

SC allows woman to abort 26-week foetus due to abnormalities

New Delhi: The Supreme Court on Monday permitted a woman, who is in her 26th week of pregnancy, to abort her foetus that is suffering from severe cardiac ailments. A bench of justice Dipak Misra and M. Khanwilkar said the procedure of termination of pregnancy should be carried out “forthwith” at the SSKM Hospital in Kolkata.

The direction came after the bench perused the report of the medical board and the SSKM Hospital, which advised the termination of pregnancy on the grounds that the mother would suffer “severe mental injury” if the pregnancy is continued and the child, if born alive, has to undergo multiple surgeries for severe cardiac ailments.

“Keeping in view the report of the medical board, we are inclined to allow the prayer and direct medical termination of pregnancy of petitioner no. 1 (woman),” the bench said.

The woman and her husband had approached the apex court seeking permission to abort her foetus on grounds of abnormalities which could be even fatal to her. They have also challenged the constitutional validity of section 3(2)(b) of the Medical Termination of Pregnancy (MTP) Act which prohibits abortion of a foetus after 20 weeks of pregnancy.

The apex court had earlier took on record the report of a seven-member medical board set up by the West Bengal government on its direction and asked the woman to examine the report on her health and apprise it of her stand.

The court, on 23 June, had ordered setting up of the medical board of seven doctors of the SSKM Hospital to ascertain certain aspects relating to the health of the woman and her 24-week foetus and submit a report.

The couple, in the plea, had attached a report suggesting that the foetus suffered from serious abnormalities, including cardiac issues. This report had said if the birth was allowed, the baby may not survive even the first surgery and, moreover, the foetus could be fatal to the mother as well.

The court had on 21 June sought responses from the Centre and West Bengal government on the plea. The petition has said that the woman had suffered immense mental and physical anguish after coming to know of the abnormalities on the 21st week of her pregnancy.

“This petition challenges the constitutional validity of section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 (MTP) restricted to the ceiling of 20 weeks stipulated therein. “This challenge is to the effect that the 20 week stipulation for a woman to avail of abortion services under section 3(2)(b) may have been reasonable when the section was enacted in 1971 but has ceased to be reasonable today where technology has advanced and it is perfectly safe for a woman to abort even up to the 26th week and thereafter,” it said.

The plea has said the determination of foetal abnormality in many cases can only be done after the 20th week and, by keeping the ceiling artificially low, women who obtain report of serious foetal abnormalities after the 20th week have to suffer excruciating pain and agony because of the deliveries they are forced to go through.

“The ceiling of 20 weeks is therefore arbitrary, harsh, discriminatory and violative of Articles 14 and 21 of the Constitution of India,” it has said. The petition has claimed that during the examination of the foetus on May 25, the abnormalities were detected including, a combination of four impairments in the heart.

“It was during a foetal echocardiography conducted on the petitioner on 25 May, that it was first suspected that the foetus suffered from Tetralogy of Fallot, a combination of four impairments in the heart. Further, a subsequent foetal echocardiography done on May 30, confirmed the same.

“However, petitioner had crossed the 20 weeks mark and medical termination of pregnancy under the MTP Act restricts medical termination of pregnancy beyond 20 weeks,” her plea had said, adding that the denial of her right to an abortion had caused her “extreme anguish” and “forced her to continue her pregnancy while being aware that the foetus may not survive”.

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