



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7491 OF 2025

ABC

.....Petitioner

Vs.

The State of Maharashtra & Ors.Respondents

Ms. Nikita Raje, for the Petitioner.

Ms. M. P. Thakur, AGP, for Respondent-State.

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

(IN CHAMBERS)

DATE : 19th JUNE 2025.

P.C.

1. The Petitioner is an adult. She is in her 25th week of pregnancy. She is unwilling to continue with the pregnancy for the reasons mentioned in the Petition. She seeks permission for medical termination of the pregnancy at a medical institution of her choice.

2. According to the Petitioner, she was in a consensual relationship with her partner. Her pregnancy has occurred as a result of failure of contraceptive device used by her and her partner with the purpose of preventing the pregnancy. She is no longer in the said relationship with her partner and is thus not desirous of continuing with the pregnancy. She has thus filed the present Petition.

3. By order dated 13th June 2025, we had directed the constitution of a Medical Board by the Dean, Sir J. J. Group of Hospitals, Mumbai in terms of the Medical Termination of Pregnancy ('MTP') (Amendment) Act, 2021 read with the MTP Act, 1971. Thereafter, she was subjected to a medical examination by the Medical Board constituted by the Authorities of Sir J. J. Group of Hospitals and Grant Medical College, Mumbai under Rule 3A(b)(ii) of the MTP Rules'. The Medical Board has given an opinion dated 17th June 2025 in terms of our order.

4. Ms. M. P. Thakur, learned AGP placed the report of the Medical Board before us. The same is taken on record and marked as 'X' for identification. The Medical Board has rendered an opinion that while the patient is currently fit for termination of pregnancy, there are no medical ground for the same in the patient at this gestational age of the fetus. The opinion of Dr. Maithili Umate, Associate Professor, Department of Psychiatry is pertinent. While conducting the psychiatry evaluation of the Petitioner, she found the Petitioner to have a history of sadness and stress due to financial constraints and inter-personal conflicts. She has a history of alcohol consumption for the past eight years and also has a history of smoking

three to four cigarettes per day for the past five years. She has also experimented with cannabis. She has undergone surgeries for past illnesses. Having recorded her observation, Dr. Umate opined that the Petitioner is fit to take a decision for MTP insofar as her Department is concerned. The Board has opined that she is currently fit to undergo the procedure of MTP. The Opinion of the Board is unanimous. It reads as thus:

“On detailed review of the clinical records, ultrasonographic findings, psychiatric and psychological evaluation, anesthetist and physician fitness reports, it is noted that the petitioner is a primigravida with no active illness and the fetus is currently of 24 to 25 weeks gestation with the fetal scan not revealing any congenital anomalies and the biometric parameters are within normal limits.

Furthermore, while the patient expresses subjective distress and concern regarding her use of alcohol and smoking earlier in pregnancy; there is currently no clinical or radiological evidence to support fetal harm. However, all fetal anomalies especially those of the fetal nervous system consequent to maternal smoking and alcohol consumption cannot be ruled out definitively.

The Board has considered the psychiatric and psychological opinion, which did not diagnosis any active psychiatric

disorder that would render continuation of pregnancy a threat to maternal life or mental stability. While her concerns are acknowledged and empathized with, there is no substantial fetal anomaly or a grave certified risk to her physical or mental health.

Therefore, after careful multidisciplinary deliberation, the Board is of the opinion that while the patient is currently fit for termination of pregnancy, there are no medical grounds for the same in this patient at this gestational age.

If the Honorable Court is of the view that the continuation of this pregnancy would cause grave anguish to the petitioner due to her personal or social circumstances, then the termination of pregnancy can be done in any tertiary care institute with the possibility of fetus being born alive who may have to bear the complication of its preterm birth.”

5. Ms. Nikita Raje, learned counsel appears for the Petitioner and Ms. M. P. Thakur, AGP, represents the Respondent-State.

6. Ms. Nikita Raje has brought to our notice that the Petitioner has no financial nor any emotional support to carry the said pregnancy to its full term. She states that the pregnancy occurred because of failure of the contraceptive device used by Petitioner and her partner. She further states that continuance of pregnancy

constitutes a grave injury to the mental health of the Petitioner caused by the anguish of her situation. She also points to the medical history and background of the Petitioner in as much as her parents are not inclined to support her and neither is her partner willing to offer any assistance.

7. Per contra, Ms. Thakur contended that neither is there any fetal anomaly nor has the pregnancy occurred on account of non-consensual relationship between the parties. She suggested that the Court may direct continuance of pregnancy to the full term after which the State will shoulder all the responsibility of the child, if born alive, including its rehabilitation by way of placing the child in adoption or otherwise.

8. We heard the matter in chambers and interacted with the Doctors comprising the Medical Board, the Petitioner herself and both the learned counsel. We have perused the record in the matter, especially the opinion of the Medical Board.

9. It is clear from the report that the Petitioner has a history of illness. She has specifically pleaded in the Petition that the

pregnancy occurred on account of failure of contraceptive device used by her. In these circumstances, continuance of the pregnancy is causing her tremendous amount of anguish constituting grave injury to her mental health. The Petitioner's parents/family is not aware of the Petitioner's pregnancy. She states that if her parents learn about her pregnancy, they would not accept the same, leaving her in a complete lurch to fend for herself. The Petitioner informs us that she quit her job about a few months back and that today, instead of looking for a new job, on learning of her pregnancy, she is now required to run pillar to post to consult doctors from Mumbai and Pune for their opinion to terminate her pregnancy. On interacting with the Petitioner, the Petitioner appears to be extremely disturbed, having to face these challenges. The Petitioner has thus clearly made a conscious decision to terminate the pregnancy. We have ascertained that she has made the choice of her own free will and she is not desirous of continuing the pregnancy.

10. In a decision of the Apex Court in the case of *A (Mother of X) v. State of Maharashtra & Anr.* the Hon'ble Supreme Court has articulated in a fair degree of detail, the need for the Medical Board's

report to reflect the effect of the pregnancy on the pregnant person's physical and mental health. The Hon'ble Supreme Court has also stated that primacy has to be accorded to the pregnant person's consent. The following extract is noteworthy:

"21The purpose of the opinion of the RMP borrows from the legislative intent of the MTP Act which is to protect the health of a pregnant person and facilitate safe, hygienic, and legal abortion. The right to abortion is a concomitant right of dignity, autonomy and reproductive choice. This right is guaranteed under Article 21 of the Constitution. The decision to terminate pregnancy is deeply personal for any person. The choice exercised by a pregnant person is not merely about their reproductive freedom but also about their agency as recognised by this court in X v. State (NCT of Delhi). It is therefore imperative that the fundamental right of a pregnant person is not compromised for reasons other than to protect the physical and mental health of the pregnant person."

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25.two clear postulates emerge as to the legislative intent of the MTP Act. Firstly, the health of the woman is paramount. This includes the risk avoided from the woman not availing unsafe and illegal methods or abortion. Secondly, disallowing terminations does not stop abortions, it only stops safe and accessible abortions. The opinion of

the RMP and the medical board must balance the legislative mandate of the MTP Act and the fundamental right of the pregnant person seeking a termination of the pregnancy. However, as noticed above and by this Court in X vs. State (NCT of Delhi) the fear of prosecution among RMPs acts as a barrier for pregnant people in accessing safe abortion. Further, since the MTP Act only allows abortion beyond twenty four weeks if the fetus is diagnosed with substantial abnormalities, the medical board opines against the termination of pregnancy merely by stating that the threshold under Section 3(2-B) of the MTP Act is not satisfied. The clarificatory report dated 3 April 2024 fell into this error by denying a termination on the ground that the gestational age of the fetus is above twenty four weeks and there are no congenital abnormalities in the fetus.

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27. *The powers vested under the Constitution in the High Court and this Court allow them to enforce fundamental rights guaranteed under Part III of the Constitution. When a person approaches the court for permission to terminate a pregnancy, the courts apply their mind to the case and make a decision to protect the physical and mental health of the pregnant person. In doing so the court relies on the opinion of the medical board constituted under the MTP Act for their medical expertise. The court would thereafter apply their judicial mind to the opinion of the medical board. Therefore, the*

medical board cannot merely state that the grounds under Section 3(2-B) of the MTP Act are not met. The exercise of the jurisdiction of the courts would be affected if they did not have the advantage of the medical opinion of the board as to the risk involved to the physical and mental health of the pregnant person. Therefore, a medical board must examine the pregnant person and opine on the aspect of the risk to their physical and mental health."

11. Applying the principles of the aforesaid decision of the Supreme Court and conscious of the right of the Petitioner to reproductive freedom, her autonomy over the body and her right to choice, and having considered the findings and opinion of the Medical Board pertaining to the psychological condition of the Petitioner as well as the averments in the Petition, and our interaction with her, we are satisfied that continuance of the pregnancy shall adversely affect the already disturbed psychological condition of the Petitioner. Hence, in the peculiar facts of this case, we permit the Petitioner to medically terminate the pregnancy.

12. The Petitioner has indicated her desire to undergo the procedure by stopping the fetal heartbeat in terms of clause V(c) of the guidance note issued by the State of Maharashtra. We sought the

opinion of the Medical Board on the procedure to be adopted to terminate the pregnancy of the Petitioner. By its report dated 19th June 2025, the Medical Board has submitted its recommendation in this regard. The said report is taken on record and marked as 'X1' for identification. The Board has opined that the Petitioner can terminate the pregnancy at a hospital of her choice ideally affiliated to or closest to a recognized fetal medicine center, where facility for feticide is available. The Medical Board has recommended that the procedure can be done by a suitable mechano pharmaceutical method, however, the same is to be done only by a fetal medicine expert in a recognized and licensed center. The Sir J.J.Group of Hospitals does not offer the said facility. However, Ms. Thakur, on instructions, states that the Petitioner can be admitted in the J. J. Hospital, which can then transfer her to N. M. Wadia Hospital, Mumbai, which is a recognized/licensed centre to carry out the said procedure. A fetal medicine expert is available in the said hospital and the procedure of stopping the heart beat of the fetus can be carried out in the said N.M.Wadia Hospital, Mumbai.

13. Considering both reports of the Medical Board and the

statement made by Ms. Thakur on instructions, we permit the Fetal Medical doctor concerned of N. M. Wadia Hospital, Mumbai to perform the MTP procedure.

14. Having interacted with the Petitioner in chambers, we found the Petitioner to be in a disturbed state of mind. From her oral statements as well as the averments made in the Petition, we found that the Petitioner, a 31 years old woman is left in a lurch by her own circumstances as well as refusal of her partner to offer support and assistance to her in any manner, despite being an active participant in bringing about the present situation. The Petitioner is naturally apprehensive about social stigma as well as facing her own parents, who may not be supportive in the circumstances. We, therefore, deemed it necessary to permit the Petitioner to implead her partner as Respondent No.6 and also requested her to inform the Respondent No.6 to remain present before us in the chambers today.

15. We now refer to the Respondent No.6 as XYZ to spare him and the Petitioner embarrassment. XYZ was present before us today. He immediately offered to deposit an amount of Rs.1,00,000/- in the account of the Petitioner for medical and legal expenses to be

incurred by her. He appeared to be a mature person and accepted responsibility. He also assured us that he will accompany the Petitioner to the hospital, if she so desired and remain with her during the entire ordeal. We accept the offer of XYZ to pay Rs.1,00,000/- towards medical and other miscellaneous expenses in addition to the legal fees of the Petitioner's counsel. He shall deposit the said amount in the bank account of the Petitioner during the course of today.

16. The Petitioner is thus permitted to medically terminate her pregnancy. She is directed to present herself at J.J.Hospital at 10:30 a.m. on 20th June 2025. The authorities of J.J.Hospital shall facilitate her transfer to the N.M.Wadia Hospital, Mumbai at the earliest. Subject to the N.M.Wadia Hospital having the facility of a fetal medical expert to carry out the procedure of MTP by stopping the fetal heartbeat, the Petitioner is permitted to undergo MTP at N.M.Wadia Hospital, Mumbai.

17. The Petition is disposed off in the aforesaid terms.

18. List the matter on **23rd June 2025 at 2:45 p.m.** in chambers, for 'Reporting Compliance'.

19. All concerned parties will act on the production of the authenticated copy of this order.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)