



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 3604 of 2024

XYZ Minor through her natural Guardian Mother -Mrs. Vaishali Sunil Thakre
vs.

Union of India, through Ministry of Health, New Delhi and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms Soniya Gajbhiye, Advocate for petitioner.
Mr N. S. Deshpande, Dy. Solicitor General of India for respondent no.1.
Mr. D.V. Chauhan, Government Pleader with Mr A. M. Kadukar, Assistant Government
Pleader for respondent/State.

CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATE :- 18th JUNE, 2024

Heard.

2. The victim in the present petition through her mother has approached this Court for issuance of direction to the Competent Authority for medical termination of pregnancy.

3. On earlier occasion this Court having regard to the provisions of the Medical Termination of Pregnancy Act, 1971 (for short, the Act of 1971) in Writ Petition No. 2319 of 2024 has issued certain directions on 05.04.2024. Pursuant thereto, the State Government through its Public Health Department has issued Standard Operating Procedure (SOP) to be adopted in the matter of medical termination of pregnancy.

4. We have perused the instructions/SOPs framed by the Public Health Department.

5. The fact remains that in the case like the present one, initially the victim through her mother has approached the police authority, who in turn referred her to medical examination. As such, from the very beginning itself when the offence was registered and it was

reported that the victim was carrying pregnancy. Both, the police and the medical officer from the General Hospital, Wardha should have sensitized the victim and her parents about their legal right of getting the pregnancy terminated by adopting lawful mode. Not only the SOPs prescribed so, but also this Court is required to be sensitive of the judgment of the Apex Court in the matter of *A (Mother of x) versus State of Maharashtra and another* in **Civil Appeal No.5194 of 2024** decided on 29.04.2024. Paragraph 19 of the said judgment reads as under:

“19. The sole and only consideration which must weigh with the Court at this stage is the safety and welfare of the minor. We are conscious of the trauma which the minor will face in having to continue the pregnancy for approximately five weeks, if the course of action which has been suggested by her parents is accepted. The Court has been informed that the minor is ready and willing to accept the decision of her parents which is in her best interest. Performing a procedure for termination of an advanced pregnancy at this stage is subject to risks involving the well-being and safety of the minor as explained by the medical team at Sion Hospital. Bearing in mind the detailed discussion which took place the parents of the minor have chosen not to press ahead with the termination of the advanced pregnancy at the present point of time. This decision should in our view be accepted bearing in mind all that has been set out in the earlier part of this order. As a consequence, the earlier order of this Court dated 22 April 2024 shall stand cancelled.”

6. In the aforesaid backdrop, this Court on 13.06.2024 has issued directions to constitute a Medical Board to examine the victim and submit a report in a sealed envelope. Accordingly, the report is submitted by Mr. Chauhan, learned Government Pleader in the Court.

7. We have perused report which reads as under :

16. *Recommendation by Medical Board for termination (choose one and provide any additional recommendations of the panel in the box below if any):*

a. Recommended (if yes, please mention the methods):-

b. Not (if no, justification):-

Key recommendations of the panel (if any) with justification:

* Continuation of this pregnancy would involve grave injury to the mental and physical health of the survivor, also she is minor and the case of sexual assault or rape. As per the Hon'ble Court order dated 13th June, 2024 the patient is examined on dated 13th and 14th June 2024 and the opinion is formed.

* As per the recommendation given by the standard operative protocol by the Rajya Kutumb Kalyan Karyalaya, Pune, the panel recommends that the termination of pregnancy will be done by use of Prostaglandins/Oxytocin but before termination ultrasound guided procedure by a skilled/experienced obstetrician or foetal medical expert may be required so that foetus is not delivered alive. The Royal College of Obstetricians and Gynaecologist (RCOG) recommend 2-3 ml of strong (15%) potassium chloride (KCl) injection in the foetal heart prior to termination. Foetal demise should be confirm by ultrasound scan after 30 to 60 minutes.

* As per the Medical Termination of Pregnancy (Amendment) Act, 2021 on 25th March 2021 and standard operating procedure and also the new amendment dated 3rd June, 2024 pregnancy beyond 24 weeks can be terminated after the opinion of medical board at the concerned facility.

* Continuation of pregnancy would involved grave injury to physical and mental health of patient and substantial risk that if the child is born would suffer from physical abnormalities and significant morbidity but late termination of pregnancy with this procedure may involve the risk to the life of this patient. So the late termination of pregnancy may be done with the high risk consent of this patient and her relatives.”

8. In the aforesaid backdrop, the counsel for the petitioner informs us that the victim is ready to undergo medical termination of pregnancy.

9. We are also informed that the victim is already hospitalized in the General Hospital, Wardha.

10. In view of recommendations of the Medical Board, we deem it appropriate to dispose of the writ petition. We direct the medical authorities to proceed in accordance with the recommendations of the Medical Board.

11. As regards to the implementation of the SOP, we are of the view that the circulation of the SOP amongst medical officers so also the police authorities is necessary so as to sensitize them about the aforesaid issue.

12. Similarly, the said SOP which is notified vide Government Resolution dated 03.06.2024 be circulated to the District Legal Services Authorities in the State of Maharashtra so that the victims are not required to approach this Court as the power pursuant to aforesaid SOP vests with the Dean of the Medical Colleges/Medical Board so as to take appropriate decision in the matter.

13. We defer hearing of the writ petition for four weeks only for the purpose of having response from the State Government as well as the Department of Public Health and Medical Education, about the steps taken to sensitize not only the medical officer but also the police authority.

14. Stand over to 16.07.2024.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.