

IN THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)

W.P No _____/2019

BETWEEN

Nausheen Bano

...PETITIONER

AND

State of Karnataka and Ors

...RESPONDENTS

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Place: Bengaluru

Date: 26/10/19

Advocate for Petitioner

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BETWEEN

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...PETITIONER

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...RESPONDENTS

SYNOPSIS AND LIST OF DATES

The Petitioner is a 24-year-old woman, who is seeking permission of this Hon'ble Court to terminate her pregnancy, which is beyond 20 weeks. The Petitioner is presently 30 weeks pregnant. This petition is filed seeking permission of this Hon'ble Court to permit the termination of her pregnancy by the Respondent No.2 Hospital after getting a medical report from the Medical Board at the Respondent No. 3 institution. The Petitioner's scans have revealed that the fetus has multiple medical abnormalities including heart abnormalities, Duodenal atresia and also Down's Syndrome.

It is submitted that these abnormalities and medical conditions of heart AVSD and Downs Syndrome were only revealed in the test results on 24.10.2019, at 30 weeks, as in many cases such abnormalities are not detected earlier. The Hon'ble Supreme Court has held that Section 5 of the Medical termination of Pregnancy Act 1971, which permits the termination of pregnancy after 20 weeks should be interpreted liberally to include situations where saving the life of the woman would include cases where continuing the pregnancy would cause undue mental anguish to the Petitioner due to the serious abnormalities of the fetus and has permitted medical termination of pregnancies even upto 32 weeks.

The fetus has multiple abnormalities of Downs Syndrome with other serious medical conditions. Having Downs Syndrome is a life long disability. It has also been diagnosed with heart abnormalities as stated with having partial unbalanced AVSD, which means

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that the foetus is having a hole in the heart. The ventricles are unbalanced and this is a serious heart abnormality. There is Duodenal Atresia which amounts to a blockage of the Duodenum, which means that the fetus will not be able to digest any form of food due to a blockage in the stomach. This would require surgery to be performed as soon as the baby is born.

All these abnormalities has caused great mental trauma to the Petitioner as she does not have the capacity to care and support the child if born, and hence has taken the painful decision to seek termination of her pregnancy and is seeking the permission of this Hon'ble Court to allow the termination of her pregnancy.

DATE	EVENT
04.03.2019	The Petitioner tentatively conceived the present child on this day as marked by her last menstrual period.
11.10.2019	The Petitioner got the Anomaly scan performed at the Bangalore Fetal Medicine Centre. In the results of the said scan the Petitioner learnt that the fetus has multiple abnormalities (Duodenal Atresia, AVSD and EIF) and the occurrence of these increases the significantly increase risk for the fetus developing chromosomal abnormalities in particular Trisomy 21 (Down Syndrome).
18.10.2019	The Petitioner then underwent a second scan at the Bangalore Fetal Medicine Centre. This scan directed her to undergo amniocentesis to definitively diagnose the occurrence of Down Syndrome.
24.10.2019	The Petitioner received the amniocentesis (FISH Diagnosis) scan results from Medgenome on this day. The said scan finds the presence of Trisomy 21 (Down Syndrome) in the fetus. The Petitioner received the said scan results when she was 30 weeks pregnant. Hence this petition.

Place: Bengaluru

Date: 26/10/19

Advocate for the Petitioner

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IN THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)

W.P. NO. _____/2019

BETWEEN

Nausheen Bano

W/o Thousif, *aged about 24 years*

18/1, Lal Masjid,

B Street, Shivajinagar

Bengaluru – 560 051

...PETITIONER

AND

1. State Of Karnataka

Vidhana Soudha

Bengaluru – 560 001

Represented by its Chief Secretary

2. Manipal Hospital

98, HAL Airport Road

Bengaluru – 560 017

Represented by the Medical Superintendent

3. Bangalore Medical College and Research Institute

Fort, K. R. Road

Bengaluru – 560 002

Represented by its Director cum Dean

...RESPONDENTS

MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, 1950

The Petitioner submits as follows:

1. The Petitioner is a 24-year-old woman, who is seeking permission of this Hon'ble Court to terminate her pregnancy which is beyond 20 weeks. The Petitioner is

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presently 30 weeks pregnant. This petition is filed seeking permission of this Hon'ble Court to permit the termination of her pregnancy by the Respondent No.2 Hospital after getting a medical report from the Medical Board at the Respondent No. 3 institution. The Petitioner's scans have revealed that the fetus has multiple medical abnormalities including heart abnormalities, Duodenal atresia and also Down's Syndrome. All of this has caused great mental trauma to the Petitioner and she is seeking the permission of this Hon'ble Court to allow the termination of her pregnancy. Hence this petition.

BRIEF FACTS

2. The Petitioner is a 24 year old married woman. This Petition pertains to her second pregnancy. The Petitioner already has a son who is about 2 years old. She has completed her education up to the SSLC level.
3. The Petitioner conceived sometime in March 2019. Thereafter her pregnancy was progressing normally and she was having regular scans done as per the directions of the doctors.
4. It is submitted that it was only in the Anomaly scan performed on 11.10.2019 when the Petitioner was about 29 weeks pregnant that the Petitioner for the first time learnt about foetal abnormalities. The said scan observes that:

"...there is double bubble appearance of stomach, likely suggestive of Duodenal atresia. In addition there is linear insertion of Atrio-Ventricular valves with discrepancy in heart chambers suggestive of partial unbalanced AVSD. There is single echogenic intracardiac focus (EIF) in the left ventricle."

Further, the doctor observed in the said report that due to the multiple abnormalities (Duodenal Atresia, AVSD and EIF) the risk for chromosomal abnormalities in particular Trisomy 21 (Down Syndrome) has significantly increased and hence, advised the Petitioner to go for amniocentesis for a definitive

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diagnosis of the condition. This amounts to a blockage of the Duodenum, which means that the fetus will not be able to digest any form of food due to a blockage in the stomach. This would require surgery to be performed as soon as the baby is born. Further, in newborn babies, Duodenal Atresia often causes intestinal obstruction, and if this happens then another major surgical intervention will be needed. The fetus was also diagnosed with heart abnormalities as stated with having partial unbalanced AVSD, which means that the foetus is having a hole in the heart. The ventricles are unbalanced and this is a serious heart abnormality. (A copy of the Anomaly Scan performed by the Bangalore Fetal Medicine Centre dated 11.10.2019 is annexed herein as ANNEXURE – A)

5. The Petitioner then underwent a second scan on the 18th of October 2019 at the Bangalore Fetal Medicine Centre. After this scan, the doctors directed her to undergo amniocentesis.

(A copy of the scan results dated 18.10.2019 performed by the Bangalore Fetal Medicine Centre is annexed herein and is marked as ANNEXURE – B)

6. The Petitioner then went to Medgenome – Centre for Genetic Health Care for the amniotic fluid scan (FISH Diagnosis) to be performed. The FISH Diagnosis (amniotic fluid scan) results were received by the Petitioner on 24.10.2019. The said scan finds the presence of Trisomy 21 (Down Syndrome) in the foetus. This means that the fetus has Down's Syndrome. The Petitioner received the said scan results when she was already 30 weeks pregnant.

(A copy of the amniotic scan performed by Medgenome dated 24.10.2019 is annexed herein as ANNEXURE – C)

7. With all of these medical foetal abnormalities, the Petitioner is greatly traumatized and is facing great mental trauma in continuing the pregnancy where the fetus has multiple abnormalities and seeks the termination of the same to be carried out at the Respondent No.2 Hospital, which is a well-renowned hospital with all the facilities for handling termination of pregnancy with these complications.

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8. It is submitted that in light of the directions by the Hon'ble Supreme Court and this Hon'ble Court, the Respondent No.3 Bangalore Medical College and Research Institute, has set up a Medical Board to examine cases for termination of pregnancy beyond 20 weeks. It is therefore prayed that they may be directed to examine the Petitioner and report to this Hon'ble Court on the termination of her pregnancy in light of these abnormalities. The Union of India in a petition being ***Dr. Nikhil D. Datter vs. Union of India & Ors (Civil Appeal No. 7702 of 2014)*** pending before the Hon'ble Supreme Court has submitted along with its Compliance Affidavit, a set of Guidelines to be followed by Medical Boards in cases of termination of pregnancies beyond 20 weeks of gestation in cases referred by the Courts. The said Guidelines note that medical technology has advanced significantly since 1971 and this allows for accurate diagnosis of fetal abnormalities. Upon reference of the Court, the Guidelines state that it is the responsibility of the Medical Boards to determine whether the foetal abnormality is substantial enough to qualify as either incompatible with life or associated with significant morbidity or mortality in the child, if born. In making this determination, the experts on the Medical Board may refer to an indicative list of major foetal abnormalities annexed therewith. AVSD (Atrio-Ventricular Septal Defect) which falls under the category of Cardiovascular Abnormalities, particularly Complex ventricular septal defects and Trisomy 21 (Down's Syndrome) as a Chromosomal Abnormality with which the foetus is diagnosed in the present case are both a part of the list of major abnormalities annexed to the Guidelines issued to the Medical Boards by the Union of India.

(A copy of the Compliance Affidavit on behalf of the Union of India dated 11.09.2019 filed in ***Dr. Nikhil D. Datter vs. Union of India & Ors (Civil Appeal No. 7702 of 2014)*** pending before the Hon'ble Supreme Court along with the Guidelines is annexed herein and marked as **ANNEXURE - D**)

9. The Petitioner has not presented any other Writ Petition before this Hon'ble Court or any other Forum on the same cause of action. The Petitioner having no other efficacious or alternate remedy has approached this Hon'ble Court by presenting

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this Writ Petition under Article 226 of the Constitution on the following among other grounds.

GROUND

10. **THAT** the Medical Termination Of Pregnancy Act, 1971 ("MTP Act") under Section 3 only provides for termination of pregnancies of 20 weeks and below. However, Section 5 of the MTP Act creates an exception to Section 3 and permits terminations of pregnancies to be performed after 20 weeks when a registered medical practitioner is of the opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman. At present the Petitioner is more than 20 weeks pregnant and hence without a specific direction from this Hon'ble Court permitting her to terminate the pregnancy no medical practitioner can terminate the pregnancy. Hence, the Petitioner has been left with no other remedy in law than to approach this Hon'ble Court as the pregnancy has crossed 20 weeks.

11. **THAT** the Petitioner is severely traumatized mentally upon learning of the multiple medical abnormalities of the foetus, which would prevent it from leading a normal life. The fetus is diagnosed with having heart abnormalities of AVSD, which show that there is a hole in the heart, has blockage of the stomach being duodenum atresia, and has Down's Syndrome. All of these conditions would require multiple surgeries immediately after delivery and would also be life long disabilities and medical conditions for the child if born, and the Petitioner does not have the means, either financial or emotional, to handle such difficult conditions. It is after careful consideration of these prospects that the Petitioner has taken the tough decision to terminate her pregnancy at this belated stage. The Petitioner has taken this decision without any influence from anyone and if termination is not carried out it would seriously impact the mental health of the Petitioner.

12. **THAT** the Hon'ble Supreme Court in several cases has permitted medical termination of pregnancy beyond the ceiling period of 20 weeks as prescribed in Section 3(2) of the MTP Act where the continuance of pregnancy involved grave

injury to the mental health of the pregnant woman or where there was substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. In **Tapasya Umesh Pisal v. Union of India**, (2018) 12 SCC 57, the Hon'ble Supreme Court in interests of justice, permitted the petitioner to undergo MTP, which was in its twenty fourth week noting that "*but for the time period, it appears that the case falls under section 3(2)(b) of the MTP Act.*". The Medical Board, in the said case, had opined that the baby if delivered alive, would have to undergo several surgeries after birth which is associated with a high morbidity and mortality. The Supreme Court on basis of such material held that it would be difficult to refuse the permission to medically terminate pregnancy, as it was certain that the fetus if allowed to born, would have a limited life span with serious handicaps which could not be avoided.

13. THAT in **Mamta Verma v. Union of India**, (2018) 14 SCC 289, the Hon'ble Supreme Court was concerned with a pregnancy which had advanced into the 25th week and there was no danger to the life of the pregnant mother. Yet, termination of pregnancy was permitted primarily on the ground that the fetus was not likely to survive and this was causing severe mental injury to the pregnant mother. This means that termination of pregnancy was permitted under section 5 of the MTP Act by reading into the provisions of section 5 of the MTP Act, the contingencies referred to in clauses (i) and (ii) of section 3(2)(b) of the MTP Act. The Hon'ble Supreme Court, while allowing the termination of pregnancy beyond 20 weeks as it caused serious mental injury to the mother observed as under –

"7. Importantly, it is reported that the continuation of pregnancy can pose severe mental injury to the petitioner and no additional risk to the petitioner's life is involved if she is allowed to undergo termination of her pregnancy.

8. In the circumstances, we consider it appropriate in the interests of justice and particularly, to permit the petitioner to undergo medical termination of her pregnancy under the Medical Termination of Pregnancy Act, 1971..."

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14. THAT the Hon'ble High Court of Bombay in *XYZ vs. Union of India*, 2019 SCC OnLine Bom 560 has categorically noted that the powers of the courts to allow termination of pregnancy after 20 weeks are to be exercised liberally to further the purpose of the MTP Act. Therefore, the courts in carving out an exception to Sections 3 and 4 of the MTP Act while passing an order under Section 5 permitting termination of pregnancy beyond 20 weeks to save the life of the mother, are directed to interpret the term 'life' purposively to incorporate therein the provisions of Section 3(2)(b). The Court held as under –

"61. From the conspectus of the decisions of the Supreme Court, it is quite clear that the Supreme Court has construed the provisions in section 5 of the MTP Act, not narrowly by adopting the principle of literal construction but liberally by adopting the principle of purposive construction. The Supreme Court has consistently permitted medical termination of pregnancies which had exceeded the ceiling of 20 weeks where medical opinion established that continuance of pregnancy involved grave injury to the mental health of the pregnant woman or where there was substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. This was despite the fact that there was no immediate danger to the life of the pregnant mother. In effect therefore, the Supreme Court read into the provisions of section 5 of the MTP Act the contingencies referred to in clause (i) and (ii) of section 3(2)(b) of MTP Act, no doubt, upon satisfaction that the risk involved in the termination of such pregnancies was not greater than the risk involved in spontaneous delivery at the end of the full term."

15. THAT the Petitioner's right to terminate the pregnancy is an integral part of her fundamental rights to privacy, liberty and dignity. The Hon'ble Supreme Court of India in the case of *Suchita Srivastava and Anr. vs. Chandigarh Administration*, (2009) 9 SCC 1 has categorically held that –

"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

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well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected..."

Therefore, at this stage where the continuance of the pregnancy poses grave injury to the physical or mental health of the mother or in a situation where there is substantial risk that if the child were born, would suffer from deformities and diseases, the Petitioner mother is forced to continue her pregnancy merely because the pregnancy has extended beyond the ceiling of 20 weeks, there would arise a serious violation to the fundamental rights of the Petitioner to privacy, to exercise a reproductive choice, to bodily integrity and to her dignity.

16. **THAT** as held by the Hon'ble Court in *K.S. Puttuswamy v. Union of India* (2017)

10 SCC 1, on the right to privacy and dignity, the Hon'ble Supreme Court held that the best decisions on how life should be lived are entrusted to the individual, and the duty of the State is to safeguard the ability to take decisions and not to dictate those decisions and to live is to live with dignity. The Petitioner if forced to carry on with this pregnancy knowing that the fetus has serious medical abnormalities which she would not be able to support is causing grave mental trauma and would force her to live with indignity and trauma and hence deserves the intervention of this Hon'ble Court.

17. **THAT** these medical abnormalities were not detected earlier, despite the diligent diagnosis and regular check-ups taken by the Petitioner and many serious fetal anomalies may not even be detected till much after 20 weeks and hence the provisions of section 5 of the MTP Act have to be considered.

18. **THAT** on account of the advanced nature pregnancy, time is of critical importance. Hence, there is an urgent and immediate need for this Hon'ble Court to intervene.

19. **THAT** the Respondent No. 3 is the most well equipped hospital and research centre in Karnataka. They have been directed by the Hon'ble Supreme Court in

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similar cases to opine on viability of termination of pregnancy in cases of foetal abnormalities.

20. THAT the Petitioner is left with no other option or legal remedy except to approach this Hon'ble Court in order to restore to some degree the normalcy of her life by granting her permission to terminate her pregnancy.

GROUND FOR INTERIM RELIEF

21. The Petitioner is experiencing severe mental trauma after having learnt of the multiple medical abnormalities of the fetus, which will prevent it from leading a normal life right from birth. The Petitioner in her best interest has agreed to consent to the termination of her pregnancy at this belated stage. Therefore, it is necessary to expeditiously take necessary steps evaluate the medical fitness of the minor Petitioner to undergo termination of pregnancy and for a report to be submitted in this regard.

PRAYER

Wherefore, in light of the above facts and circumstance, the Petitioner prays that this Hon'ble Court may be pleased to:

- A. Issue an appropriate Writ of Mandamus directing Respondent No. 2, Manipal Hospital, Bengaluru to admit the Petitioner and take necessary medical steps to terminate her pregnancy; and
- B. Grant such or other reliefs as this Hon'ble Court deems fit in the facts and circumstances of the above case as also compensation for their losses and costs in the above in the interests of justice and equity.

INTERIM PRAYER

It is prayed that during the pendency of this Writ Petition, this Hon'ble Court may be pleased to direct the Medical Board at the Respondent No. 3 Bangalore Medical College and Research Institute consisting of a gynecologist, an obstetrician, a pediatrician, and psychologist/ psychiatrist to medically evaluate the Petitioner and

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opine on whether the Petitioner is fit and able to undergo medical termination of pregnancy and submit a report to this Hon'ble Court as expeditiously as possible in the interest of justice and equity.

Place: Bangalore

Counsel for the Petitioner

Date: 26/10/19

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