

ITEM NO.22

COURT NO.13

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SSPECIAL LEAVE PETITION (CIVIL) Diary No(s). 4527/2024

(Arising out of impugned final judgment and order dated 23-01-2024 in CMAPPL No. 3561/2024 passed by the High Court Of Delhi At New Delhi)

R Petitioner(s)

VERSUS

THE UNION OF INDIA & ORS. Respondent(s)

Date : 31-01-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE BELA M. TRIVEDI

HON'BLE MR. JUSTICE PRASANNA BHALACHANDRA VARALE

For Petitioner(s)

Dr. Amit Mishra, Adv.

Mr. Rahul Sharma, AOR

For Respondent(s)

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

1. Heard learned counsel for the petitioner.
2. The Special Leave Petition has been filed being aggrieved by the impugned order passed by the High Court in Writ Petition in which the petitioner had sought direction to the respondents to permit medical termination of her ongoing pregnancy under Section 3(2)(b)(i) read with Section (3) and Section 5 of the Medical Termination Act, 1971 read with Rule 3B of the Medical Termination of Pregnancy Rules, 2003.
3. Having heard learned counsel for the petitioner and having perused the impugned order passed by the High Court, it appears that the High Court had called for the report from the Medical Board, AIIMS which is reproduced as under:-

"In this regard, it is informed that at present the period of gestation is 30 weeks plus 6 days, the fetus is viable and

the fetus will be alive after delivery. The anticipated requirement for NICU ICU care will range from 30-45 days with reasonable risk of physical mental handicap subsequently. However, if pregnancy is carried on till term (37 week), the anticipated requirement of NICU will be minimal to nil. There will be very high likelihood of morbidity free survival. Hence the medical board would like to request the Hon'ble High Court of Delhi for appropriate management of new born after delivery."

4. Considering the said Report, the High Court has observed as follows:-

"23. The Medical Reports indicate that a preterm induction of labor has a high chance of failure and may lead to caesarean section which may have serious implications on her future pregnancies. The report also indicates that the child which is born after a preterm induction of labor can have physical and mental deficiencies which will have drastic effect on the future of the child and that the NICU ICU care in such case is about 30-45 days with reasonable risk of physical and mental handicap of the new born.

24. In view of the Reports dated 06.01.2024, 12.01.2024 and 13.01.2024 of the AIIMS Hospital, which have been brought to the notice of this Court subsequent to the Order dated 04.01.2024, the Court is inclined to recall the Judgment dated 04.01.2024 passed by this Court. The Judgment dated 04.01.2024 is hereby recalled.

25. The Petitioner, who is already having as on date 32 weeks period of gestation, if so advised, can go to AIIMS Hospital, New Delhi and present herself before the Medical Board and it is for the Medical Board to take a decision as to how to go ahead with the delivery at the appropriate time.

26. It is for the Petitioner to decide where the delivery is to be conducted i.e., whether to go AIIMS or any other Central Government Hospital or at any State Government Hospital. If the Petitioner is inclined to undergo her delivery at any Central Government Hospital, the Central Government shall bear all the medical expenses and all other incidental charges of the delivery. If the Petitioner is inclined to undergo her delivery at any State Government Hospital, the State Government shall bear all the medical expenses and all other incidental charges of the delivery

27. If the Petitioner is inclined to give the new born child in adoption then as suggested by Ms. Aishwarya Bhati, learned ASG, the Union of India shall ensure that the process of adoption takes place at the earliest and in a smooth fashion."

5. In view of the above well-considered Judgment passed by the High Court, and considering the fact that the petitioner is having pregnancy of over 32 weeks by now, it is not advisable to accept her prayer as prayed for.

6. Since the High Court has taken sufficient safeguards in the impugned order, it is expected that the petitioner shall be taken care of by the Central Government Hospital/State Government Hospital as observed in the said order.

7. Subject to the said observations, the Special Leave Petition is dismissed.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(MAMTA RAWAT)
COURT MASTER (NSH)