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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SUO MOTU PUBLIC INTEREST LITIGATION NO. 1 OF 2016

High Court on its own Motion

.. Petitioner

Versus

The State of Maharashtra

.. Respondent

Appearances

Ms. Manjiri Shah	<i>Advocate (appointed) for the Petitioner</i>
Mr. Arfan Sait	<i>APP for the State</i>

**CORAM : SMT. V.K. TAHILRAMANI &
MRS. MRIDULA BHATKAR, JJ.**

DATE : SEPTEMBER 19, 2016.

ORDER [PER SMT. V.K. TAHILRAMANI, J.] :

1. The background of this PIL, coming before us, is that Ms. A.S. Shende, Judge, City Civil & Sessions Court, Greater Bombay visited Byculla District Prison on 25.4.2016 in view of directions of this Court. Generally women prisoners in Mumbai are kept in District Women Prison, Byculla, Mumbai. During the visit, one inmate / under-trial prisoner namely Shahana gave a requisition for obtaining permission to terminate her pregnancy. The requisition given by Shahana

is part of this PIL. In the requisition, she has stated that she already has a baby who is five months old. The baby was suffering from convulsion / epilepsy, hernia, loose motion as well as fever. Shahana's health was also not good and she was suffering from repeated bleeding. Shahana was four months pregnant. Shahana stated that in all these circumstances, it was very difficult for her to maintain and take care of her five months old baby and herself and in addition, the baby which she was expecting, hence, she requested that she be allowed to medically terminate her pregnancy.

2. Ms. Shende, the learned Judge made inquiry with the Jail Superintendent as well as the Medical Officer attached to the jail. She was informed by the Medical Officer about the health condition of five months old baby of Shahana and pregnancy of Shahana. The medical officer also supported the contention of Shahana in respect of termination of pregnancy. Learned Judge Ms. Shende was further informed

by the Medical Officer attached to jail that for obtaining permission for termination of pregnancy, a proposal has to be sent to the Committee which will take time, therefore, considering the state of health of the baby and the mother and the application given by Shahana, the learned City Civil & Sessions Judge thought it fit to forward all the papers including the application / requisition given by Shahana to the High Court for information and urgent action, by her letter dated 26.4.2016. Along with the letter, Ms. Shende sent requisition of Shahana along with her medical papers along with copy of application dated 21.3.2016 sent by the Superintendent, Mumbai District Women Prison, Byculla, Mumbai addressed to Sir J.J. Group of Hospitals, Mumbai for grant of permission for surgery / medical termination of pregnancy. The concern of the learned Judge was that though the letter dated 21.3.2016 was addressed to the hospital, till 26.4.2016, no medical termination of pregnancy was carried out. In view of that, the learned Judge Ms. Shende requested for urgent directions to be given to Jail

Authorities as well as Dean of J.J. Hospital to take immediate necessary action according to law. In view of this report, the

Registry of this Court then sought following directions :-

A. Registry be permitted to forward the report of City Civil Judge, Mumbai dated 26.4.2016 with annexures to the Dean of Sir JJ Hospital for taking immediate needful action as permissible under law.

AND

B. Registry be permitted to inform Jail Superintendent, Mumbai District Women Prison, Byculla, Mumbai to immediately co-ordinate with the authority of Sir J.J. Hospital and to produce the concerned Under Trial Prisoner at Sir J.J. Hospital for giving immediate medical treatment including MTP as per medical advice and permissible under law.

AND

C. Registry be also permitted to inform the concerned City Civil & Sessions Judge to monitor the action taken by the Jail Authorities and Sir J.J. Hospital for avoiding delay as there is requirement of urgent steps to be taken by the Authorities in respect of Under Trial Prisoners.

OR

D. Your Lordship may issue any other appropriate directions as may be deemed fit.

3. The directions at 'A' to 'C' were approved and the matter was placed before the Hon'ble the then Chief Justice who directed that this matter be treated as Suo Motu PIL and

assigned the matter to this Bench. This is how this matter has come up before us as a number of female prisoners are faced with a similar situation.

4. Meanwhile as per the directions of the Jail Superintendent of Byculla Prison, Mumbai, under-trial prisoner Shahana was taken to the J.J. Hospital, Mumbai on 30.4.2016 for medical termination of her pregnancy. She was directed to be brought before the concerned unit of J.J. Hospital on 3.5.2016. Accordingly, she was brought to J.J. Hospital on 3.5.2016 and on that day itself, her pregnancy was medically terminated.

5. This Court appointed Advocate Ms. Manjiri Shah to assist this Court as amicus curiae in this matter. This Court also directed the learned APP to file an affidavit stating the procedure which is followed in case of Medical Termination of Pregnancy of a female prisoner. Pursuant to the said directions, learned APP

tendered the affidavit of Dr. Khan Sayeed Ahmed, Medical Officer presently working at Byculla District Prison, Mumbai. In the affidavit, it is stated that Chapter XLI, at Page No. 607 of Maharashtra Prisons Manual deals with women prisoners. Rule 5 thereof deals with the facilities to women prisoners. Rule 6 deals with medical aid to women prisoners including cases of pregnancy. Rule 7 deals with pregnancy. Rule 8 deals with births in prison. In the said affidavit, it is further stated that records are being maintained by Prison Authorities and as soon as the prisoner viz. under-trial / convicts are admitted to prisons / jails, entry is made in the register maintained by the Prison Authorities. The prisoners at the time of admission in the prison are medically examined. Female prisoners at the time of admission are examined and history about last menstrual period is taken down. Urine pregnancy test is also conducted. After conducting the test, if a woman prisoner is found to be pregnant, this fact is intimated to the Superintendent of the Jail and thereafter the woman prisoner is taken to the

Government Hospital for further investigation, treatment and for registration of pregnancy in Government Hospital at the earliest.

6. On 29.8.2016, Advocate Ms. Manjiri Shah brought to our notice that an under-trial prisoner Anjali who was lodged at Thane Central Prison as under-trial prisoner F-346/16 was arrested on 25.6.2016 and she wanted to terminate her pregnancy, however, no steps were being taken in this regard. We then directed the Superintendent of Thane Central Prison to record the statement of under-trial prisoner F-346/16 (Anjali) and to produce it in the Court on the next date. Accordingly, the statement of under-trial prisoner F-346/16 was produced before us on the next date i.e on 30.8.2016. In her statement, she clearly stated that she wanted to terminate her pregnancy as it was not possible to continue the same for various reasons stated in her statement. We were also informed that the said prisoner had been referred to the Civil Hospital, Thane for medical tests

including sonography and the report of the tests will be produced on the next date i.e 31.8.2016. On 31.8.2016, the medical reports of under-trial prisoner F-346/16 were produced before us. It showed that she was fifteen weeks pregnant as on 30.8.2016. The Medical Officer of Thane Central Prison who was present before the Court stated that in view of the statement of the said under-trial prisoner, the under-trial prisoner will be immediately referred to Thane Civil Hospital so that pregnancy can be terminated. As 3rd to 5th Sept. were holidays, we kept the matter on 6.9.2016 to find out the progress of the matter. On 6.9.2016, we were informed that prisoner was admitted in hospital on 3.9.2016 for medical termination of pregnancy and on 4.9.16, the pregnancy was medically terminated.

7. If a pregnancy is to be terminated, it is to be done strictly as per the norms provided in the Medical Termination of Pregnancy Act, 1971 (for short, 'The Act') especially Sections 3, 4 and 5. The Medical Termination of Pregnancy

Act, 1971 sets some limitations regarding the circumstances when abortion is permissible, the persons who are competent to perform the procedure and the place where it could be performed. Sections 3 to 5 are relevant for our purpose. Sections 3, 4 and 5 of the Act reads thus:-

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 I. - 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 II.- 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 sub-section (2), account may be taken of 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 [mentally ill person], shall be terminated except with the consent in writing of her guardian.

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

4. Place where pregnancy may be terminated.- No termination of pregnancy shall be made in accordance with this Act at any place other than -

- (a) a hospital established or maintained by Government, or
- (b) a place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with the Chief Medical Officer or District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said committee.

Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.

5. Section 3 and 4 when not to apply -

- (1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

- [2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent,

stand modified.

- (3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.
- (4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1 -For the purpose of this section, the expression "owner" in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2 - For the purpose of this section, so much of the provisions of clause (d) of section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynecology and obstetrics shall not apply.]

8. Sections 3 and 5 of the Act are the only sections which allow termination of pregnancy. Section 5 can be invoked at any time if the registered medical practitioner is of the opinion in good faith that termination of pregnancy is immediately necessary to save the life of the pregnant

woman irrespective of restriction of 12 or 20 weeks as mentioned in Section 3. Thus, Section 5 stands altogether on different footing. We are concerned with Section 3. Whether a woman can make her choice to continue with the pregnancy or to terminate it within a restricted period as contemplated in Section 3 of the Act.

9. In the affidavit of Dr. Khan Sayeed Ahmed, Medical Officer of Byculla District Prison, it is clearly stated that if a prisoner who is pregnant shows her willingness for termination of pregnancy, the norms set out in Section 3 of the Act are strictly followed and if the length of the pregnancy exceeds maximum of 20 weeks as stated in Section 3 of the Act, then Section 5 of the Act is followed.

10. It appears that earlier, there was some misconception that for obtaining permission for medical termination of pregnancy of a prisoner, the proposal has to be sent to a Committee. Referring the case to a Committee would entail

delay in the termination of pregnancy. This delay in terminating the pregnancy could have some serious or unnecessary complications which may affect the pregnant lady adversely. However, on going through the Medical Termination of Pregnancy Act and the Rules, as well as the Prison Manual, we find that it is not necessary to refer the case of a pregnant prisoner who wants to terminate her pregnancy to a Committee. The Committee which is referred to under 2(e) of the Medication Termination of Pregnancy Rules 2003 and to which there is a reference in Section 4 of the Act is a Committee whose job is only to approve the place where a pregnancy can be terminated. A prisoner has to simply indicate that she wants to terminate her pregnancy as its continuance would cause grave injury to her physical and mental health. She would then be referred to the Government hospital and if her case was covered by Sections 3 or 5 of the Act, the pregnancy would be terminated.

11. Section 3(2) states that where the length of pregnancy does not exceed twelve weeks, it can be terminated by a registered medical practitioner if he is of the opinion that the case falls under Section 3(2)(a), (b)(i) or (ii). In case of termination of pregnancy exceeding twelve weeks and not exceeding 20 weeks, then same opinion but of not less than two registered medical practitioners is to be sought. The registered medical practitioners should opine that the continuance of pregnancy either would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health. Section 3(2)(b)(ii) pertains to the risk involved to the health of the child. The present case of medical termination of pregnancy is to be considered under Section 3(2)(b)(i) which allows the termination of pregnancy if there is risk to the life of the pregnant woman or of grave injury to her physical or mental health.

12. Besides physical injury, the legislature has widened the scope of the termination of pregnancy by including "a injury" to mental health of the pregnant woman. Thus, if

continuance of pregnancy is harmful to the mental health of a pregnant woman, then that is a good and legal ground to allow termination if the pregnancy is not exceeding 20 weeks. Explanations 1 and 2 have stated the presumptions in respect of grave injury to mental health of the pregnant woman. The law-makers have considered and taken care of the mental condition of the pregnant woman. In the case of termination of pregnancy, the injury caused either to body or mind is considered. However, mental health can deteriorate if it is forced or unwanted pregnancy. Let us advert to Explanation 1. Under Explanation 1, if a woman is pregnant due to rape, then anguish caused by such pregnancy is to be presumed to constitute a grave injury to mental health of the pregnant woman. As per Explanation 2, if the pregnancy is accidental on account of failure of device or method used by married woman or her husband for the purpose of limiting the number of children, then the said pregnancy if unwanted, it may be presumed to constitute grave injury to mental health of the pregnant woman. These two explanations

stating presumptions do not restrict the scope of the various other circumstances causing grave injury to mental health of woman who is pregnant. We do not want to deal with Explanation 1, as it is very specific about cases of rape and mental anguish to a woman in such cases is obvious. If pregnancy is due to rape, then there is bound to be complete mental break down of a victim. We need to interpret Explanation 2 which is restricted only to a married couple. However, today a man and a woman who are in live-in-relationship, cannot be covered under Explanation 2 whereas Explanation 2 should be read to mean any couple living together like a married couple.

13. A woman irrespective of her marital status can be pregnant either by choice or it can be an unwanted pregnancy. To be pregnant is a natural phenomenon for which woman and man both are responsible. Wanted pregnancy is shared equally, however, when it is an accident or unwanted, then the man may not be there to share the

burden but it may only be the woman on whom the burden falls. Under such circumstances, a question arises why only a woman should suffer. There are social, financial and other aspects immediately attached to the pregnancy of the woman and if pregnancy is unwanted, it can have serious repercussions. It undoubtedly affects her mental health. The law makers have taken care of helpless plight of a woman and have enacted Section 3(2)(b)(i) by incorporating the words "grave injury to her mental health". It is mandatory on the registered medical practitioner while forming opinion of necessity of termination of pregnancy to take into account whether it is injurious to her physical or mental health. While doing so, the woman's actual or reasonable foreseeable environment may be taken into account.

14. A woman's decision to terminate a pregnancy is not a frivolous one. Abortion is often the only way out of a very difficult situation for a woman. An abortion is a carefully considered decision taken by a woman who fears that the welfare of the child she already has, and of other members of the household that

she is obliged to care for with limited financial and other resources, may be compromised by the birth of another child. These are decisions taken by responsible women who have few other options. They are women who would ideally have preferred to prevent an unwanted pregnancy, but were unable to do so. If a woman does not want to continue with the pregnancy, then forcing her to do so represents a violation of the woman's bodily integrity and aggravates her mental trauma which would be deleterious to her mental health.

15. According to international human rights law, a person is vested with human rights only at birth; an unborn foetus is not an entity with human rights. The pregnancy takes place within the body of a woman and has profound effects on her health, mental well-being and life. Thus, how she wants to deal with this pregnancy must be a decision she and she alone can make. The right to control their own body and fertility and motherhood choices should be left to the women alone. Let us not lose sight of the basic right of

women: the right to autonomy and to decide what to do with their own bodies, including whether or not to get pregnant and stay pregnant.

16. Women in different situations have to go for termination of pregnancy. She may be a working woman or homemaker or she may be a prisoner, however, they all form one common category that they are pregnant women. They all have the same rights in relation to termination of pregnancy. As stated earlier, as per Prison Manual, for prisoners, there is provision for pregnant prisoners. Chapter XLI is on Women Prisoners. Rule 7 in said Chapter pertains to "Pregnancy of Women Prisoners, which is as follows:

"When a woman prisoner (convict or undertrial) is found or suspected to be pregnant at the time of her admission or at any time thereafter, the Medical Officer shall report the fact to the Superintendent. As soon as possible arrangements shall be made to get such prisoner medically examined at the hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery etc. After ascertaining necessary particulars, a report shall be sent to the Dy. Inspector of General of Prisons, stating the date of her admission, term of sentence, the date of release, duration of pregnancy, probable

date of delivery etc.

Rule 8 states about Births in prison. Rule 9 is in respect of children of women prisoners. However there is no provision specifically relating to termination of pregnancy of women prisoners either convict or under-trial.

17. When a woman prisoner is admitted in prison, she is medically examined, history of her last menstrual period is taken and urine pregnancy test is carried out. One register is maintained in which noting on these aspects is made including if she is pregnant and if pregnant, procedure stated in paragraph 5 above is followed. However, we understand that sometimes a convict or under-trial women prisoner may not be aware of her pregnancy and she may be unable to disclose the fact of pregnancy at the time of admission in the prison. Hence, medical check up of all the women prisoners who are of reproductive age should be done at least once every month for two months from their admission in jail to ascertain whether the woman is pregnant. Moreover, a woman prisoner if found pregnant should be informed by

the Medical Officer attached to the prison that she can get the pregnancy terminated if it is such that it falls under Section 3(2)(a), (b)(i) or (ii). This onus is cast on the medical officer. If she wants to terminate the pregnancy, she should be sent to the civil hospital on an urgent basis to help her to terminate the pregnancy.

18. Rule 1 of Section II of Chapter " Non Statutory Rules" falling in Chapter IV relating to Maharashtra Prisons (Prison Hospital) Rules 1970 reads as under:-

1. For all administrative purposes, the Medical Officer is subordinate to the Superintendent of the prison except as regards the medical treatment of the sick. He shall have a free hand in the medical treatment of the inmates of the Hospital whether sick or convalescent or under observation, subject to Jail discipline. He is under the general control of the I.G. of Prisons.

Though pregnancy is not a sickness, the case of pregnant prisoner will fall in "Under Observation" category, hence, the Medical Officer will have the right to decide whether the prisoner requires termination of pregnancy and send her to Civil Hospital on urgent basis to help her to

terminate the pregnancy.

19. If a pregnant prisoner wants to terminate her pregnancy, then provision of section 3(2)(b)(i) or (ii) are applicable. She being a prisoner should not be treated differently than any other pregnant women. We, with all responsibility state that Section 3 of Medical Termination of Pregnancy Act bestows a very precious right to a pregnant woman to say no to motherhood. It is the right of a woman to be a mother so also it is the right of a woman not be a mother and her wish has to be respected. This right emerges from her human right to live with dignity as a human being in the society and protected as a fundamental right under Article 21 of the Constitution of India with reasonable restrictions as contemplated under the Act. Human rights are natural rights and thus a woman has a natural right in relation to her body which includes her willingness to be a mother or her unwillingness to be a mother.

20. Section 3(2)(b)(i) is an extension of the human right of a woman and this needs to be protected. Woman owns her body and has right over it. Abortion is always a difficult and careful decision and woman alone should be the choice maker. A child when born and takes first breath, is a human entity and thus, unborn foetus cannot be put on a higher pedestal than the right of a living woman. Thus, fundamental right under Article 21 of Constitution of India protects life and personal liberty which covers women. This right of exercise of reproductive choice though is restricted by Medical Termination of Pregnancy Act, 1971, it also recognizes and protects her right to say no to the pregnancy if her mental or physical health is at stake. Thus, it is a regulated procedure.

21. We would like to refer to the decision of the Supreme Court in the case of **Suchita Srivastava and Anr. vs. Chandigarh Administration**¹ where it is observed that there is no doubt that a woman's right to make reproductive

¹ (2009) 9 SCC 1

choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choice 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.”

22. Advocate Ms. Manjiri Shah stated that she had a discussion with the Head of the Department of Gynaecology in J.J. Hospital where women prisoners in Mumbai are referred in cases of pregnancy. The Out Patient Department (O.P.D.) timings are 8.00 a.m. to 12.00 p.m and it was found that generally women prisoners were brought to the hospital at about 11.30 a.m. to 12.00 p.m., hence, on that day, though the woman prisoner is examined, it is not possible to carry out all the tests which are necessary in relation to the pregnancy. Therefore, it was felt that it would be advisable that the woman prisoner who is pregnant reaches the hospital at about 8.00 or 8.30 a.m. and after examination,

the tests can be prescribed and carried out on the same day by the afternoon and the tests results would be received by the evening, hence, by the time, the woman prisoner went back to the prison, the entire tests and reports are ready due to which the next step can be decided and the next date of operation / medical procedure can be decided on that day itself.

23. In Mumbai, when the prisoners are to be taken to the Court or hospital, it is the job of L.A. Squad to escort them, however, it is seen that except in cases of dire medical emergency, the L.A. Squad gives preference to prisoners who are to be produced in the Court and sometimes, sufficient staff is not available to take the prisoners to the hospital. In case where there is no emergency, then that prisoner is not taken to the hospital on that day and may be taken to hospital after a day or two. In case of pregnant prisoner, if the pregnancy has to be terminated, normally it has to be done in 12 weeks as set out in Section 3(2)(a) or

20 weeks as set out in 3(2)(b) of the Act provided it falls under Section 3(2)(b)(i) or (ii). In cases of pregnancy, every day is important on account of growth of foetus. Once a woman prisoner is found to be pregnant and she indicates that she wants to terminate the pregnancy, she should be immediately referred to the hospital and it should be ensured that her pregnancy is terminated. The Jail Administration and Escort Division to ensure that as far as possible such lady prisoner reaches the hospital by 8.30 a.m. A female prisoner cannot have access to facility of medical termination of pregnancy if her case falls under Section 3 or 5 of the Act, therefore not providing her with the facility amounts to forcing a woman to continue with a pregnancy she does not want which by itself constitutes a grave injury to her mental health and as such would fall under Section 3(2)(b)(i) of the Act. Hence, such a pregnancy can be lawfully terminated.

24. We are further informed that in the prison, OPD case papers are maintained in loose format. In such case, there is risk of the case papers getting mixed up or lost. In our opinion, it would be proper that in addition, an 'OPD Register' is maintained in the jail in which brief details of the patient are given. The name of the prisoner, medical problem and follow up should be stated briefly in the register. This OPD Register be produced for inspection to the Sessions Judge / Magistrate who is deputed to visit the jail.

25. In view of the above, directions are given as under:-

1. (i). Upon admission into a jail / prison, every woman prisoner of child bearing age shall undergo a Urine Pregnancy Test (UPT) within 5 days of being admitted to jail.
- (ii) Every woman prisoner of child bearing age shall undergo a second UPT approximately 30 days after admission into jail / prison in case the UPT under 1(i) is not positive.

2. In case, the urine pregnancy test is positive, the Medical Officer shall inform the prisoner that she can get the pregnancy terminated if her case falls under Section 3 or 5 of The Medical Termination of Pregnancy Act.

3. If the prisoner indicates she wants to terminate the pregnancy, her statement should be recorded by the Jail Authority or Medical Officer to that effect and the record of the statement be maintained. A copy of that statement be forwarded with the prisoner when she is referred to the hospital.

4. If the prisoner indicates that she wants to terminate the pregnancy, the Medical Officer and Jail Superintendent shall ensure that woman prisoner is sent on urgent basis to the nearest Government Hospital to help her terminate the pregnancy. It is made clear that they shall not wait for any order of the Court if the case falls under Sections 3 or 5 of the Act.

5. Every prison shall maintain "Prison OPD Register" where details of every prisoner examined either by

the prison medical officer / doctor or visiting doctor are entered. Such register shall contain in brief (i) the name of the prisoner; (ii) convict or undertrial number, (iii) the medical complaint of the prisoner; (iv) the advice of the doctor (including referral of the patient to the nearest government Hospital) and (v) the date for follow up when necessary. The Prison OPD Register be produced for inspection of the Sessions Judge / Magistrate deputed to visit the prison.

6. The Jail Superintendent and escort division to ensure that such prisoner as well as other prisoners needing medical treatment in a hospital are sent to the hospital as far as possible by 8:30 a.m. i.e when O.P.D opens.

7. After discharge from the said hospital, the prison authorities shall take due care of the woman prisoner until she fully recovers from the medical termination of her pregnancy.

26. Copy of this order be forwarded for information and implementation to the following:-

- (1) Principal Secretary (Home Department), Government of Maharashtra;
- (2) Principal Secretary (Home Department - Prisons), Government of Maharashtra;
- (3) Principal Secretary (Women and Health), Government of Maharashtra;
- (4) Principal Secretary (Health), Government of Maharashtra;
- (5) Principal District & Sessions Judge;
- (6) Chief Metropolitan Magistrate;
- (7) Inspector General of Prisons;
- (8) Addl. Director General (Prisons), Pune;
- (9) Superintendents of all prisons in Maharashtra;
- (10) Medical Officers of Prisons in Maharashtra.

With these directions, the P.I.L. is disposed of.

26. Before we part with this case, we wish to place on record our appreciation for the valuable assistance rendered by Advocate Ms. Manjiri Shah and Learned APP Mr. Arfan Sait.

[MRS. MRIDULA BHATKAR, J]

[SMT. V.K. TAHILRAMANI, J.]