



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

CRIMINAL WRIT PETITION NO.951 OF 2025

XYZ (victim) thr. Mother Smt. Munni wd/Dharmendra Kasdekar
.Vs.

State of Maharashtra thr. PS Gadge Nagar and another

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

Mr. V.S.R. Nayak, Advocate for the petitioners.
Mr. A.B.Badar, APP for respondents /State.

CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE, JJ.
DATED : 21.11.2025.

Heard.

2. On 19.11.2025 following order was passed:-

“ *Leave to correct the name of the petitioner granted.*

2. *Correction be made forthwith.*

3. *Heard.*

4. *The petitioner is a victim of rape. She has approached this Court seeking direction against the respondents to terminate unwanted pregnancy of 25 weeks, with further prayer to refer her to Medical Board for determination of her physical, mental status and other relevant factors.*

5. *Issue notice to the respondents.*

6. *Learned AGP waives service of notice for respondents/State.*

7. *Respondent No.2 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.

8. The petitioner shall appear before respondent No.2 at 11.00 a.m. i.e. 20.11.2025.

9. The Medical Board shall examine the petitioner and submit its report to this Court by tomorrow evening.

10. List on 21.11.2025.

11. All concern to act on steno copy or uploaded copy of the order.”

3. In response to the said order, the petitioner appeared before the Medical Board, who has examined the petitioner. The report is submitted in sealed envelop. It is taken on record. We have gone through the report. According to the Board, the petitioner is 16 years old (minor) with 25 weeks of pregnancy. There is no infirmity to the fetus and the petitioner is physically and mentally fit. She is aware of the consequences of continuing pregnancy. She is ready for termination of pregnancy. Due to less age and social stigma of unmarried mother. There is no psychotic fetus at present. There is no depressive features. There is no manic and anxiety fetus at present. She is physically fit for termination of pregnancy after consent of parents. She can be posted for MTP procedure with due risk and consent of victim and her parents.

4. Thus, the report indicates that the petitioner could be posted for MTP with due risk, however, with consent of victim and her parents.

5. Counsel for the petitioner submits that petitioner and her parents are made aware of the risk involved in termination of pregnancy. However, they all have 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 petitioner has been already admitted to District Women's Hospital, Amravati.

7. In view of the above, considering the background that resulted into victim's pregnancy, we concede to the decision of victim and her parents 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 16 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.

10. Learned APP, however, opposed on the ground that the procedure is life threatening.

11. The question, therefore, is whether in peculiar facts and circumstances of the case, where the petitioner is not willing to continue with the pregnancy should the relief be granted.

12. We would respect petitioner's feelings and the decision, firstly, she being minor 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, risk is involved, 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.

13. The Civil Surgeon, District Women's Hospital, Amravati shall permit the petitioner to undergo medical termination of pregnancy at the earliest 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.

14. The Civil Surgeon District Women's Hospital, Amravati shall perform DNA of the fetus and forward the report to the Investigating Officer of Police Station, Gadge Nagar, Amravati.

15. The petition is disposed of in above terms.

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

[RAJ D. WAKODE, J]

[ANIL L. PANSARE, J.]