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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9088 OF 2020

Mrs. Vandana w/o Somgiri Giri
(through her daughter)
Ms. Bhagyashree d/o Somgiri Giri

..PETITIONER

VERSUS

The State of Maharashtra & anr.

..RESPONDENTS

Mr S. G. Shinde, Advocate for petitioner;
Mr S. R. Yadav, A.G.P. for respondents

**CORAM : RAVINDRA V. GHUGE
AND
SMT. VIBHA KANKANWADI, JJ.
(VACATION COURT)**

DATE : 31st December, 2020

PER COURT:

1. On 29th December, 2020, we had passed the following order :

“1. Leave to correct the name of the petitioner so as to mention the biological guardian of the victim. So also, the description of Respondent No.2 shall be corrected. Corrections be carried out forthwith.

2. Issue notice to the respondents, returnable on 31.12.2020. Learned AGP waives service for Respondent Nos.1 & 2.

3. The petitioner is before this Court seeking

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permission to carry out medical termination of her pregnancy. She has lodged an FIR on 8.12.2020, stating therein that the accused has committed an offence punishable under sections 376(2)(f) read with section 506 of the IPC and Sections 4,8 and 12 of The POCSO Act.

4. The petitioner has not stated the exact gestational age of her pregnancy in the petition. So also, the petitioner has not referred to any provisions of The Termination of Pregnancy Act, 1971. Prayer clauses are also ambiguous.

5. We find that the petitioner is before this Court for seeking permission to resort to medical termination of her pregnancy in view of Section 3 of the said 1971 Act.

6. We deem it appropriate to direct Respondent No.2 to carry out a medical examination of the victim by constituting a Board. Such examination shall be carried out on 30.12.2020 at 12.00 noon. The victim shall remain present for such medical examination and is permitted to be accompanied by either of the biological parent. Respondent No.2 shall submit the medical report, either through e-mail to the learned Registrar (Judicial) of this Court or a hard copy in a sealed envelope, by 10.30 am on 31.12.2020. Needless to state, the board shall express it's

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opinion as to whether termination of pregnancy is necessitated and whether the probable mother is at any risk while undergoing such procedure.

7. List this petition in the urgent admissions category on 31.12.2020.”

2. Today, the Department of Obstetrics & Gynecology has tendered a report dated 30th December, 2020, which is prepared by the Medical Board constituted for considering the case of the petitioner for medical termination of pregnancy. We have taken the said report (two pages) on record, which is marked as ‘X’ collectively for identification. The Medical Board comprising of seven senior Doctors, have submitted their opinion at Clause no.16, which reads as under :

“16. Recommendations by Medical Board for termination
: Not Recommended

As Foetus has attained period of viability. If terminated it will result in live birth and will face serious morbidities due to prematurity.

Such cases can be safely delivered in hospital at term and handed over to child welfare committee.

Date and time : 30/12/2020. AT 2:30 PM”.

3. At Sr.No.13, the Medical Board has stated on investigation that the woman/the victim carries “*Single live intrauterine gestation with average gestational age 28 weeks 6 days*” as on 30th December, 2020. As such, today the victim has completed 29 gestational weeks and according to the medical report, the foetus has attained the period of viability. If terminated, it will result in live birth.

4. In view of the above, we deem it appropriate to refuse permission for medical termination of her pregnancy.

5. As such, this petition is rejected.

(SMT. VIBHA KANKANWADI, J.) (RAVINDRA V. GHUGE, J.)

sjk