

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5274 OF 2026

ABC
(Name, Age and Address withheld for privacy)

...Petitioner

V/s.

State of Maharashtra

...Respondents

...

Mr. Ritesh M. Thobde, i/b. Mr. Changdev Shingade, with Mr. Mervin Bardeskar, with Mr. Darshan Singh Rajpurohit, Ms. Divyashree Dhumal & Mr. Pushkraj Deshmukh for the Petitioner.
Ms. Tejas J. Kapre, AGP for the Respondents-State.

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Coram : ABHAY AHUJA &
NEERAJ P. DHOTE, JJ.

Date : 12th October, 2026

JUDGMENT : (PER NEERAJ P. DHOTE, J.)

1. Considering the reliefs prayed in this writ petition, in the nature of directions for termination of the pregnancy under the provisions of the Medical Termination of Pregnancy Act, 1971 (for short, '**the MTP Act**'), the petition is finally heard at the admission stage by consent of both the sides.

2. The Petitioner is 26 year old woman. She is carrying pregnancy of 27+ weeks. The Petitioner and her husband are carriers of *Beta Thalassaemia trait (heterozygous state)*. Upon medical advice, an

amniocentesis and comprehensive genetic mutation analysis were conducted on the foetus in the Anderson Diagnostic & Labs, which diagnosed the foetus with *Beta Thalassaemia Major* in homozygous state (c.92+5G>C splice variant). The Special Medical Board at the Government Medical College, Solapur evaluated the Petitioner and confirmed the foetus diagnosis of *Beta Thalassaemia Major* and recorded that the Petitioner is physically fit for termination. The Petitioner could not seek routine medical termination of her pregnancy as the gestational period had exceeded 24 weeks ceiling, stipulated under Section 3(2)(b) of the MTP Act.

3. When this petition was first listed on 9th October 2026, this Court directed that the Board be constituted immediately by the Dean of the S.C.S.M. General Hospital, Solapur to examine the Petitioner and submit report to this Court by today. The learned AGP appearing for the Respondents tendered across the Bar the copy of the report given by the Medical Board.

4. It is submitted by learned counsel for the Petitioner that permitting the Petitioner to continue with the pregnancy of the fetus diagnosed with profound, incurable genetic disorder, which causes profound physical and mental anguish would be violative of the constitutional right to health, life and personal liberty of the Petitioner. Continuation of the pregnancy

would endanger the Petitioner's mental, emotional and physical well-being, subjecting her to immense psychological trauma that far exceeds any justification of rigid statutory time limit. It is submitted that the Petitioner is financially weak to manage the lifelong, expensive medical care, recurring blood transfusions and specialized treatments which would require for the child born with *Beta Thalassemia Major*. It is submitted that the petition, therefore, be allowed. Learned counsel for Petitioner cited the decisions of this Court in *ABC v. State of Maharashtra*¹ and in *XYZ & Anr. v. Union of India & Anr.*²

5. It is submitted by learned AGP that, this Court may pass appropriate order in view of the report submitted by the Board constituted pursuant to the orders of this Court.

6. Section 3 of the MTP Act, which is relevant in the present matter, is reproduced below:

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

¹ Writ Petition (St.) No.1357 of 2023 dtd. 20th January 2023.

² Writ Petition No.3992 of 2026 dtd. 27th March 2026.

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.

(2A) 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.

(2B) 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.

(2C) 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.

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

namely:—

- (a) a Gynaecologist ;*
- (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 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.

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

7. In **XYZ & Anr.** (*supra*), the petition was for medical termination of the pregnancy, wherein the pregnancy was approximately 33 to 34 weeks and the report of the Medical Board therein noted that if the child was born alive, it may suffer from significant physical and mental abnormalities, resulting in severe handicap and long-term morbidity. This Court allowed the said writ petition. This Court considered the relevant rule from the Medical Termination of Pregnancy Rules, 2003, and the relevant paragraph numbers 9, 10 and 11 are reproduced below:

"9. When this provision is read with Rule 3-B of the Rules of 2003, which has set out the categories of women who are eligible for termination of pregnancy upto 24 weeks, we find inclusion of a

particular contingency which reads thus :-

“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:-

(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”

10. Reading of Rule 3A which has set out the powers and functions of medical board, where the powers are specifically conferred and this involve a fatal malformation, we must also take note of clause (i) of sub-section (a) of Rule 3A which reads thus :-

“3-A. 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 (2-B) 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;”

11. *A conjoint reading of the aforesaid provisions would make it evidently clear that when there is substantial risk, that child to be born, would suffer from any physical or mental disability, the pregnancy may be terminated by a registered medical practitioner. The length of pregnancy is irrelevant when such termination is necessitated by the diagnosis of any of the substantial fetal abnormalities diagnosed by a Medical Board.*

The report placed before us, when examined in this background, has clearly noted that the Obstetrics Ultrasonography include the findings suggestive of non lethal skeletal dysplasia. However, it is also clarified that though the anomaly is categorized as non-lethal, there exists a substantial risk, that if the child is born alive, it may suffer from significant physical and mental abnormalities, resulting in severe handicap and long term morbidity.

Another factor which is significant to note when the Board has permitted termination of the pregnancy, despite the gestation age being approximately 33 to 34 weeks, is the observation that at this gestational age, there is significant likelihood that the fetus, if delivered now, may be born alive and may require Intensive Neonatal Care.”

8. In **ABC** (*supra*), the subject-matter was similar, i.e., prayer for medical termination of pregnancy, wherein the gestation period was 29 weeks. The medical report therein showed that, the foetus suffered from multiple anomalies. This Court allowed the writ petition.

9. This Court considered the observations in *X v. The Principal Secretary*.³ The said observations are reproduced below:

20. *In X v Principal Secretary, the Supreme Court elucidated the Constitutional values that it said animated the proper interpretation of the MTP Act. We find these in paragraphs 98 to 102 of the judgment:*

“98. Certain constitutional values, such as the right to reproductive autonomy, the right to live a dignified life, the right to equality, and the right to privacy have animated our interpretation of the MTP Act and the MTP Rules. A brief discussion of these values is undertaken below.

i. The right to reproductive autonomy

99. The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from coercion or violence.

100. Zakiya Luna has, in a 2020 publication, argued that reproduction is both biological and political. According to Luna, it is biological since physical bodies reproduce, and it is political since the decision on whether to reproduce or not is not solely a private matter. This decision is intimately linked to wider political, social, and economic structures. A woman’s role and status in family, and society generally, is often tied to childbearing and ensuring the continuation of successive generations.

101. To this, we may add that a woman is often enmeshed in

3 2022 SCC OnLine SC 1321.

complex notions of family, community, religion, and caste. Such external societal factors affect the way a woman exercises autonomy and control over her body, particularly in matters relating to reproductive decisions. Societal factors often find reinforcement by way of legal barriers restricting a woman's right to access abortion. The decision to have or not to have an abortion is borne out of complicated life circumstances, which only the woman can choose on her own terms without external interference or influence. Reproductive autonomy requires that every pregnant woman has the intrinsic right to choose to undergo or not to undergo abortion without any consent or authorization from a third party.

102. The right to reproductive autonomy is closely linked with the right to bodily autonomy. As the term itself suggests, bodily autonomy is the right to take decisions about one's body. The consequences of an unwanted pregnancy on a woman's body as well as her mind cannot be understated. The foetus relies on the pregnant woman's body for sustenance and nourishment until it is born. The biological process of pregnancy transforms the woman's body to permit this. The woman may experience swelling, body ache, contractions, morning sickness, and restricted mobility, to name a few of a host of side effects. Further, complications may arise which pose a risk to the life of the woman. A mere description of the side effects of a pregnancy cannot possibly do justice to the visceral image of forcing a woman to continue with an unwanted pregnancy. Therefore, the decision to carry the pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman."

(Emphasis added)

21. Paragraphs 105 and 107 say this:

"105. In Suchita Srivastava (supra) this Court explicitly recognized the concept of reproductive autonomy. In this case, the victim, an orphaned woman of around 19 years, with mental retardation, became pregnant as a result of a rape that took place while she was an inmate at a government-run welfare institution. After the discovery of her pregnancy, the Chandigarh Administration approached the High Court of Punjab and Haryana seeking approval for the

termination of her pregnancy. The High Court constituted an expert body to conduct an enquiry into the facts. The expert body recorded that the victim had expressed her willingness to bear the child and accordingly recommended the continuation of the pregnancy. However, the High Court directed the termination of the pregnancy on the ground that the victim was mentally incapable of making an informed decision on her own.

107. *Suchita Srivastava (supra)* rightly recognised that the right of women to make reproductive choices is a dimension of personal liberty under Article 21. It held that reproductive rights include a woman's entitlement to carry the pregnancy to full term, give birth, and raise children. More importantly, it also recognised that the right to reproductive choice also includes the right not to procreate. In doing so, it situated the reproductive rights of women within the core of constitutional rights."

(Emphasis added)

22. Then the Supreme Court went on to consider the facets of decisional autonomy in paragraphs 108, 109 and 111:

"108. Decisional autonomy is an integral part of the right to privacy. Decisional autonomy is the ability to make decisions in respect of intimate relations. In *Puttaswamy (supra)* this Court held that personal aspects of life such as family, marriage, procreation, and sexual orientation are all intrinsic to the dignity of the individual. The right to privacy safeguards and respects the decisional autonomy of the individual to exercise intimate personal choices and control over the vital aspects of their body and life. In *Common Cause v. Union of India*, this Court observed that right to privacy protects decisional autonomy in matters related to bodily integrity:

"441. The right to privacy resides in the right to liberty and in the respect of autonomy. The right to privacy protects autonomy in making decisions related to the intimate domain of death as well as bodily integrity. Few moments could be of as much importance as the intimate and private decisions that we are faced regarding death. Continuing treatment against the wishes of a patient is not only a violation of the principle of informed consent, but also of bodily privacy

and bodily integrity that have been recognised as a facet of privacy by this Court.

109. The right to decisional autonomy also means that women may choose the course of their lives. Besides physical consequences, unwanted pregnancies which women are forced to carry to term may have cascading effects for the rest of her life by interrupting her education, her career, or affecting her mental well-being.

111. A woman can become pregnant by choice irrespective of her marital status. In case the pregnancy is wanted, 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.

(Emphasis added)

23. *Paragraphs 112 and 113 say:*

“112. The right to dignity encapsulates the right of every individual to be treated as a self-governing entity having intrinsic value. It means that every human being possesses dignity merely by being a human, and can make self-defining and self-determining choices. Dignity has been recognized as a core component of the right to life and liberty under Article 21.

113. If women with unwanted pregnancies are forced to carry their pregnancies to term, the state would be stripping them of the right to determine the immediate and long-term path their lives would take. Depriving women of autonomy not only over their bodies but also over their lives would be an affront to their dignity. The right to choose for oneself — be it as significant as choosing the course of one’s life or as mundane as one’s day-to-day activities — forms a part of the right to dignity. It is this right which would be under attack if women were forced to continue with unwanted pregnancies.”

(Emphasis added)

10. Coming to the case at hand, the report submitted to this Court by the Medical Board constituted pursuant to orders of this Court shows that, the Board comprised of Head of Department-OBGY, Civil Surgeon, HOD-Radiology, Associate Professors of Pediatrics and Pediatric Surgeon, HOD of Medicine, HOD of Psychiatry and Medical Social Worker. A careful reading of the said report shows that, the Petitioner was 26 year old, G3P2L2, previous FTVD with 30 weeks 3 days gestation with (beta-thalassemia major) [AR], P/A-Uterus 28-30 weeks, relaxed, FHS 146 bpm. The report records that mother and father were known case of *Beta Thalassemia Major* carrier/trait and foetus is a case of *Thalassemia Major*, patient was currently not on any treatment. The relevant findings from the report are reproduced below:

- 1. Thalassemia major is a serious inherited blood disease that prevents the body from making enough healthy hemoglobin.*
- 2. A baby with this condition may look healthy at birth, but severe anemia often develops during the first months of life.*
- 3. The child usually needs blood transfusions regularly, often every few weeks, for many years or lifelong.*
- 4. Repeated transfusions cause excess iron to build up in the body, which can damage the heart, liver and hormone-producing organs.*

5. The child needs regular hospital visits, blood tests, medicines to remove extra iron, and close specialist follow-up.

6. Without good treatment, severe complications can occur; even with treatment, the illness creates a major lifelong medical burden.

7. Some children may develop poor growth, delayed puberty, bone problems, diabetes or heart and liver disease.

8. A stem-cell transplant or certain gene-based treatments may help selected patients, but they are not suitable or accessible for everyone and carry risks.

11. The Medical Board recorded its opinion that, the pregnancy be allowed to be terminated and the Petitioner is fit for termination of pregnancy. Nothing is brought to counter the findings of the Medical Board given in the aforesaid report.

12. As the report of the Medical Board clearly opines what the newborn will have to face in his/her life with the said ailment and the report indicates that, the foetus, if born alive, will require regular medical treatment lifelong and the Petitioner, as seen from the averments of the petition, has taken conscious decision to terminate her advanced pregnancy due to the aforesaid diagnosis, to deny the prayers sought by

the Petitioner would be violative of her right as referred in the above referred decisions. By not permitting the medical termination of the Petitioner would certainly cause mental, emotional and physical distress to the Petitioner. Denying the prayers would result in more traumatic situation for the Petitioner and lifelong medical burden on the child. Since there is clear report by the Medical Board, we are constrained to grant the prayers made by the Petitioner.

13. Hence, the following order :

ORDER

- i) Petitioner is permitted to undergo medical termination of pregnancy as per Medical Board's opinion which appears to be dated 10th October 2026, at S.C.S.M. General Hospital, Solapur or at a medical facility of her choice at the earliest, however such procedure shall be conducted at the Medical Center which has all the necessary permissions issued under the Maharashtra Termination of Pregnancy Rules, 2003 and the procedure shall be conducted by a Medical Practitioner who satisfies the conditions laid down under those Rules.
- ii) In case, if the child is born alive, the Medical Practitioner who conducts the procedure will ensure that all necessary medical facilities are made available to such child for saving its life.

- iii) In case, if the child is born alive and if the Petitioner is not willing to take responsibility of such a child then the State and its agencies will have to assume full responsibility for such child.
- iv) Rule is made absolute in the aforesaid terms.
- v) Writ Petition is disposed of accordingly.
- vi) No order as to costs.
- vii. All concerned parties to act on the authenticated copy of this order.

[NEERAJ P. DHOTE J.]

[ABHAY AHUJA J.]

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signed by
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