

**CWP-18132-2025****1**

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

112**CWP-18132-2025****Date of Decision : July 10, 2025****NXXX****-PETITIONER****V/S****STATE OF HARYANA AND ANOTHER****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. K.L. Saini, Advocate
for the petitioner.

Mr. Pankaj Mulwani, D.A.G., Haryana.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant writ petition cast under Article 226 of the Constitution of India, the petitioner, who has recently attained legal adulthood, craves for issuance of directions upon the respondents to provide her with adequate medical assistance for the termination of her pregnancy, as the pregnancy is the result of sexual assault.

**GROUND CANVASSED IN THIS WRIT PETITION FOR
SECURING THE RELIEF OF PREGNANCY TERMINATION**

2. Compendiously and concisely, the averments set forth in this writ petition are that, consequent upon the petitioner allegedly becoming subjected to sexual assault by one Sahil son of Ishwar Chand, on account whereof, she became pregnant, her father got lodged against him the FIR No.161 dated 17.06.2025, under Sections 3(5), 64(2)(m), 78 of the Bharatiya Nyaya Sanhita (BNS), 2023, and, Section 6 of the Protection of

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Children from Sexual Offence Act, 2012, at Police Station Civil Lines, Kaithal, investigation whereof is pending. With these averments, a prayer is made that, since the pregnancy is the outcome of a sexual assault, hence the petitioner does not want to continue with her unwanted pregnancy, as it would cause grave injury to her physical and mental health. Resultantly, prayer is made for grant of permission to the petitioner to medically terminate her unwanted pregnancy.

PROCEEDINGS BEFORE THIS COURT AND REPORT OF THE BOARD OF DOCTORS

3. This Court had passed the hereinafter extracted order on 04.07.2025 upon the instant writ petition.

“1. The sole prayer engraved in the instant writ petition, as cast under Article 226 of the Constitution of India, appertains to issuance of directions upon the respondent(s) to provide her adequate medical help for medical termination of her pregnancy.

2. Succinctly stated; consequent upon the petitioner allegedly becoming subjected to sexual assault by one Sahil son of Ishwar Chand, on account whereof, she became pregnant, her father got lodged against him the FIR No.161 dated 17.06.2025, under Sections 3(5), 64(2)(m), 78 of the Bharatiya Nyaya Sanhita (BNS), 2023, and, Section 6 of the Protection of Children from Sexual Offence Act, 2012 at Police Station Civil Lines, Kaithal, investigation whereof is pending. With these averments, prayer is made that, the petitioner does not want to continue with her unwanted pregnancy, as it would cause grave injury to her physical and mental health, therefore, permission be granted to medically terminate her unwanted pregnancy.

3. Taking into account the facts and circumstances narrated in the instant petition, this Court deems it appropriate, at this stage, to direct the petitioner to approach the Principal/Chief Medical



Officer, Civil Hospital Kaithal, District Kaithal-respondent No.2, on 05.07.2025, whereupon, the latter shall constitute a Board of Doctors, as per the provisions of the Medical Termination of Pregnancy Act, 1971, to find out the age of the foetus, as well as the health condition of mother and the foetus, and thereupon, shall submit a status report in this regard, positively on or before 10.07.2025. Since the issue relates to the termination of pregnancy, where time is the essence, therefore, this Court presuppose that there should not be any kind of delay on the part of the doctors concerned, in making compliance of the directions (supra).

4. The S.H.O. of the jurisdictional police station concerned is also directed to extend every possible help to the petitioner for the above purpose. Moreover, the S.H.O. concerned is also directed to, on the next date of hearing, file his personal affidavit before this Court disclosing therein the status of the FIR (supra).

5. A copy of this order be also supplied to the learned State counsel, and petitioner's counsel under signatures of Special Secretary of this Court, for strict compliance.

6. List on 10.07.2025, in the urgent list."

4. In deference to the directions enclosed in the hereinabove extracted order, today the learned State counsel has furnished before this Court the report dated 08.07.2025 submitted by the Board of Doctors. This report is taken on record as Mark 'A'.

5. A perusal of the report (Mark 'A') reveals that, at presently intrauterine gestational age of the fetus is approx. 23 weeks and the Board of Doctors has opined that, there is no substantial risk for medical termination of pregnancy for mother (petitioner) at present. Moreover, the report also voices that, the health condition of the mother (petitioner) is healthy with vitals stable, though she is moderately anemic with Hb 7.6 gm%. The relevant portion of the report is reproduced hereunder:-



“As per Lab investigation report is as under:

HB 7.6 gm, BT 3.15 min, CT 6.30 min, Blood group B Negative, VDRL, HIV, HBsAg and HCV are Non reactive, RBS 82 mg/dl and urine Alb and sugar Nil.

As per ultrasound report is as under:

Single viable fetus of intrauterine gestational age of 23 weeks 0 days with no obvious congenital malformation at the time of scan. Placenta is posterior and well away from os. Amniotic Fluid is adequate.

On the basis of above mentioned findings the board is of the opinion is that at presently intrauterine gestational age of fetus is 23 weeks 0 days and is healthy without any congenital malformation. The health condition of mother is healthy with vitals stable though she is moderately anemic with Hb 7.6 gm%. It is advised by board that there is no substantial risk for MTP for Mother at present. If there is need of MTP then it is better to be conducted at some tertiary care centre that is Medical College level.”

6. Before this Court proceeds to gauge the merits/demerits of the instant writ petition and consequently evince any opinion thereon, it is deemed imperative to initially capture a glimpse of some significant legal provisions and judicial precedents germane to the disposal of the instant writ petition.

ANALYSIS OF SIGNIFICANT LEGAL PROVISIONS AND JUDICIAL PRECEDENTS GERMANE TO THE DISPOSAL OF THE INSTANT WRIT PETITION.

7. The first provision, which is of utmost significance and which is reproduced hereinafter, is enclosed in Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the ‘Act of 1971’) inasmuch as there becomes prescribed the manner in which



registered medical practitioners may terminate pregnancies.

“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 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 reasonably 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."

8. Another important provision is encapsulated in Rule 3(B) of The Medical Termination of Pregnancy Rules, 2003 (hereinafter referred to



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the as ‘Rules of 2003’). This Rule prescribes the categories of women, who shall be considered eligible for termination of pregnancy for a period of upto twenty-four weeks. Rule 3(B) is reproduced hereunder:-

“3B. 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:—

- (a) survivors of sexual assault or rape or incest;*
- (b) minors;*
- (c) change of marital status during the ongoing pregnancy (widowhood and divorce);*
- (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];*
- (e) mentally ill women including mental retardation;*
- (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; and*
- (g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.”*

9. Taking into account the age of the foetus, which is approx. 23 weeks and considering the fact that, the pregnancy is the result of sexual assault, this Court can safely conclude that, the case of the petitioner is covered under Section 3(2)(b)(i) of the Act of 1971, and therefore, this Court can grant the asked for relief.

10. Moreover, in **“K.S. Puttaswamy Vs. Union of India”, (2017) 10 SCC 1**, a nine Judge Bench of the Hon’ble Supreme Court has held that the right to privacy enables individuals to retain and exercise autonomy over the body and mind. This issue came to be considered in



“X Vs. Principal Secretary, Health and Family Welfare Department and Anr.”, 2022(4) RCR(Criminal) 37 also, whereupon, it has been held as under:-

“100. In K S Puttaswamy v. Union of India, a nine-judge bench of this Court recognized the right to privacy as a constitutionally protected right under Article 21 of the Constitution. In Puttaswamy (supra), this Court held that the right to privacy enables individuals to retain and exercise autonomy over the body and mind. The autonomy of the individual was defined as “the ability to make decision on vital matters of concern to life.” The judgement delivered on behalf of four judges described the right to privacy in the following terms:

“297. ... Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt.” (emphasis supplied)



101. Importantly, *Puttaswamy (supra)* also deals with facets of reproductive autonomy. *Chelameshwar, J.* held that a “woman’s freedom of choice whether to bear a child or abort her pregnancy are areas which fall in the realm of privacy.”⁹³ This Court recognized the right to bodily integrity as an important facet of the right to privacy. *Puttaswamy (supra)* considered *Suchita Srivastava v. Chandigarh Administration* to reiterate that the statutory right of a woman to undergo termination of pregnancy under the MTP Act is relatable to the constitutional right to make reproductive choices under Article 21 of the Constitution.

102. 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.

103. A three-judge Bench of this Court disagreed with the High Court’s decision. In a judgment authored by K G Balakrishnan, C.J., this Court emphasized that the consent of the pregnant woman is an essential requirement to proceed with the termination of a pregnancy under the MTP Act. It was held that the state administration cannot claim guardianship of the woman as she was a major. It was further held that the woman only had “mild mental retardation” and was therefore competent to give her consent in terms of Section 3(4)(a) of the MTP Act. This



Court concluded that the state must respect the reproductive rights of women with “mental retardation” with regard to decisions about terminating their pregnancy. In the process, this Court recognized that a woman’s right to reproductive autonomy is a dimension of Article 21 of the Constitution:

“22. There is no doubt that a woman's right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a “compelling State interest” in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.”

104. 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.

105. 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.”

106. 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.”

11. In ***“Amandeep Kaur Vs. The Postgraduate Institute of Medical Education and Research, Chandigarh”***, CWP-474-2024,

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Decided on: 20.01.2024, the Co-ordinate Bench of this Court has held that “*Forced into an unwanted pregnancy, a woman is likely to experience significant physical and emotional challenges. Dealing with the aftermath of such a pregnancy, even after childbirth, places an extra burden on the petitioner, affecting her ability to pursue other opportunities in life, such as employment and contributing to her family's income.*”

FINAL ORDER

12. In view of the peculiar facts and circumstances of this case and the hereinabove discussed legal propositions, this Court deems it appropriate to allow this writ petition. Therefore, the petitioner, who has a pregnancy length of approx. 23 weeks, is eligible for medical termination of her unwanted pregnancy. Consequently, the instant petition is **allowed** with the following directions:-

- (a) *The petitioner is directed to, within two days from today, approach the S.H.O. of the jurisdictional police station concerned, who shall forthwith associate with her and approach the PGIMS, Rohtak, without any delay;*
- (b) *The Registrar, PGIMS, Rohtak, is directed to ensure that, the moment the petitioner approaches there, expeditious measures for medically terminating her pregnancy are taken, in accordance with the requisite Act and Rules.*
- (c) *The operating/treating doctor is directed to preserve the DNA samples of the foetus and to hand over the same to*

the S.H.O./investigating officer concerned, thereby enabling the latter to take further necessary action for completion of investigation of the present FIR.

13. A copy of this order be supplied to the learned counsel for the petitioner and to the learned State counsel, under signatures of Special Secretary of this Court, for information and strict compliance.

July 10, 2025
devinder

Whether speaking/reasoned

Whether Reportable

:

:

Yes/No

Yes/No

(KULDEEP TIWARI)
JUDGE