



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3677/2025

XYZ Minor (born on 20.8.2011) through her natural Guardian Father Shri Sunil
Maroti Wankhede

...Versus...

Union of India, through Ministry of Health, New Delhi and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Ms Soniya Gajbhiye, Advocate (Legal Aid) for petitioner

Mr. S.A. Chaudhari, Advocate for respondent No.1

Mr. D.V. Chauhan, Senior Advocate/GP i/b Mr. N.R. Patil, AGP for respondent Nos.2 & 3

CORAM : NITIN W. SAMBRE AND
SACHIN S. DESHMUKH, JJ.

DATE : 17/07/2025

P. C.

1. Heard respective Counsel.
2. By this petition, a prayer is made for medical termination of pregnancy of the petitioner, who is 13 years and 04 months of age only. Since a direction is sought for medical termination of pregnancy, this Court issued notice the respondents on 15/07/2025 and the victim was directed to appear before the Medical Board for medical examination.
3. Accordingly, a report dated 16/07/2025 to that effect is submitted after the victim appeared before the Medical Board comprising of Professor & HOD Dept. OBGY GMC, Akola; Associate Professor & HOD Dept. Medicine GMC, Akola; Associate Professor & HOD Dept. Pathology GMC, Akola;

Associate Professor & HOD Dept. Paediatrics GMC, Akola; Associate Professor & HOD Dept. Chest Medicine GMC, Akola; Professor & HOD Dept. Psychiatry GMC, Akola and Dean & HOD Dept. Radiodignosis GMC, Akola. The Medical Board reported that after examination of the health condition of the victim she is medically fit to undergo medical termination of pregnancy by Hysterotomy (Method of termination of pregnancy), procedure can be done with informed high risk consent of parents and assent of the victim and there is potential risks and complications during and after procedure. It is further reported that during MTP procedure possibility of life threatening complications cannot be ruled out.

4. In the aforesaid backdrop, the directions as prayed by the victim need to be issued to the respondents to permit the petitioner/victim to undergo medical termination of pregnancy. Crime No.0170 of 2025 is registered on 09/07/2025 for the offence punishable under Sections 64 (2) (f), 64 (1), 65 (1) and 351 (3) of the Bhartiya Nyaya Sanhita, 2023 and under Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012, wherein the allegations are that cousin uncle of the victim has committed offence in relation to the FIR which is registered. Although the report has been registered at a belated stage, as the accused is related with the family members of the victim, has resulted into approaching this Court at a belated stage.

5. Learned Counsel for the petitioner/victim submits that the victim and her parents are willing to undergo medical

termination of pregnancy even if process as is indicated in the report of the Board, which is informed to be with substantial risk and complications during and after procedure of MTP. According to the said report, there is no life threatening complications to the victim in case the victim is permitted to undergo the medical termination of pregnancy. In order to substantiate the contentions, learned Counsel for the petitioner has placed reliance on the decision of the Apex Court in the case 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.”

6. Since the right to carry pregnancy is always by virtue of the choice of woman like the present petitioner, one cannot force to continue the pregnancy as in case 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 SCC Online SC 1573***, particularly paragraph Nos.13, 17 and 19 thereof, which are reproduced as under :-

“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.”*

7. Per contra, Mr. D.V. Chauhan, learned Senior Counsel/Government Pleader has urged in the wake of the report that there is high risk having regard to the age of the victim. Learned Government Pleader has also placed reliance on the 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 him, no doubt the right under Article 21 of the Constitution of India can be recognized, however, the Court is equally required to be sensitive to the risk that is involved in the case which is highlighted by the Medical Board in its report.

8. Having considered the rival submissions of the parties, we are of the opinion that it is not the case of the Medical Board that life of the victim is at risk, if the process of medical termination of pregnancy is undertaken and only in the event of such termination possibility of life threatening complications cannot be ruled out. Equally, the Medical Board has recorded the health condition of the victim that she is medically fit to undertake the medical termination of pregnancy by Hysterotomy (Method of termination of pregnancy).

9. Apart from the aforesaid aspect and considering the fact that the victim has assented for medical termination of pregnancy and also the parents have undertaken to furnish high risk consent to the authority, if the medical termination of pregnancy procedure is undertaken, we are required to be sensitive in the matter. Needless to state that the required termination of pregnancy of the victim as is prayed, the safety protocol has to be followed, which is prevelant in the matter of medical termination of pregnancy by the Medical Board.

10. Considering the age of victim i.e. 13 years and 04 months, and the age of fetus is ranging 25 to 26 weeks, the necessary procedure must be carried out by the team of Doctors which must be of Paediatric Surgeon, Gynecology Surgeon, so also if possible Doctor of Paediatric Anesthesiologist should also be made part of it.

11. The learned Government Pleader has assured us that necessary safety protocol would be followed, if this Court permits medical termination of pregnancy. In light of the

aforesaid facts and the statement of law declared by the Apex Court in the aforesaid judgments that this Court cannot force the victim to carry out 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, we are equally sensitive to the fact that a women can become pregnant by choice irrespective of her marital status. In the case of unwanted or incidental pregnancy the burden invariably falls on the victim.

12. Thus, considering the fact that there is no life threat to the victim as has been 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 adopting the measures which are provided in the safety protocol and strictly in accordance with the observations recorded by this Court herein above.

13. Needless to state that the parents of the victim shall furnish undertaking of high risk consent and the assent of the patient shall be made part of the medical report in that regard.

14. The writ petition is accordingly allowed in the aforesaid terms. No order as to costs.

15. Steno copy of this order is granted.

(SACHIN S. DESHMUKH, J.)

(NITIN W. SAMBRE, J.)