



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

WRIT PETITION NO. 5604 OF 2025

[XYZ d/o Santosh Deulkar vs. State of Maharashtra, through the
Principal Secretary, Public Health Services, Mantralya, Mumbai and anr.]

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

Court's or Judge's orders

Ms. S. H. Bhatia, Advocate (Appointed) for the petitioner
Mr. Hrishikesh Marathe, AGP for the State/respondents

CORAM: ANIL L. PANSARE AND
SIDDHESHWAR S. THOMBRE, JJ.

DATED : 24-09-2025.

Heard.

2. On 22-6-2025, following order was passed.

“1) *Heard.*

2) *The petitioner who is the victim of rape has approached this Court seeking direction against the respondent No.2 to terminate unwanted pregnancy of 30 weeks, with further prayer to refer her to Medical Board for determination of her physical, mental status and other relevant factors.*

3) *Issue notice to the respondents. Learned Government Pleader waives service of notice on behalf of respondents.*

4) *The respondent No.2 Dean, Government Medical College And Hospital, Akola shall constitute a Medical Board in terms of SOP dated 03/06/2024 issued by the Public Health Department, Government of Maharashtra, so as to examine mental, physical condition of the petitioner, as also the fetus and the risk involved in terminating and carrying pregnancy.*

5) *The petitioner shall appear before respondent No.2 at 11.00a.m. on tomorrow i.e. 23/09/2025.*

6) *The Medical Board shall examine the petitioner and submit its report to this Court, which should reach by 1.00p.m. on 24/09/2025.*

7) *List the petition on 24/09/2025 at 2.30p.m.*

8) *All concerned shall provide authenticated copy of this order."*

3. In response to the order, learned Assistant Government Pleader (AGP) has tendered across bar the report of the Medical Board. The report is taken on record. Recommendations of the Board for termination of pregnancy read as under :

"Key recommendations of the panel (if any) with Justification

As victim is 18 years old (major) with 31 weeks of pregnancy without any congenital anomaly to fetus. As per MTP act decision of termination of pregnancy in such cases is beyond the purview of medical board as per government GR No. महाराष्ट्र शासन सार्वजनिक आरोग्य विभाग, शासन निर्णय क्रमांक न्यायाप्र-२०२४/५४/प्र.क्र. १००/कु.क., दिनांक ३ जुन २०२४.

After examination of health condition of victim she is fit to continue the pregnancy till term (9months). Although by any means patient wants her pregnancy has to be terminated, she may undergo procedures and methods of termination of pregnancy with informed high risk consent of victim and her relatives. There is a potential risk and complications during and after procedures of termination of pregnancy to mother and fetus and during procedures and methods of termination of pregnancy circumstantial possibilities of life threatening complications cannot be ruled out."

4. Thus, the report indicates that termination of pregnancy at such a belated stage (31 weeks of pregnancy) will carry high risk, however, with the consent of the victim and her relatives, the procedure could be undertaken. The report

further indicates that there is a potential risk of complications during and after procedures of termination of pregnancy to mother and fetus and that the life threatening risk cannot be ruled out.

5. The counsel for petitioner submits that the petitioner is made aware of the high risk and the probable complications. However, she has made up a mind to not continue the pregnancy. Her parents have also consented to undergo the procedure of termination of pregnancy.

6. We are informed that the petitioner has been already admitted to respondent no. 2 – Government Medical College and Hospital, Akola.

7. In view of the above, considering the background that resulted into victim's pregnancy, we concede to the victim's decision to terminate pregnancy considering the judgment of Hon'ble Supreme Court in the case of ***XYZ vs. State of Gujarat and others [2023 CC Online SC 1573]*** wherein in identical situation, the Supreme Court observed 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.”

8. Thus, the Supreme Court held that where the pregnancy is by choice, it will be equally shared by both the partners. However, if the pregnancy is unwanted or incidental, the burden invariably falls on the pregnant woman affecting her mental and physical health. The Supreme Court further observed that the woman alone has a right over her body and is the ultimate decision maker on the question of whether she wants to undergo an abortion.

9. The petitioner - victim is 18 years old. She became pregnant of the unfortunate incident. The counsel for the petitioner submits that Section 3(2)(b)(i) read with explanation 2 of the Medical Termination of Pregnancy Act, 1971 enables the termination of pregnancy caused by rape with the only rider that length of pregnancy does not exceed 24 weeks. Learned

AGP, however, opposed on the ground that the procedure is life threatening.

10. The question, therefore, is whether in peculiar facts and circumstances of the case, where the petitioner is not willing to continue with the pregnancy despite knowing the fact that termination of pregnancy at such a belated stage is at a high risk, the relief could be granted.

11. We would respect petitioner's feelings and the decision, firstly, she being major and secondly, the pregnancy is unwanted and forceful. As such, the report of Medical Board indicates that during procedures and methods of termination of pregnancy, circumstantial possibilities of life threatening complications cannot be ruled out, the Board has not found the situation to be such where there is direct threat to the life of the petitioner or the fetus. That being so, we allow the petition in following terms.

12. The Dean, Government Medical College and Hospital, Akola shall permit the petitioner to undergo medical termination of pregnancy at the earlier possible time by taking recourse to the safety protocol, subject to the written consent of the victim and her parents to undergo the procedure at such a belated stage.

13. The Dean, Government Medical College and Hospital, Akola shall perform DNA of the fetus and forward the report to the Investigating Officer of Police Station, Tamgaon, Tahsil Sangrampur, District Buldana.

14. The petition is disposed of in above terms.

15. The fees of appointed counsel shall be quantified and paid as per the rules.

16. All concerned to act on steno/uploaded copy of the order.

(S. S. THOMBRE, J.)

(A. L. PANSARE, J.)

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