

ITEM NO.35

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).9163/2024

(Arising out of impugned final judgment and order dated 04-04-2024 in WPL No. 11208/2024 passed by the High Court of Judicature at Bombay)

A (MOTHER OF X)

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ANR.

Respondent(s)

(WITH IA No. 95161/2024 - EXEMPTION FROM FILING O.T.)

Date : 22-04-2024 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Mr. Shantanu M Adkar, Adv.  
Mr. Rajiv Shankar Dvivedi, Adv.  
Ms. Bharti Tyagi, AOR  
Mr. Ashley Cusher, Adv.

For Respondent(s) Ms. Aishwarya Bhati, ASG  
Ms. Shivka Mehra, Adv.  
Mr. Akshaja Singh, Adv.  
  
Mr. Siddharth Dharmadhikari, Adv.  
Ms. Preet S. Phanse, Adv.  
Mr. Aaditya Aniruddha Pande, AOR  
Mr. Bharat Bagla, Adv.  
Mr. Sourav Singh, Adv.  
Mr. Aditya Krishna, Adv.  
Mr. Adarsh Dubey, Adv.  
Ms. Yamini Singh, Adv.

**UPON hearing the counsel the Court made the following  
O R D E R**

- 1 Leave granted.
- 2 The High Court of Judicature at Bombay, by its order dated 4 April 2024, declined to allow the plea for medical termination of pregnancy moved by the appellant on behalf of her minor daughter.
- 3 The minor who is pregnant is alleged to have been subjected to a sexual assault. A First Information Report of offences punishable under Section 376 of the Indian Penal Code 1860 and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act 2012 has been registered at Police Station Turbhe, MIDC, Navi Mumbai.
- 4 The High Court had, while declining the plea for medical termination of pregnancy, relied on a report submitted by the Medical Board constituted at the Department of Obstetrics & Gynaecology of the Grant Government Medical College & Sir J J Group of Hospitals, Mumbai.
- 5 The Special Leave Petition was mentioned for urgent orders after the Court had risen on the conclusion of normal working hours at 5.15 pm on 19 April 2024. The Bench reassembled immediately thereafter and, while issuing notice, took note of the fact that the report of the Medical Board which was relied upon by the High Court had not dealt with the impact of the pregnancy on the physical and emotional well-being of the minor. Accordingly, a fresh Medical Board was directed to be constituted under the Lokmanya Tilak Municipal General Hospital

and Lokmanya Tilak Municipal Medical College, Sion, Mumbai<sup>1</sup>. Paragraphs 5 and 6 of the order of this Court are extracted below:

“5 From the material which has been placed on the record, a striking feature which has emerged before this Court, prima facie, is that the medical report does not contain an evaluation of the physical and mental status of the minor, particularly having regard to the background leading up to the pregnancy, including the alleged sexual assault. Moreover, it would be necessary that this Court is apprised whether the carrying of the pregnancy to the full term would impact upon the physical and mental well being of the minor who is barely fourteen years old. The Medical Board shall also opine on whether a termination of the pregnancy can be carried out at this stage without any threat to the life of the minor.

6 In this view of the matter, we are of the view that the petitioner’s daughter should be examined afresh by a Medical Board to be constituted at the Lokmanya Tilak Municipal General Hospital and Lokmanya Tilak Municipal Medical College, Sion, Mumbai tomorrow (20 April 2024). We request the Medical Superintendent of the hospital to constitute a Medical Board for that purpose.”

6 A report has been submitted by the Sion Hospital. The minor was examined by a team of the following six doctors constituted by the Dean:

- “1. Dr. Rajesh Dere, Prof. & Head Dept. of Forensic Medicine
2. Dr. Anagha Joshi, Prof. & Head Dept. of Radiology
3. Dr. Amarjitsingh Bawa, Additional Prof. Of Dept. of Gynecology & acting Head of Department
4. Dr. Nilesh Shah, Prof. & Head Dept. of Psychiatry
5. Dr. Swati Manerkar, Prof. & Head Dept. of Neonatology”

7 After examining the minor, the Medical Board at Sion Hospital has opined as follows:

1 “Sion Hospital”

“1. Whether carrying of the pregnancy to the full term would impact upon the physical and mental well being of the minor who is barely 14 years?”

Ans. Yes, continuation of pregnancy against her will may impact negatively on physical and mental well being of the minor who is barely 14 year old.

2. The medical board shall also opine whether termination of pregnancy can be carried out at this stage without any threat to the life of the minor?

Ans. Yes, termination can be carried out at this stage. The threat of life to the patient if termination of pregnancy carried out at this stage is not higher than the risk of delivery at full term of pregnancy.

Also in view of minor being barely 14 years, the chances of surgical intervention (Abdominal Surgery) at term or now may be there.”

8 While forwarding the report of the Medical Board, the Dean of Sion Hospital has noted the opinion of the Board in the following terms:

“The opinion of the committee is forwarded herewith for your perusal. The committee has opined that the medical termination of the pregnancy can be done with due risk and with appropriate counseling of the patient and the relatives. The Psychiatrist also contributed in evaluation of patient and assessing the psychological state of the patient. According to the committee report continuation of pregnancy could cause psychological trauma to the patient.”

9 In view of the urgency of the situation, we are inclined, while reserving judgment, to issue the following directions. We have duly borne in mind the provisions of the Medical Termination of Pregnancy Act 1971<sup>2</sup>. This Court is inclined to exercise its powers under Article 142 of the Constitution. In a similar case which is reported as **X v Union of India and Another**<sup>3</sup>, this Court had adverted to its constitutional jurisdiction under Article 142.

2 “MTP Act”

3 2023 SCC Online SC 1338

10 The following circumstances have been borne in mind, at this stage:

- (i) The medical termination of pregnancy is sought in respect of a minor who is 14 years old;
- (ii) The pregnancy is alleged to be an emanation from a sexual assault which has resulted in the registration of a First Information Report. The FIR was recorded on 20 March 2024 beyond the period of 24 weeks envisaged in the MTP Act;
- (iii) The minor was unaware of the fact that she was pregnant until a very late stage;
- (iv) The Medical Board at Sion Hospital has clearly opined that the continuation of the pregnancy against the will of the minor “may impact negatively on physical and mental well being of the minor who is barely 14 years old”; and
- (v) While a certain degree of risk is involved in every procedure for medical termination, the Medical Board has opined that the threat to life of the patient if termination of pregnancy is carried out at this stage is not higher than the risk of delivery at full term of pregnancy.

11 We will further elaborate on the guiding parameters in a reasoned order which will be delivered separately. However, bearing in mind the exigencies of the situation, the welfare of the minor, which is of paramount importance and her safety, we pass the following order:

- (i) The judgment and order of the High Court of Judicature at Bombay dated 4 April 2024 shall stand set aside for reasons to follow;
  - (ii) The Dean at Sion Hospital is requested to immediately constitute a team for undertaking the medical termination of pregnancy of the minor in respect of whom the Medical Board has submitted its report dated 20 April 2024;
  - (iii) Arrangements shall be made by the State for transportation of the minor to the Hospital and for her return home after the completion of the procedure;
  - (iv) The State has agreed to bear all the expenses in connection with the procedure and all medical expenses required in the interest of the safety and welfare of the minor; and
  - (v) Post-termination if any further medical care is required, this may be ensured in the interest of the minor.
- 12 Counsel for the State of Maharashtra shall communicate the gist of the order to the Dean at Sion Hospital immediately for compliance.

**(SANJAY KUMAR-I)**  
**DEPUTY REGISTRAR**

**(SAROJ KUMARI GAUR)**  
**ASSISTANT REGISTRAR**