



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO. 3027 of 2025

XYZ Minor through her natural
guardian father Sheikh Ansar Sheikh Kalam

..Petitioner

versus

Union of India and others.

..Respondents

Ms. Soniya Gajbhiye, Advocate appointed through Legal Aid.
Mr. S.A.Chaudhari, Advocate for respondent no.1.
Mr. D.V.Chauhan, Senior Advocate and Government Pleader a/b
Mr. H.D.Marathe, Assistant Government Pleader for respondents/State

CORAM :- NITIN W. SAMBRE and SACHIN S. DESHMUKH, JJ.

DATE :- 17th JUNE, 2025

P. C.

Heard learned counsel appearing for the parties.

2. A prayer is for medical termination of pregnancy of the petitioner who is 12 years and 5 months old.

3. Considering the nature of relief claimed viz. directions for medical termination of pregnancy, we have caused notice and directed the victim to appear before the Medical Board.

4. In compliance thereof, the victim has appeared before the Medical Board today. The Medical Board was consisting of Dean, Professor and HOD of Obstetrics and Gynecology, Associate Professor and HOD, Pathology; Associate Professor and HOD, Paediatrics, Professor and HOD, Chest Medicine, Professor and HOD, Psychiatry and Associate Professor, Radiodiagnosis. The opinion given by the Medical Board reads thus:

'Key recommendations of the panel (if any) with justification

The process of termination of pregnancy is high risk by considering her age and fetal gestational age. Hysterotomy can be done with High Risk consent of parents and assent of patient."

5. In this background, we are required to consider whether the directions as prayed for need to be issued to the respondents to permit the victim to undergo medical termination of pregnancy.

6. The offence is registered vide Crime No.283 of 2025 on 05.06.2025 for the offences punishable under Sections 64(2)(f), 64(2)(m), 65(2), 351(2) of Bhartiya Nyay Sanhita, 2023 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, wherein the allegation is that the cousin uncle of the victim has committed the offence in question.

7. It appears that the report came to be lodged at a belated stage as the accused is in relation with the family members of the victim and the same has led to approaching this Court at the belated stage.

8. Learned counsel for the petitioner submits that in spite of the aforesaid report/opinion given by the Medical Board, the parents of the petitioner and the petitioner herself is willing to undergo the medical termination of pregnancy, even if such process is at high risk. According to her, there is no life threat to the petitioner in case if she is permitted to undergo medical termination of pregnancy. So as to substantiate her contentions, the counsel for the petitioner has invited our attention to the judgment of the Apex Court in the matter of *X vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another*, reported in [(2023) 9 SCC 433]. Paragraphs 114 and 116 thereof read thus:

“114. 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 recognises 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.

116. 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.”

9 As such, according to her, since the right to carry pregnancy is by virtue of the choice of a woman like the petitioner in the present case, one cannot force to continue the pregnancy as in case if the termination is not allowed, the same is likely to affect the mental and physical health condition of the victim. In addition to above, support is also drawn from the judgment of the Apex Court in the case of *XYZ vs. State of Gujarat and others*, reported in **2023 CC Online SC 1573** particularly paragraphs 13, 17 and 19 thereof. The paragraphs 13, 17 and 19 read thus:

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.*

17. *More recently, in case of X v. The Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi, AIR 2022 SC 4917; this Court, in another three-judge Bench lead 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 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 recognises 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.

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.”

10. As against above, Mr. Chauhan, learned Government Pleader assisted by Mr. Marathe, learned Assistant Government Pleader, would urge that considering the expert opinion, it will not be justifiable to permit the medical termination of pregnancy as there is high risk having regard to the age and fetal gestational age. According to Mr. Chauhan, the Medical Board has advised hysterotomy can be done with high risk with the consent of the parents and assent of the patient.

11. Learned Government Pleader has invited our attention to the latest judgment of the Apex Court in the matter of *A (Mother of X) vs. State of Maharashtra and another*, reported in [(2024) 6 SCC 327]. According to the learned Government Pleader, no doubt the right under Article 21 of the Constitution of India can be recognised, however, the Court is equally required to be sensitive to the risk that is involved in the case particularly as can be seen from the factual matrix of the case in hand.

12. We have considered the rival claims.

13. It is not the opinion of the Medical Board that the life of the victim is at risk in case the process of medical termination of pregnancy is carried

out. Perhaps, the patient in such an eventuality may develop complications.

14. However, we are equally required to be sensitive to the submissions of the counsel of the petitioner that not only the victim has assented for medical termination of pregnancy but also the parents have undertaken to furnish high risk consent to the Authority in case if the medical termination of pregnancy procedure is carried out. The fact remains that the Board consists of not only the Professor of Obstetrics and Gynecology but also the Professors of Medicine and Paediatrics. In case if the victim is required to undergo termination of pregnancy as has been prayed, the safety protocol is required to be followed in the matter of medical termination of pregnancy by the Medical Team.

15. In the case in hand, if we consider the age of the victim i.e. 12 years and 5 months and the age of foetus is between 28 to 29 weeks, it is necessary that such procedure must be carried out by the Team of the Doctors which must be of Paediatric Surgeon, Gynaecology Surgeon, so also if possible Doctor of Paediatric Anesthesiologist should also be made part of it.

16. We are not susceptible about safety protocol being followed, as the learned Government Pleader has specifically assured us that safety protocol shall be duly followed in case if this Court permits medical termination of pregnancy.

17. In the aforesaid background and having regard to the law laid down by the Apex Court in the aforesaid three judgments, it has to be inferred that this Court cannot force the victim to carry her pregnancy against her wish as in such an eventuality, the State would be stripping her of the right to determine the immediate and long term path of her life.

18. Apart from above, we are equally required to be sensitive to the fact that a woman can become pregnant by choice irrespective of her marital status. However in case of unwanted or incidental pregnancy the burden invariably falls on the pregnant woman/victim.

19. In that view of the matter and considering the fact that there is no life threat to the petitioner as certified by the Medical Board, we deem it appropriate to direct the Dean, Government Medical College, Akola to permit the petitioner to undergo medical termination of pregnancy at the earliest by taking recourse to the safety protocol and by complying with the aforesaid observations.

20. The petition is accordingly allowed in aforesaid terms. No costs.

21. We however clarify the statement made by the counsel for the petitioner on instructions from the parents of the victim that they are willing to furnish an undertaking of high risk consent and the assent of the patient be also made part of the medical record.

(SACHIN S. DESHMUKH, J.)

(NITIN W. SAMBRE, J.)

Andurkar.