

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WP ASDB-LD-VC- 109 OF 2020

X .. Petitioner
Vs
State of Maharashtra .. Respondent

Mr.Kranti L.C., for the Petitioner.
Mr.P.P.Kakade-Government Pleader a/w Ms.M.P.Thakur-Addl. Govt.
Pleader, for the Respondent.

*CORAM : NITIN JAMDAR &
S.P.TAVADE, JJ.*

*Date : 3 July 2020.
(Through Video Conferencing)*

P.C. :

The Petitioner, mother of a minor daughter aged 12 years, who is 23 weeks pregnant, is seeking medical termination of the Minor's pregnancy.

2. The Petitioner resides with her four daughters and husband at Sangli. Petitioner's husband is currently unemployed. The Minor is studying in a school at Sangli. According to the Petitioner, some time around June 2020, she suspected the Minor to be pregnant. The Minor told her that she was repeatedly raped by

some persons in the neighborhood. The Petitioner filed an FIR at Kadegaon police station, Sangli on 5 June 2020 under section 376 of the Indian Penal Code and under the provisions of Protection of Children from Sexual Offences Act, 2012. The Petitioner went to the Government Hospital on 16 June 2020. She was informed that as per the provisions of the Medical Termination of Pregnancy Act 1971, the pregnancy cannot be terminated since it had crossed twenty weeks. Hence the Petitioner has filed the present Petition.

3. We have heard the learned Counsel for the parties.
4. By order dated 26 June 2020, this Court had directed the Medical Board to examine the Minor and submit a report.
5. The Minor was examined by the Dean of the Government Medical College, Miraj along with specialists from Obstetrics and Gynaecology, Paediatrics, Radiology, Medicine, Pulmonary Medicine, Anatomy, Medicine, Neurosurgeon and Psychiatry. The Associate Professor of Psychology also counseled the minor. The report of the Medical Board is submitted. After examining the minor, the Board has opined as under -

“The rape victim is only 12 year old child and at present she has 22 weeks of pregnancy which if we allow to progress, it will have serious repercussions on the general and mental health of the rape victim. Hence, she should be allowed to terminate her pregnancy as per her parents

petition with due care and explaining related possible complications to the parents with written informed consent.'

6. It is settled position of law that a Writ Court, in appropriate circumstances, can issue directions for medical termination of pregnancy even after period of 20 weeks specified under the Act of 1971 is over. This Court by an order passed on 26 May 2020 in WP NO.LD/VC/10 OF 2020, in identical circumstances, where a minor of thirteen years who had become pregnant as a result of sexual assault, permitted termination of medical pregnancy. In the case at hand the physical and mental trauma that will be suffered by the Minor if pregnancy is not terminated, requires no elaboration. Case for issuance directions for termination of medical pregnancy is made out. The Petitioner is accordingly permitted to carry out medical termination of the pregnancy of her minor daughter as per the report of the Medical Board (dated 28 June 2020).

7. The Petitioner will present the Minor before the Government Hospital, Sangli on 6 July 2020. The Hospital will carry out the medical termination accordingly.

8. Since the FIR has been filed a tissue of blood sample of the foetus needs to be preserved for requisite medical tests including DNA mapping. The Hospital shall preserve the blood sample and

tissue sample of the foetus 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 the trial.

9. 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.

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

(S.P.TAVADE, J.)

(NITIN JAMDAR, J.)