021. Her husband is employed abroad and he is also desirous of getting the pregnancy terminated.

2. When the matter came up for admission on 04.02.2021 this Court passed an interim order, in the light of the Government Order dated 31.12.2020 directing the additional 6th respondent to constitute a Medical Board and to examine and report the medical condition of the petitioner and the fetus. Thereafter, Smt. Princy Xavier, the learned Government Pleader, has made available the report of the medical board which would show that the medical board was convened on 05.02.2021 with the following members:

"1. Dr. A Santhosh Kumar, Superintendent, SATH, Govt.Medical College, Trivandrum,

2. Dr.Nandini V R, Professor and Head, Dept. of O & G, Govt.Medical College, Trivandrum,

3. Dr.Sreekumari R, Professor, Dept. of O & G, Govt.Medical College, Trivandrum

4. Dr. Bindu P, Additional Professor, Dept. of O & G, Govt. Medical College, Trivandrum

5. Dr. Vijaya Krishnan Y, Associate Professor, Dept. of Psychiatry, Govt. Medical College, Trivandrum

6. Dr.Radhika S, Associate Professor, Neonatology Dept., Govt. Medical College, Trivandrum

7. Dr.Priyasree J, RMO, SAT Hospital, Govt. Medical College, Trivandrum

8. Dr. Pio James J".

3. The medical board has examined the petitioner & observed the following facts:

"1. As the patient has requested for certificate of opinion of medical board showing details of substantial risk of pregnancy to be filed before court for termination of pregnancy was put forward for medical board opinion and decided that fetus has multiple congenital anomalies of upper gastro intestinal tract which may interfere with respiration and feeding in the immediate postnatal period and later. It may be due to chorosomal or sporadic. The baby will require multiple surgical intervention in the immediate post natal period and later. As per psychiatric counselling she is anxious and apprehensive regarding the fetal anomalies and outcome with guarded prognosis. Period of pregnancy is 23 weeks 6 days on 5-2-2021, patient need a court directive for an extended period of termination of pregnancy. Hence a medical board was constituted.

The medical board members have entrusted the professor and

HOD of OBG to sign on their behalf."

4. The report of the medical Board, also shows that grave abnormalities have been found in the fetus. As per Section 3(2) (b) of the Medical Termination of Pregnancy Act 1971, termination of pregnancy is permissible where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. As per section 5 of the Medical Termination of Pregnancy Act, termination of pregnancy is permissible even in cases where the period of gestation exceeds the period prescribed in Section 3 and 4 of the Act, which reads as follows:

"5. S.3 and S.4 when not to apply. - (1) The provisions of S.4 and so much of the provisions of sub-section (2) of S.3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman."

5. The Apex Court has in similar circumstances, in the

judgment in **Sarmishtha Chakraborty v. Union of India: (2018) 13 SCC 339**, permitted termination of pregnancy when the gestational age was 26 weeks, in view of the recommendation of the medical board and the medical report revealing the threat of severe mental injury to the woman and to the multiple complex problems to the child, if born alive, involving complex cardiac corrective surgery stage by stage after birth, in the event of continuation of the pregnancy. In **Meera Santosh Pal v. Union of India: (2017) 3 SCC 462** also permission was granted when the pregnancy crossed 24 weeks, in view of the medical reports pointing out the risk involved. This Court also in **ABC v. Union of India : 2020(2) KHC 526**, permitted termination of pregnancy in order to save the life of the pregnant woman, who was in physical as well as mental trauma. In the judgment reported in **Neethu Narendran v. State of Kerala: 2020(3)KHC 157** also this Court permitted termination of pregnancy when gestational age crossed 23 weeks. In view of the medical report furnished in the present case, I deem it necessary to permit termination of pregnancy of the petitioner.

6. Therefore, having regard to the urgency involved in the matter, there shall be a direction to the 6th respondent to see that the termination of pregnancy of the petitioner is carried out at the earliest, by competent doctors in accordance with the provisions of the Medical Termination of Pregnancy Act, 1971, its rules and all other rules, regulations and guidelines

prescribed for the purpose.

The Writ Petition is allowed accordingly.

rtr/

Sd/-
P. V. ASHA
JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE AADHAR CARD OF THE PETITIONER BEARING NO. 809777203832.
- EXHIBIT P2 TRUE COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE ISSUED TO THE PETITIONER.
- EXHIBIT P3 TRUE COPY OF THE CERTIFICATE OF MARRIAGE DATED 30.10.2017 ISSUED TO THE PETITIONER AND HER HUSBAND ASEEM.S
- EXHIBIT P4 TRUE COPY OF THE AADHAR CARD ISSUED TO THE PETITIONER'S HUSBAND ASEEM.S BEARING NO. 460404128390.
- EXHIBIT P5 TRUE COPY OF THE ANTENATAL SONOGRAPHY REPORT DATED 20.01.2021 ISSUED BY DR. PARVATHY P. (MBBS.DMRD).
- EXHIBIT P6 TRUE COPY OF THE ANTENATAL SONOGRAPHY REPORT DATED 30.01.2021 ISSUED FROM PIONEER METRO SCAN AND LABORATORY.
- EXHIBIT P7 TRUE COPY OF CHART OF SAT HOSPITAL, THIRUVANANTHAPURAM.