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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 6th April, 2021.

+ **W.P.(C) 4117/2021**
MAHIMA YADAV Petitioner
Through: Ms. Sneha Mukherjee, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents
Through: Mr. Anupam Srivastava, ASC for
GNCTD.
Mr. VSR Krishna, Advocate for
AIIMS with Dr. P. Kumar.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh (Oral)

1. This hearing has been done through hybrid mode (physical and virtual hearing).
2. The present petition has been filed by the Petitioner, seeking permission for medical termination of her pregnancy. The Petitioner has invoked the provisions of the Medical Termination of Pregnancy Act, 1971 (*hereinafter referred to as 'MTP Act, 1971'*). The submission of Id. counsel for the Petitioner is that the Petitioner's foetus is more than 24 weeks in age, however, she should be permitted to carry out the termination in view of the abnormalities of the foetus and the risk involved for the Petitioner who is suffering from severe heard conditions.
3. Vide order dated 26th March, 2021, this Court had directed the Medical Superintendent of AIIMS to appoint a Board of Doctors to examine the Petitioner. The said Board of Directors consisted of a Chairperson and seven Members, along with a Member Secretary. The Medical Board was chaired

by the Professor, Department of Obstetrics & Gynaecology and the Members are from various departments i.e., Department of Paediatrics, Department of Radio-diagnosis and Department of Cardiology, etc. A report was to be submitted by the said Board after examination of the Petitioner. The report has now been received by this Court. The opinion of the Medical Board clearly is as under:

“Opinion:

The petition is a known case of heart disease since 2018 and was on blood thinners following MVR done in March 2019. Presently she is pregnant for the second time and is at the 25th week + 4 days POG by LMP and 25 weeks + 3 days by ultrasound Scan. the report of the ultrasoundgraphy done at AIIMS has been attached.

The Medical board has noted the following points:

- *The fetus has warfarin embryopathy which has a guarded prognosis in terms of immediate and long term outcomes especially in view of the intracranial bleeds and ventriculomegaly. As the fetus may be viable at birth, if the termination is planned feticide with intracardiac KCI is advisable before MTP.*
- *The mother in a known case of cardiac disease with MVR done in 2019 on warfarin 5mg/6mg.*
- *The procedure of termination of pregnancy at this stage will involve switch over to heparin with use of prostaglandins, which increase the risk of maternal cardiac failure. It may be a long drawn process with a subsequent need for hysterotomy (surgical procedure).*
- *The patient has been evaluated clinically by the cardiologist at AIIMS and also an echocardiogram has been performed. According to his opinion the patient has permissible cardiac risk for the procedure.*
- *In view of the above observations, the patient may undergo the procedure, provided they understand the*

maternal risk of cardiac failure and prosthetic valve complication.”

4. A perusal of the Medical Board’s opinion clearly shows that the Petitioner i.e., the mother, is a known cardiac patient who has been administered blood thinners including warfarin 5mg/6mg. The Medical Board’s opinion is that in view of the said blood thinner administered to the Petitioner, the foetus has warfarin embryopathy which has a guarded prognosis in terms of immediate and long term outcomes especially in view of the intracranial bleeds and ventriculomegaly.

5. The foetus is clearly more than 25 weeks in age. The opinion of the Medical Board is that the termination of the pregnancy would involve some risk to the patient, but the said risk is within the permissible limit for cardiac patients and is a risk which could be undertaken.

6. Ms. Mukherjee, Id. Counsel appearing for the Petitioner relies upon the provisions of the recent amendments to the MTP Act, 1971, as contained in the Amendment Act, 2021 to argue that the said amendment in fact permits medical termination of pregnancy without any limitation of age, if there are any substantial foetal abnormalities.

7. Dr. P. Kumar has appeared before this Court on behalf of AIIMS and he submits that there is a certain amount of risk in the medical termination of pregnancy given the heart conditions of the Petitioner. However, there is no doubt that the foetus is suffering from various abnormalities, in view of which, the Medical Board has recommended the termination of pregnancy to be carried out. It is submitted by Dr. Kumar that the opinion of the AIIMS Medical Board ought to be given to the team which may be performing the procedure for termination of pregnancy.

8. The Petitioner's husband - Mr. Mayank Yadav has joined the proceedings and submitted that the Petitioner is being treated at B.L. Kapoor Hospital, New Delhi by a team of doctors. He submits that the Petitioner would be undergoing termination at the said hospital and he is conscious of the risk which may be involved, as per the opinion of the Medical Board.

9. This Court has heard the Id. Counsels for the parties, as also the husband of the Petitioner. This Court has also perused the opinion of the Medical Board, as also the other records relating to the petition. The Petitioner has also placed on record various judgments/orders of the Supreme Court and of High Courts as under:

- i. ***Sharmishtha Chakraborty & Anr. v. Union of India Secretary & Ors. [W.P.(C) No. 431/2017, decided on 3rd July 2017] – Supreme Court***
- ii. ***Nisha Suresh Aalam v. Union of India [W.P.(C) No. 929/2017, decided on 9th October, 2017] – Supreme Court***
- iii. ***Shaikh Ayesha Khatoon v. Union of India & Ors. [W.P.(ST) No. 36727/2017, decided on 9th January, 2018] – High Court of Bombay.***
- iv. ***Priyanka Shukla v. Union of India & Ors. [W.P.(C) No. 7080/2019 decided on 10th July, 2019] – High Court of Delhi.***

10. In most of these cases, the termination had been permitted by the Courts even beyond the 24 weeks' period in view of the foetal abnormalities. The recent amendments in the MTP Act, 1971 have been carried out and notified, though the Rules therein, are yet to be framed, in order to facilitate the termination of pregnancy beyond the period of 20 weeks, up until 24 weeks; and in the case of substantial foetal abnormalities, even beyond the 24 weeks' period. This is clear from a reading of the amendments carried out in Section

3 of the Act which are as under:

“3. When pregnancies can be terminated by medical practitioners –

....

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,—

*(a) where the length of the pregnancy **does not exceed twenty weeks**, if such medical practitioner is, or*

*(b) where the length of the pregnancy **exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act**, if not less than two registered medical practitioners are, of the 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 any serious physical or mental abnormality**.*

Explanation 1.—

*For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by **any woman or her partner for the purpose of limiting the number of children or preventing pregnancy**, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.*

Explanation 2.—For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed.”

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:—

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.

11. A perusal of the above-mentioned provisions shows that termination of pregnancy is permitted under the following circumstances:

Situation 1: Where the length of pregnancy does not exceed 20 weeks:

Termination of pregnancy is permissible on the opinion formed in good faith, of a single registered medical practitioner:

- i. that the pregnancy would cause risk to the life of the pregnant woman or grave injury to her physical or mental health OR
- ii. If there is a risk that upon birth of the child, it would suffer from serious physical or mental abnormality.

Explanations 1 and 2 to Section 3(2)(b) stipulate certain situations when a presumption can be arrived at as to what constitutes a grave injury to the mental health of the pregnant woman – viz., if the pregnancy is a result of

failure of any device or method used for preventing pregnancy or if the pregnancy is alleged to have been caused by rape.

Situation 2: Where the length of the pregnancy exceeds 20 weeks but not 24 weeks:

Termination of pregnancy is permissible on the opinion formed in good faith, of two registered medical practitioners:

- i. that the pregnancy would cause risk to the life of the pregnant woman or grave injury to her physical or mental health OR
- ii. If there is a risk that upon birth of the child, it would suffer from serious physical or mental abnormality.

Explanations 1 and 2 to Section 3(2)(b) stipulate certain situations when a presumption can be arrived at as to what constitutes a grave injury to the mental health of the pregnant woman – viz., if the pregnancy is a result of failure of any device or method used for preventing pregnancy or if the pregnancy is alleged to have been caused by rape.

Situation 3: Where the length of the pregnancy exceeds 24 weeks:

Under Section 3(2B), the limitation of 20 weeks or 24 weeks would not be applicable if the termination is necessitated due to a diagnosis by the Medical Board that the foetus suffers from substantial foetal abnormalities. A State Government is to constitute a Board for this purpose. Such a Board shall mandatorily consist of a Gynaecologist, a Paediatrician, a Radiologist or sonologist and any other members as may be notified by the State Government. Thus, the period of length of pregnancy of 20 weeks or 24 weeks would not apply in case of substantial foetal abnormalities.

12. The above amendments introduced in 2021 are of enormous significance as they have relaxed the conditions under which pregnancy can

be terminated. In fact, there are several decisions wherein termination has been permitted on a case-by-case basis even beyond the 24-week period. In *Sharmishtha Chakraborty (supra)* the Supreme Court had deliberated on whether a medical termination of pregnancy ought to be allowed in the 25th week of pregnancy. As per the medical report produced before the Court, the foetus was said to have a complex cardiac anomaly and if born alive, would require multiple corrective surgeries. The Court allowed the medical termination of the pregnancy, considering that the medical report placed before the Court, revealed that the mother would have suffered mental injury if the pregnancy was to be continued and there would be multiple problems if the child was born alive.

13. The Supreme Court considered allowing the medical termination of pregnancy in the 28th week of pregnancy in the matter of *Nisha Suresh Aalam (supra)*. As per the medical report placed before the Court, the foetus was said to be suffering from multiple serious neurological and skeletal anomalies. The Supreme Court allowed the medical termination of the pregnancy, placing reliance on the medical report which opined that while the termination of the pregnancy at that stage would not be more hazardous than spontaneous delivery at term, the continuation of the pregnancy would cause mental anguish to the Petitioners.

14. The High Court of Bombay considered the matter of medical termination of a pregnancy at its 27th week in *Shaikh Ayesha Khatoon (supra)*. The foetus in this case was suffering from several foetal anomalies including a congenital malformation. The Court observed that if continuance of pregnancy is harmful to the mental health of a pregnant woman, then that is a good and legal ground to allow termination of pregnancy if all the

conditions incorporated in the legal provisions are met. In respect of the legal provisions of the MTP Act, 1971, the Court observed that a statute must be interpreted having regard to the purport and object of the Act. With these observations, the Court allowed the medical termination of the pregnancy.

15. In *Priyanka Shukla (supra)* the Id. Division Bench of this Court considered the matter of medical termination of pregnancy in the 25th week. As per the medical reports placed before the Court, the foetus was suffering from severe oligohydromnious and bilateral multicystic dysplastic kidneys, which were observed to be incompatible with life, by the Court. The medical termination of the pregnancy was allowed by the Court, while observing that in matters where the condition of the foetus is incompatible with life, the rigour of Section 3(2) of the MTP Act, 1971 is to be relaxed and that the right to termination of pregnancy could not be denied based solely on the gestation period continuing beyond 20 weeks.

16. Thus, the recent amendments are in line with the decisions set out above, wherein termination is permitted beyond the 24 weeks period if there are serious abnormalities for the foetus. A perusal of the medical report in the present case shows that the foetus is suffering from substantial abnormalities and as per the Medical Board, the foetus has warfarin embryopathy. The abnormalities are captured in the opinion of the Board as under:

“The fetus has warfarin embryopathy which has a guarded prognosis in terms of immediate and long term outcomes especially in view of the intracranial bleeds and ventriculomegaly. As the fetus may be viable at birth, if the termination is planned feticide with intracardiac KCI is advisable before MTP.”

17. Considering the above-mentioned status of the foetus, this Court holds

that the conditions described clearly constitute ‘*substantial foetal abnormalities*’ which could have an impact on the physical condition of the foetus even if the entire pregnancy is allowed to mature. This would have a deleterious impact on the mother as well. Since the Amendment Act, 2021 has already been notified and in view of the settled legal position in the various judgments which have been set out herein above, this Court is of the opinion that the termination of pregnancy ought to be permitted even beyond the 24 weeks period.

18. The Petitioner is accordingly permitted to undergo the procedure for medical termination of her pregnancy at the B.L. Kapoor Hospital. The team at the B.L. Kapoor Hospital shall be given a copy of the AIIMS Medical Board’s opinion prior to carrying out the procedure, prior to undertaking the termination procedure. The patient shall be again made conscious of the risk involved, considering the fact that she is a cardiac patient. The procedure shall be carried out by a team of competent doctors at B.L. Kapoor Hospital. If the Petitioner approaches the hospital, the termination shall be carried out without any further delay.

19. The Court records its appreciation for the Medical Board for rendering a timely opinion and also to Dr. P. Kumar for joining the proceedings today.

20. The writ petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 6, 2021

Rahul/Sp