

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 2261 of 2019**

- Smt. Pallavi Bhoi W/o Shri Navin Bhol Aged About 22 Years R/o Ward No. 06, Nayapara, Tahsil And District Mahasamund, chhattisgarh, At Present Hospitalized At C.H.C. Mahasamund Represented Through His Husband Navin Bhoi, S/o Shri Harakharam Bhoi, Ward No. 06 Nayapara, District- Mahasamund, Chhattisgarh

---- Petitioner**Versus**

1. The State Of Chhattisgarh The Secretary, Ministry Of Public Health And Welfare, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The Chief Medical Officer, (C.M.O.) /Medical Board Of District Hospital, Mahasamund, Chhattisgarh
3. Head Officer Of Department Gyanaecologist, (H.O.D.)- Gynaic, District- Hospital, Mahasamund, Chhattisgarh

---- Respondents

For Petitioner : Shri Jameel Akhtar Lohani, Advocate
For Respondents/State : Shri Alok Bakshi, Addl. AG

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****09/07/2019**

1. Heard.
2. The present petition is filed for seeking a termination of the pregnancy under the provisions of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the Act, 1971).
3. Learned counsel for the petitioner submits that the petitioner was married with



Navin Bhoi in the year 2018. Subsequently she conceived, thereafter for a routine medical test, she was admitted to maternity ward at Government Hospital, Mahasamund (C.G.). He would further submit that the petitioner wherein was examined by the doctors and on examination the foetus was diagnosed with medical abnormality condition known as anencephaly. It is contended that on advice of doctors, the petitioner was again examined at the higher medical centre on 30.06.2019 at Raipur named as Appollo Diagnostic Centre, Raipur. In such examination the doctors gave a report that a single live foetus at 24 weeks 06 days gestation with hydrocephalus abnormal spine curvature with large meningocele pleural effusion & abdominal ascities with oligohydramnios seen in uterine cavity wherein foetal skull bones remained unformed, this condition being untreatable and would be certain to cause infant's death during or short after birth and also endanger life of petitioner. The said report is filed as Annexure P-3 which is reproduced hereunder:-

Biometry

BPD (5.85 cms.) F.L. (4.54 cms.), AC (21.11 cms) is 24 wks 6 days

The FHR is 146 BPM, The estimated fetal weight is 786 gms

US EDD- 14.10.19

A cursory doppler shows normal flow pattern through the umbilical artery.

ANATOMICAL SURVEY

HEAD

Evidence of mild hydrocephalus (LV-1.20 cm) with normal thalamus & cerebellum seen. 1 Midline flax seen.

SPINE

Evidence of deformed spinal curvature with? Large



meningocele at C-D spine seen.

URNARY TRACT

Both kidneys are normal with normal size, shape & outline.

The urinary bladder is not visualised.

IMPRESSION :- Single live foetus at 24 wks 6 days gestation with hydrocephalus, abnormal spine curvature with large meningocele, pleural effusion & abdominal ascites with oligohydramnios seen in the uterine cavity.”

4. This petition thereafter has been filed on 04.07.2019 and this Court vide order dated 05.07.2019 after preliminary examination of papers in order to ascertain the authenticity of such report had ordered the petitioner to appear before the Medical Board, District Hospital Mahasamund wherein she was hospitalized and directed that she may be examined by the Medical Board and the report may be sent forthwith to this Court. Pursuant to such order, a team of doctors/medical board examined the petitioner and gave a report, the same is reproduced hereunder:-

“कमांक/अस्प.प्रशा./2019/968

महासमुन्द, दिनांक 6/7/2019

Reference: In reference to Letter No.AG/CG/BSP/2019 Date :- 05/07/2019 & Case No-WP (C) No.2261 / 2019 Smt. Pallavi Bhoi v/s State of C.G. & Others.

CERTIFICATE BY MEDICAL BOARD

Certified that Smt. Pallavi Bhoi W/o Naveen Bhoi, resident of ward no 06 Mahasamund has admitted on 2nd July 2019 at District Hospital Mahasamund (C.G.) I.P.D. No.839.

She is a case of Pregnancy 24 Weeks 06 days (As by USG Dated 30-06-2019, By Appollo Diagnostic Centre Raipur) with Multiple Congenital Anomalies in fetus which are as follows:

1. Hydrocephalus.
2. Spinal Deformity.
3. Meningocele.

Newborn will be mentally retarded and burden for the family. Viability is also questionable. She has examined and findings are as follows:



G.C. Fair, P/A-Wt 24 Weeks, Pulse-80/Min., BP-110/70, Hb-12gm, FHS+, RS & CVS-NAD, P/V Exam- OS Closed. She has found physically fit.

As she has pregnancy gestational period more than 20 weeks so awaiting for permission by Hon. High Court to terminate her pregnancy.

Attached :- Bed Head Ticket containing 13 pages.

Dr RK Pardal
Civil Surgeon & President Medical Board
District Hospital Mahasamund (C.G.)

Dr NR Sachdev
Gynecologist
DH Mahasamund

Dr. Hemeshwari Verma
MD Medicine

Dr. Onkeshwary Sahu
Female Medical Officer

5. Since the medical termination of the pregnancy has been sought for, therefore, it would be governed by the Act, 1971. Section 3 of the Act, 1971 would be relevant, which is reproduced hereunder:-

- 3. When pregnancies may be terminated by registered medical practitioners.-** (1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.
- (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 twelve weeks, if such medical practitioner is, or
- (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of 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 such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any pregnancy is alleged by the pregnant



woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in subsection (2), account may be taken to the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a ⁴ [mentally ill person], shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

6. The Act purports that a registered medical practitioner shall not be guilty of any offence if the pregnancy is terminated which satisfies the requirement of subsection (2) of Section 3 of the Act, 1971. There is no dispute about the fact that the petitioner herein is a major and the reason for seeking of termination of pregnancy has been assigned that the new born baby even if is born would be mentally retarded and viability is also questionable. The report shows that the child if is born, would suffer from such physical and mental abnormality, thereby would be seriously handicapped.

7. The Supreme Court in the case of **Meera Santosh Pal & others Versus Union of India and others {(2017) 3 SCC 462}** has reiterated the view taken in the case of **Suchita Srivastava Vs. Chandigarh Admn {(2009) 9 SCC 1}** and has observed thus in para 9, which is reproduced hereunder:-

“9. In *Suchita Srivastava v. Chandigarh Admn* {(2009) 9 SCC 1} a Bench of three Judges held “a woman’s right to make reproductive choices is also



a dimension of 'personal liberty' as understood under [Article 21](#) of the Constitution". The Court there dealt with the importance of the consent of the pregnant woman as an essential requirement for proceeding with the termination of pregnancy. The Court observed as follows:-

"22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under [Article 21](#) of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children"

8. Applying the aforesaid ratio along with the case of **Meera Santosh Pal**

(*supra*), the consideration in the present case would be that the medical board

has opined that in case the child is born, he/she would be completely mentally restarted and viability is also questionable as the development in the foetus has

not taken place. The series of examinations by the doctors fortifies the same.

Therefore, it would be covered under Section 3 (2) (b) (ii) of the Act, 1971.

Therefore, having regard to the future of the child, inability of the foetus to be

developed as full grown, if the child is born, it is obvious that it would be

dependent on mercy of others and healthy future is unforeseeable, therefore,

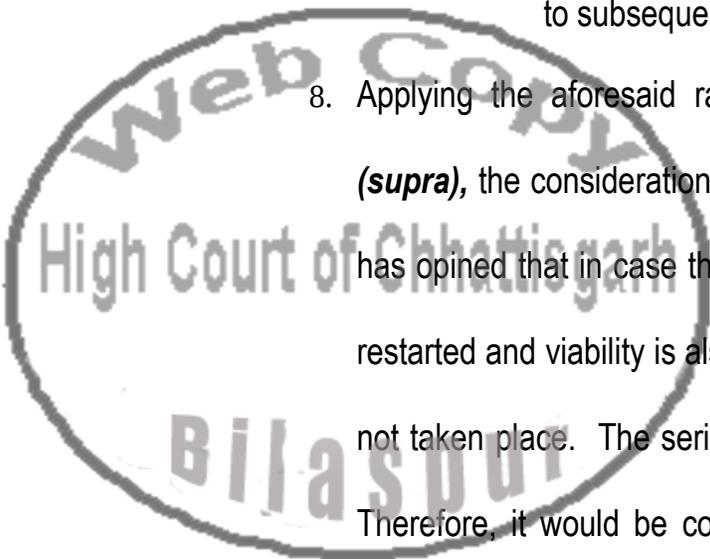
avoidable danger cannot be forced to be accepted.

9. In these circumstances, there is no doubt that the petitioner has a right to

protect and preserve her life and also has a right to see a healthy baby is born

which may not subject to neglect and abuse of society. The child also has a

right to be healthy and not live his life at scolding & censure of others . The child





born with infirmity both mental and physical for all practical purpose would be a burden to himself and hiding spot would not help and expectation of normal behaviour by the society would be contrary to general expectation. When the cutting edge medical technologies have affirmed lack of development of foetus and viability is also on doubt, in such case the mother of child in womb would have the right to call for medical termination of pregnancy to address the problem. Taking into the medical reports in the interest of justice, it is appropriate to permit the petitioner to undergo the termination of her pregnancy under the provisions of the Act, 1971. It is ordered accordingly. The termination of pregnancy of the petitioner shall be performed by the team of doctors of the hospital including the experts and if necessary, the expert from the higher medical centre should also be called for to supervise in such termination of pregnancy. The medical board shall also keep the complete record of the procedure which is to be performed on the petitioner for termination of pregnancy.

10. With the aforesaid observation, the instant petition is allowed in terms of the prayer.

Certified copy as per rules.

Sd/-

Goutam Bhaduri
Judge