

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP(C) 2387/2025

XYZ (Minor) Th. Her Mother

...Petitioner/Appellant(s)

Through: Mr. Omais Kawos, Advocate

Vs.

**UNION TERRITORY OF J AND K
(HEALTH AND MEDICAL
EDUCATION) AND ORS**

...Respondent(s)

Through: Mr. Ilyas Laway, GA

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER

30.09.2025

1. Through the medium of instant petition filed under the provisions of Article 226 of the Constitution of India, a helpless minor girl represented by her mother has sought the issuance of the appropriate writ/direction upon the respondents for commanding them to constitute a Medical Board for her examination and consequent termination of her pregnancy within a shortest possible time without any sort of delay.
2. The case of the petitioner is that she is a domicile of the Union Territory of Jammu and Kashmir hailing from a village of Boniyar, Baramulla and a citizen of India, thus, entitled to seek the enforcement of her rights under law. That she has been raped by one Firdous Ahmad ("accused") R/o Uri, as a result of which,

she is pregnant. That her father approached the Station House Officer, Boniyar on 07-09-2025 with a written application mentioning therein that his daughter (minor) had gone out in the market but did not return and is missing. That he has reliably learnt that accused namely Firdous Ahmad has been enticing her and as a consequence subjecting her to sexual assault and abuse. That case FIR No. 56 of 2025 came to be registered on the same day i.e., on 07-09-2025 with the said Police Station Boniyar under Section 137 (2) BNS. That the Police Station concerned on 08-09-2025 took her to undergo a medical checkup at Government Medical College, Baramulla where, after her examination, it got revealed that she is pregnant by 11 weeks and 1 day as on 08-09-2025. That she being a minor, her life is at risk and needs immediate termination of her pregnancy. That her father also approached the respondent No. 4, i.e., Chief Medical Officer, District Baramulla, with the request for her medical termination of pregnancy but unfortunately the respondents have failed to discharge their statutory duty under the provisions of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the 'Act' for short). That time is of great essence in respect of her case for termination of pregnancy as by every passing day with the fetus getting older, the chances of risk to her life increase. That any delay being caused in terminating her pregnancy is detrimental to her health and well-being. That it is well settled that when any victim especially a minor is carrying a pregnancy as a result of sexual abuse, the Government authorities

are under an obligation to take immediate steps for the termination of her pregnancy.

3. Vide order dated 26-09-2025 of this Court, the respondent No. 3, i.e., Principal, Government Medical College, Baramulla was directed to constitute an appropriate Medical Board for examining the petitioner and to submit a report about the feasibility/possibility of terminating her pregnancy through medical intervention.
4. The respondent No. 3, i.e., Principal, Government Medical College, Baramulla has submitted his report to the Registry vide his No. GMC/BLA/2025/3776-79.

The report of the Medical Board that came to be constituted pursuant to the aforementioned order of this Court reveals that the minor victim was examined on 29-09-2025 in presence of ASI Sh. Mushtaq Ahmad (Belt No. 47/B, EXK No. 901772, Police Station Boniyar) and Ms. Shahida Amin, Supervisor, CHD. That victim was evaluated for both physical and mental health and underwent baseline investigations. That on the basis of the examination and review of relevant investigations, including USG findings, the Board is of the considered opinion that:-

- (i) The pregnancy corresponds to 14-15 weeks of gestation.
- (ii) The pregnancy can be terminated in accordance with the MTP Act, 1971 and rules thereunder.

- (iii) The victim is found to be mentally sound and physically fit to undergo the procedure of termination.

The Board has accordingly recommended that the pregnancy of the petitioner may be terminated as per the applicable legal and medical protocols.

5. The learned State Counsel Mr. Ilyas Nazir Laway, GA, submitted that necessary orders warranted under law may be passed in the matter in view of the report of the Medical Board that came to be constituted in pursuance to the order of this Court dated 26-09-2025. The father of the minor petitioner (name withheld) appeared before the Court on today and submitted that not only his minor daughter, but his entire family is labouring under acute mental trauma on account of the incident and as such they want the immediate termination of her pregnancy. He also intimated that the age of the victim is 14 years and 8 months. The perusal of the Aadhar Card of the victim reveals her date of birth as 15-01-2011, meaning thereby that her age as on date is 14 years, 8 months and 15 days.

6. It is felt appropriate to reproduce the relevant Provisions of the Section 3 of the Act and the Rule 3-B of the Rules of 2003, which deal with the law on the subject as under:-

“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 twenty weeks, if such medical practitioner is, or
- (b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the 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 any serious physical or mental abnormality.

Explanation 1.—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.—For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2-A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2-B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2-C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2-D) The Medical Board shall consist of the following, namely—

- (a) a Gynecologist;

- (b) a Paediatrician;
- (c) a Radiologist or Sonologist; and
- (d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.

(3) In determining whether the continuance of 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 reasonably 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.

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

3-B. Women eligible for termination of pregnancy up to twenty-four weeks.—The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub-section (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely—

- (a) survivors of sexual assault or rape or incest;
- (b) minors;
- (c) change of marital status during the ongoing pregnancy (widowhood and divorce);
- (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];
- (e) mentally ill women including mental retardation;
- (f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and
- (g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.”

7. As per the report of the competent Medical Board the pregnancy of the minor petitioner as on today is of 14-15 weeks of gestation. Thus, as per the relevant provisions of the Act and the rules framed thereunder and as reproduced hereinbefore, there is no statutory bar for terminating the pregnancy of the minor petitioner. The Board has *inter alia* reported that the victim has been found to be mentally sound and physically fit to undergo the procedure of the termination.

8. The continuance of the pregnancy by the minor petitioner is likely to cause grave injury to her physical and mental health.

As per the explanation 2 appended to the Section 3(2), wherein any pregnancy is alleged by the pregnant woman to have been caused by the rape, as in the instant case, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

9. The Standing Medical Board for the purposes of the Act, which is supposed to have been constituted also for the District Baramulla, in terms of the provisions of Sub Section 2 (c) of Section 6 was expected to address the application filed by the father of the victim, by the examination of the latter and the termination of her pregnancy as per the Medical Termination of Pregnancy Rules, 2003 framed under the Act. Section 3-A of the Rules of 2003 lays down the powers and functions of the Medical Board and it is felt appropriate to reproduce the provisions of the said rule for the sake of convenience:-

“3A. Powers and functions of Medical Board. - For the purposes of section 3, -

(a) the powers of the Medical Board shall be the following, namely: -

(i) to allow or deny termination of pregnancy beyond twenty-four weeks of gestation period under sub-section (2B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped;

(ii) co-opt other specialists in the Board and ask for any additional investigations if required, for deciding on the termination of pregnancy;

(b) the functions of the Medical Board shall be the following, namely : -

(i) to examine the woman and her reports, who may approach for medical termination of pregnancy under subsection (2B) of section 3;

(ii) provide the opinion of Medical Board in Form D with regard to the termination of pregnancy or rejection of request for termination within three days of receiving the request for medical termination of pregnancy under sub-section (2B) of section 3;

(iii) to ensure that the termination procedure, when advised by the Medical Board, is carried out with all safety precautions along with appropriate counselling within five days of the receipt of the request for medical termination of pregnancy under sub-section (2B) of section 3”.

10. As hereinbefore mentioned, the father of the minor petitioner has submitted to the Court that he consents for the termination of the pregnancy of his daughter. The family of the victim is reported to have kept the victim at a shelter home run by the Government Social Welfare Department so as to avoid the social stigma, apathy and abhorrence. In a conservative rural society, the chastity of a girl is of very importance in connection with her marriage and the society looks up with great hatred and abhorrence to an unchaste girl, notwithstanding the fact of her becoming so as a result of aforesaid assault and with or without her consent being minor.

11. In the attending facts and circumstances of the case, this Court feels compelled to invoke its extraordinary jurisdiction vested under the Article 226 of the Constitution of India and to permit

the termination of the pregnancy of the victim through the applicable and approved medical procedure.

The Hon'ble Apex Court and various other High Courts of the country including this Court have been allowing the termination of the pregnancy caused by rape even beyond the period of 24 weeks stipulated under the provisions of Section 3 of the Act.

12. In its opinion this Court feels fortified with the order passed by the Hon'ble Apex Court in *case titled A (Mother of x) vs. State of Maharashtra &anr, SLPL (C) No. 9163/2024 decided on 24.04.2024*, in which the Hon'ble Court was pleased to express its inclination to exercise its powers under Article 142 of the Constitution for permitting termination of pregnancy of a minor rape victim who had a pregnancy of 28 weeks. It is felt apt to reproduce the paras 9 to 11 of the authoritative order for the sake of convenience:-

“9. In view of the urgency of the situation, we are inclined, while reserving judgment, to issue the following directions. We have duly borne in mind the provisions of the Medical Termination of Pregnancy Act 1971. This Court is inclined to exercise its powers under Article 142 of the constitution. In a similar case which is reported as **X v Union of India and Another**³, this Court had adverted to its constitutional jurisdiction under Article 142.

10 The following circumstances have been borne in mind, at this stage:

- (i) The medical termination of pregnancy is sought in respect of a minor who is 14 years old;
- (ii) The pregnancy is alleged to be an emanation from a sexual assault which has resulted in the registration of a First Information Report. The FIR was recorded on 20 March 2024 beyond the period of 24 weeks envisaged in the MTP Act;
- (iii) The minor was unaware of the fact that she was pregnant until a very late stage;

(iv) The Medical Board at Sion Hospital has clearly opined that the continuation of the pregnancy against the will of the minor “may impact negatively on physical and mental well being of the minor who is barely 14 years old”; and

(v) While a certain degree of risk is involved in every procedure for medical termination, the Medical Board has opined that the threat to life of the patient if termination of pregnancy is carried out at this stage is not higher than the risk of delivery at full term of pregnancy.

11. We will further elaborate on the guiding parameters in a reasoned order which will be delivered separately. However, bearing in mind the exigencies of the situation, the welfare of the minor, which is of paramount importance and her safety, we pass the following order:

(i) The judgment and order of the High Court of Judicature at Bombay dated 4 April 2024 shall stand set aside for reasons to follow;

(ii) The Dean at Sion Hospital is requested to immediately constitute a team for undertaking the medical termination of pregnancy of the minor in respect of whom the Medical Board has submitted its report dated 20 April 2024;

(iii) Arrangements shall be made by the State for transportation of the minor to the Hospital and for her return home after the completion of the procedure;

(iv) The State has agreed to bear all the expenses in connection with the procedure and all medical expenses required in the interest of the safety and welfare of the minor; and

(v) Post-termination if any further medical care is required, this may be ensured in the interest of the minor.”

13. This Court also feels supplemented in its opinion with the authoritative law laid down by the Hon’ble Supreme Court of India in *xyz vs. State of Gujrat and ors.* (*Cr. Appeal No.....2023 arising out of SIP (Crl) Dy No. 33790/2023*) decided on August 21st 2023, in which the Hon’ble Court permitted the termination of pregnancy of a victim of rape at the stage of 27-28 weeks of her pregnancy. It is felt apt to reproduce

the relevant paras (i.e 13 to 21) of the authoritative judgment of the Hon'ble Apex Court for the sake of convenience:-

“13. In Indian society, within the institution of marriage, generally pregnancy is a reason for joy and celebration and of great expectation, not only for the couple but also for their families and friends. By contrast, pregnancy outside marriage, in most cases, is injurious, particularly, after a sexual assault/abuse and is a cause for stress and trauma affecting both the physical and mental health of the pregnant woman the victim. Sexual assault or abuse of a woman is itself distressing and sexual abuse resulting in pregnancy compounds the injury. This is because such a pregnancy is not a voluntary or mindful pregnancy.

14. In *Suchita Srivastava v. State (UT of Chandigarh)*, (2009) 9 SCC 1, this Court expressed that the right of a woman to have reproductive choice is an insegregable part of her personal liberty, as envisaged under Article 21 of the Constitution. She has a sacrosanct right to her bodily integrity.

15. In *Sarmishtha Chakraborty and Another v. Union of India Secretary and Others*, (2018) 13 SCC 339; this Court, considered the medical report and held that unless the pregnancy was terminated, the life of the mother and that of the baby to be borne would be in great danger and, therefore, permitted termination of the pregnancy.

16. A three-Judge Bench of this Court in *Murugan Nayakkar v. Union of India & Ors.*, Writ Petition (Civil) No.749 of 2017, disposed of on 06.09.2017, while considering the case of a minor petitionersurvivor of alleged rape and sexual abuse, held that it would be appropriate that termination of pregnancy be allowed in accordance with the opinion of the Medical Board constituted by an order of this Court, to the effect that termination of pregnancy should be carried out. A direction was issued that on a very next date i.e. 07.09.2017, the petitioner was to be present so that on 08.09.2017 the termination of pregnancy could be carried out.

17. More recently, in the case of *X vs. The Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Ors.*, AIR 2022 SC 4917; this Court, in another three-judge Bench led by Dr. D.Y. Chandrachud, J. (as the learned Chief Justice then was) observed that a woman can become pregnant by choice irrespective of her

marital status. In case the pregnancy is warranted, it is equally shared by both the partners. However, in case of an unwanted or incidental pregnancy, the burden invariably falls on the pregnant woman affecting her mental and physical health. Article 21 of the Constitution recognizes and protects the right of a woman to undergo termination of pregnancy if her mental or physical health is at stake. Importantly, it is the woman alone who has the right over her body and is the ultimate decision-maker on the question of whether she wants to undergo an abortion.

18. In the context of abortion, the right of dignity entails recognizing the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the State. The right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being also injures the dignity of women.

19. The whole object of preferring a Writ Petition under Article 226 of the Constitution of India is to engage with the extraordinary discretionary jurisdiction of the High Court in exercise of its constitutional power. Such a power is vested with the constitutional courts and discretion has to be exercised judiciously and having regard to the facts of the case and by taking into consideration the relevant facts while leaving out irrelevant considerations and not vice versa.

20. In view of the above discussion and on perusal of the latest medical report we permit the appellant to terminate her pregnancy. We direct the appellant to remain present before the KMCRI Hospital, Bharuch, Gujarat during the course of the day, today (21.08.2023) or 09:00 A.M. tomorrow (22.08.2023) as she deems fit so that the termination of pregnancy could be carried out preferably during the course of the day today (21.08.2023) or tomorrow i.e. 22.08.2023.

21. Subsequently to the medical procedure to be carried out either today or tomorrow, in the event, the fetus is found to be alive, the hospital shall give all necessary medical assistance including incubation either in that hospital or any other hospital where incubation facility is available in order to ensure that the fetus survives. Further, in case the fetus survives, then State shall take steps

for ensuring that the child could be adopted in accordance with law.”

14. The fundamental right to life of a person available under Article 21 of the Constitution of India guarantees a life which is free from mental trauma and worries. It is the obligation of the state to take all steps for ensuring that a citizen within his own standard of his life lives free from worries. Not only the minor victim but her entire family and all her nears and dears are supposed to be labouring under trauma. The State through its concerned instrumentalities viz Health and Medical Education as well as Social Welfare Departments is always under a legal obligation to address to the issues of the sensitive nature as involved in the instant petition under the provisions of the Medical Termination of Pregnancy Act and the Rules framed thereunder when a case is covered under the provisions of the aforesaid legislation. The petitioner has approached this Court invoking its extraordinary powers vested under Article 226 of the Constitution for redressal of her agony.

15. In the backdrop, the petition is allowed and the minor petitioner being represented through her mother as her next friend is permitted to undergo medical termination of her pregnancy through a recognized and approved medical procedure in connection whereof the following directions are passed:-

- (i) Principal, Government Medical College, Baramulla, in coordination with Chief Medical Officer, Baramulla (ex-officio Chairman/Member of the Standing Medical Board

under MTP Act) shall take necessary steps to ensure that the termination procedure as advised by the Medical Board is carried out in terms of the provisions of the MTP Act and the Rules of 2003, framed thereunder with all safety precautions along with appropriate counseling within 3 days of the receipt of copy of this order.

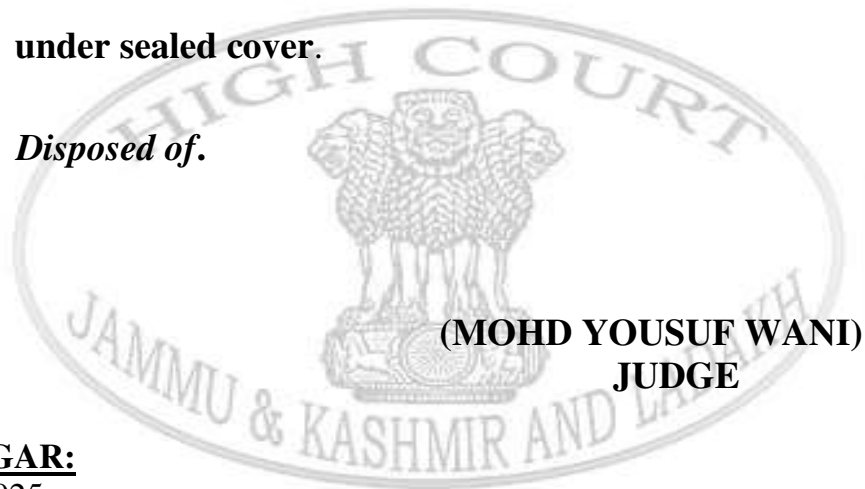
- (ii) The petitioner victim shall be provided all the prescribed medicines available in the hospital free of cost at Government expenses. The other required medicines/utensils shall be arranged by the Social Welfare Department of the District Baramulla.
- (iii) **Before performing the procedure of the termination of pregnancy, a written consent shall be obtained for the same from the father/guardian of the victim.**
- (iv) SHO-PS Boniyar/IO of the case FIR No. 56 of 2025 of the said Police Station shall be informed, who shall remain present at the time of the procedure in connection with the DNA sampling.
- (v) Chairman, Tehsil Legal Services Committee (Munsiff, Judicial Magistrate) Boniyar, shall take steps for payment of compensation to victim under the relevant victim compensation scheme.
- (vi) The Social Welfare Department shall take care of the victim post termination of her pregnancy, if any, advised

by the attending medical practitioners or as requested by the family of the victim.

16. Copies of this order shall be forwarded for compliance to the Principal, Government Medical College, Baramulla, Chief Medical Officer, Baramulla and District Social Welfare Officer, Baramulla, **under sealed covers.**

17. A copy of the order shall also be forwarded for information and necessary action to the Chairman, Tehsil Legal Services Committee (Munsiff, Judicial Magistrate) Boniyar, Baramulla **under sealed cover.**

18. *Disposed of.*



SRINAGAR:

30.09.2025

Akfil Dev

Whether the order is speaking/reportable? Yes