

CWP No. 7382 of 2020

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 7382 of 2020 (O&M)

Date of decision : 20.5.2020

(Heard through Video Conferencing)

Hema and another

.....Petitioners

vs.

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sanjeev Sharma, Advocate – Legal Aid counsel for the petitioner.

Mr. Sahil Sharma, Deputy Advocate General, Punjab.

Mr. Amit Jhanji, Advocate for the PGI- respondent No.2.

...

H. S. Madaan, J. (Oral)

Petitioners Hema aged 32 years and her husband Daljit Singh aged 37 years, both residents of Naya Nangal, Fertilizer Factory Nangal for New VTC Rupnagar, Punjab, have brought the instant civil writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondent No.2 to terminate pregnancy of the child in the womb of petitioner No.1, which is about 23 weeks, 9 days, in consonance to

the report given by Post Graduate Institute of Medical Education and Research (PGIMER), Sector 12, Chandigarh – respondent No.2 , as well as other medical record showing that foetus has high chances of Neurodevelopmental Abnormality and continuation of pregnancy would cause grave injury to the child of petitioner No.1 and also it is unsafe and dangerous for the life of foetus.

Notice of the writ petition was given to the respondents, who have put in appearance through counsel.

When the petition came up for hearing on 15.5.2020, an order was passed directing petitioner No.1 Hema to appear before the Medical Superintendent, PGIMER, Chandigarh on 18.5.2020 for examination by the Medical Board, observing that such Board would take a conscious decision regarding termination of the pregnancy. The Medical Board was requested to sent the report in the Court by today i.e. 20.5.2020.

The report from the Medical Board has been received. The observations of the Board are as under :-

1. As per USG done today, the POG is 24 weeks + 2 days. She has a single live intrauterine fetus with congenital malformation in the brain named as Corpus callosum agenesis.
2. Corpus callosum agenesis consists of absence of Corpus callosum, dilatation of posterior horns of bilateral lateral ventricles and associated other signs. This is a severe congenital anomaly with poor prognosis and neurodevelopmental delay.

3. She has two healthy children, a 8 yr old girl and 5 yr old boy, both delivered by caesarean sections (CS). In view of previous two CS, performing an abortion at 24 wks gestation will be safer by a hysterotomy (abdominal operation similar to CS). The patient has expressed a desire for family planning operation which can also be done alongwith hysterotomy at the same time.
4. As per the Royal College of Obstetricians and guidelines – (Termination of pregnancy for fetal abnormality, 2010), if abortion is performed after 22 wks of gestation, there is possibility of a live birth. Hence, in such cases injection of ultrasound guided Potassium Chloride in the fetal heart is advised prior to abortion to prevent a live birth.
5. The patient has been examined and has been found to be clinically fit. However, she is under mental stress due to carrying of pregnancy in which the fetus is affected with congenital malformation.
6. Keeping in view the above, the Permanent Medical Board recommends that this patient may undergo medical termination of pregnancy at this stage due to severe congenital anomaly. For this purpose, the petitioner will need to undergo an abdominal operation (hysterotomy) to perform the procedure of abortion. We also wish to bring to the knowledge of the Hon'ble High Court that doctors may perform the procedure of Intra-cardiac potassium chloride injection under ultrasound guidance into the fetus before

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medical termination of pregnancy by hysterotomy, so as to prevent the fetus being born alive.

Sd/- Sd/- Sd/-
Dr. Kirti Gupta Dr. Gita Prof Kanya Mukhopadhyay
(Member) (Member) (Member)

Sd/- Sd/- Sd/-
Dr. Manoj Goyal Dr. Ruchita Shah Dr. Himanshu Gupta
(Member) (Member) (Member)

Sd/- Sd/- Sd/-
Dr.Sahajal Dhooria Dr.Anupriya Kaur Dr. GSRSNK Naidu
(Member) (Member) (Member)

Sd/- Sd/- Sd/-
Prof.Rashmi Bagga Prof.Y.S.Bansal Dr. Ranjana Singh
(Chairperson) (Member) (Convener)

I have heard learned counsel for the petitioners, learned counsel for the respondents, besides going through the record.

In view of the report sent by the Medical Board of PGIMER,

which has been reproduced above, it would be proper and appropriate to allow the present writ petition.

Therefore, the present writ petition is accepted and respondent No.2 PGIMER, Chandigarh, is directed to carry out the medical termination of pregnancy of petitioner No.1 taking all the necessary measures required for the purpose, with minimum risk to the life of petitioner No.1. Considering the fact that the pregnancy being carried out by petitioner no.1 is at the advanced stage, the needful be done at the earliest. Since it is stated that the petitioners are poor persons, the concerned authorities of PGIMER, Chandigarh may consider the waiving of the necessary hospital and medical charges to the extent possible.

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As requested by learned counsel for the parties, copies of this order be given to counsel for the parties under the signatures of Bench Secretary of this Court.

(H.S. Madaan)
Judge

20.5.2020

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Whether speaking / reasoned Yes / No

Whether reportable Yes / No



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