CGHC010424472026 2026:CGHC:46535

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 5432 of 2026

1 – XYZ (Victim) D/o Shri ABC (Father) Aged About 21 Years R/o Village Silyari, Outpost Silyari, P.S. Dharsiwa, District Raipur (C.G.)

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through Secretary, Department Of Home, Mantralaya, Mahanadi Bhawan, Atal Nagar Nawa Raipur, District Raipur (C.G.),

2 - Secretary, Department Of Health, Mantralaya, Mahanadi Bhawan, Atal Nagar Nawa Raipur, District Raipur (C.G.),

3 - Chief Medical And Health Officer (C.M.H.O), District Bilaspur (C.G.)

4 - Civil Surgeon-Cum-Chief Hospital Superintendent, District Hospital Bilaspur (C.G.)

5 - Station House Officer (S.H.O), Police Station Masturi, District Bilaspur (C.G.)

... Respondent(s)

For Petitioner	:	Mr. Anukul Biswas, Advocate
For State	:	Mr. Avinash Chand Sahu, Deputy AG

Hon'ble Shri Justice Amitendra Kishore Prasad

Order on Board

03/11/2026

1. This Writ Petition has been preferred seeking a direction from this Court with regard to medical termination of pregnancy of the Petitioner who is a victim of offence of rape.

2. Facts of the case, in brief, are that the petitioner is a 21-year-old unmarried woman and a victim of rape allegedly committed by the accused-Satyaprakash Rai, on the false pretext of marriage. Upon discovering that the accused had secretly married another woman, she lodged a police complaint, pursuant to which Crime No. 715/2026 was registered at Police Station Masturi, District Bilaspur, under Section 376 of the IPC. During her medical examination, the petitioner was found to be pregnant, and the ultrasonography conducted on 05.10.2026 confirmed a single live intra-uterine pregnancy of 8 weeks. Therefore, the petitioner has preferred the present petition seeking urgent directions from this Court.

3. Learned counsel for the petitioner submits that the pregnancy of child may be detrimental to the life of petitioner and may also have significant physical, emotional, social and economic consequences to her. Therefore, she does not want to carry on pregnancy and deliver child, as such, she has filed instant petition seeking permission of this court for termination of her unwanted pregnancy. He submits that the petitioner is a 21-year-old unmarried woman who has been sexually exploited by the accused. He further submits that initially, Zero FIR No. 00/2026 was registered at Police Station Dharsiwa, District Raipur, which was subsequently transferred to Police Station Masturi, District Bilaspur, where regular Crime No. 715/2026 was registered for the offence punishable under Section 376 of the IPC.

4. Vide order dated 30.10.2026, this Court directed for medical examination of the petitioner by the Medical Board constituted under the provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971 consisting of one Gynecologist, one Pediatrician, one Radiologist/Sonologist. It was

directed to the Board to examine the petitioner after due verification of petitioner's identity in terms of Crime No.715/2026 at Police Station Masturi, District Bilaspur (C.G.).

5. This Court had emphasizedly directed the Chief Medical and Health Officer, District Bilaspur to ensure that the prosecutrix is physically examined by a duly constituted team of medical Doctors/Medical Board.

6. In compliance of the said directions, the Chief Medical and Health Officer, District Bilaspur CG has sent a letter dated 02.11.2026 whereby Medical Board has reported that :-

> <u>जॉच प्रतिवेदन</u>
>
> माननीय उच्च न्यायालय द्वारा दिये गये निर्देश के परिपालन में कु. दिव्या दिवाकर / कामेश्वर दिवाकर उम्र 21 वर्ष जाति-सतनामी, पता सिलियारी ब्लॉक-धरसींवा, जिला रायपुर के संबंध में जॉच में well oriented, well councious, Obey command, Vital stable, P/A soft, U/T Just palpable, Uterus 12 weeks size पाया गया, उक्त आधार पर चिकित्सा विशेषज्ञ का अभिमत निम्नानुसार है:-
>
> 1. समस्त प्रकार के जाँच में सब सामान्य पाया गया है।
> 2. आवेदिका का गर्भपात जिला चिकित्सालय अथवा उच्च संस्था में किया जा सकता है।

7. Learned counsel for the State submits that since the petitioner was sexually exploited, therefore she has conceived, but she does not want to carry on her pregnancy. Therefore, it may be presumed that if permission is not granted, then it would cause grave injury to the mental health of petitioner, as such, relief sought for may be granted to her.

8. I have heard learned counsel for the parties and perused the material available on record including medical report submitted by a team of doctors/Medical Board of District Hospital, Bilaspur.

9. Issue involved in the instant case is seeking permission for termination of pregnancy, which is governed by the provisions of the Medical Termination of Pregnancy Act, 1971 (henceforth referred to as “Act, 1971”). Section 3 of the Act, 1971 provides for termination of pregnancy by registered medical practitioner under the circumstances, as has been envisaged therein, which is reproduced as under :-

> “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.”
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> **[** In section 3 of the principal Act, for sub-section (2), the following sub-sections have been substituted vide Amendment Act, 2021, No. 8. of 2021**]**
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> "(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,—
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> (a) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or
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> (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
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> practitioners are, of the opinion, formed in good faith, that -
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> (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
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> (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 pregnancy would involve such risk of injury to the health as is mentioned in subsection (2), account may be taken to the pregnant woman's actual or reasonable 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."

10. In the instant case, the petitioner is a 21-year-old unmarried woman who is a victim of sexual exploitation. Therefore, she does not want to carry on her pregnancy and deliver child. Team of doctors has reported that gestational age is 12 weeks as on 02.11.2026. It has also been reported that the petitioner has been found medically fit to undergo Medical Termination of Pregnancy.

11. Having considered aforesaid facts, as has been stated above, it cannot be denied that continuation of pregnancy can lead to complication at a later stage on account of physical and mental condition of the victim.

12. This Court in WPC No. 270/2018 **(Ku. Pooja Mandavi v. State of Chhattisgarh and others)** decided on 02.02.2018 in paragraph No. 23 in a similar situation allowing the writ petition has held as under:

> "23. Taking into consideration the entire facts including her age (13 years) and circumstances what has been stated by the victim, her gestational age, judicial precedents, taking into consideration her adolescent pregnancy and risk involved in childbirth, medical condition of the victim / petitioner, as she is suffering anemia and sickle cell (trait),

considering the fact that the fetus if allowed to born, would have a limited life span with serious handicaps, and that as per Explanation I appended to sub-section (2) of Section 3 of the Act of 1971 mental agony of a rape victim (petitioner) has to be treated as a case of grave injury, particularly taking into consideration that it is in the best interests of the victim alone which has to be kept in view and considering the provisions of Sections 3 and 4 of the Act of 1971 and Explanation I that the termination of pregnancy is immediately necessary to save the life of a pregnant girl like the petitioner herein, in the interest of justice, it would be proper to direct that a team of five doctors shall consider the feasibility of termination of pregnancy at this gestational age. Accordingly, the writ petition is allowed…….”

13. This Court in WPC No. 2836 of 2026 **(XYZ and Another v. State of Chhattisgarh and others)** decided on 15.06.2026 in paragraph No. 20 in a similar situation allowing the writ petition has held as under:

> **“20.** In the considered opinion of this Court, the facts of the present case squarely satisfy the requirements envisaged under Section 3 of the Medical Termination of Pregnancy Act, 1971, as amended in 2021. The pregnancy is within the statutorily permissible period. The victim has expressed her free and informed desire not to continue with the pregnancy. The Medical Board has opined that termination is medically feasible. The pregnancy is alleged to be the consequence of repeated sexual assault upon a minor girl. Therefore, the statutory presumption of grave injury to the mental health of the petitioner stands attracted and there exists no legal impediment in permitting medical termination of pregnancy.”

14. Given the facts and circumstances of the instant case and further referring to the judgment of the Hon'ble Supreme Court in the case of "**A v. Union of India**" [2018 (14) SCC 75] and also "**Sarmishtha Chakraborthy and Another v. Union of India**" [2018 (13) SCC 339] permitted termination of pregnancy at the stage where the victim was carrying pregnancy for around 26 weeks. The Hon'ble Supreme Court in the case of " **Murugan Nayakkar v. Union of India and others**" [2017 SCC Online 1092"], considering the fact that the victim of rape must be given that much of liberty and right to decide whether she should continue with the pregnancy or she should be permitted to terminate the pregnancy.

15. Recently, the Hon'ble Supreme Court in the matter of "**A (Mother of X) vs. State of Maharashtra & Ors."** [2026 LiveLaw (SC) 160] has observed that the Court cannot compel any woman, much less a minor child, to complete her pregnancy if she is otherwise not intending to do so that would be more traumatic for a minor. In the aforesaid case, the Hon'ble Supreme Court has referred various judgments and in Para 17 following observation has been made:-

> "17. In this regard we reiterate what has been observed by one of us (Nagarathna, J) in X vs. Union of India & Another, I.A. No.211690 of 2023 in M.A. No.2157 of 2023 in Writ Petition (Civil) No.1137 of 2023 dated 11.10.2023 as under:
> "5. In this context, it would be necessary to reiterate the three Judge Bench Judgment of this Court in X vs. Health & Family Welfare Department, 2022 SCC OnLine SC 1321, authored by Dr. Justice D.Y. Chandrachud, presently the Chief Justice of India, of which paragraphs 99, 101 and 102 read as under:

"99. The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from coercion or violence.

x x x

101. To this, we may add that a woman is oftenenmeshed in complex notions of family, community, religion, and caste. Such external societal factors affect the way a woman exercises autonomy and control over her body, particularly in matters relating to reproductive decisions. Societal factors often find reinforcement by way of legal barriers restricting a woman's right to access abortion. The decision to have or not to have an abortion is borne out of complicated life circumstances, which only the woman can choose on her own terms without external interference or influence. Reproductive autonomy requires that every pregnant woman has the intrinsic right to choose to undergo or not to undergo abortion without any consent or authorization from a third party.

102. The right to reproductive autonomy is closely linked with the right to bodily autonomy. As the term itself suggests, bodily autonomy is the right to take decisions about one's body. The consequences of an unwanted pregnancy on a woman's body as well as her mind cannot be understated.

The fetus relies on the pregnant woman's body for sustenance and nourishment until it is born. The biological process of pregnancy transforms the woman's body to permit this. The woman may experience swelling, body ache, contractions, morning sickness, and restricted mobility, to name a few of a host of side effects. Further, complications may arise which pose a risk to the life of the woman. A mere description of the side effects of a pregnancy cannot possibly do justice to the visceral image of forcing a woman to continue with an unwanted pregnancy. Therefore, the decision to carry the pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman.

(underlining by me)"

6. Unwanted pregnancy as a result of failure in a familyplanning method, even during the period of Lactational Amenorrhea as in the instant case or as a result of sexual assault results in the same consequence. The pregnant lady is not interested in continuing with the pregnancy. In such a situation whether the child to be born is viable or if the child would be a healthy child are not relevant considerations. What is to be focused upon is, whether, the pregnant lady intends to give birth to a child or not. This is what has been emphasized by this Court in the aforesaid three Judge Bench decision which is binding on this Bench.

7. It may not be out of place to note that a foetus isdependent on the mother and cannot be recognized as an individual personality from that of the mother as its very existence is owed to the mother. It would be incongruous to conclude that the foetus has a separate identity from the mother and in spite of the physical or mental health of a mother being under threat, she will have to continue her pregnancy until the foetus is born which would endanger her

> delicate health. Such a position is contrary to Article 21 and 15(3) of the Constitution of India which recognize the right to life and liberty and particularly those of a woman. One cannot also lose sight of the fact that reproduction is unique to women and throughout her life, a woman goes through the process of menstruation, pregnancy, delivery, post-delivery phase and ultimately menopause. As stated above, right to reproductive health being a woman's human right would also include the right to an abortion. Otherwise, a woman who is forced into an unwanted pregnancy would experience physical and mental trauma and to endure the pregnancy which may continue in the post-natal period owing to which she would have the burden of bringing up an additional child and consequently, may lose out on other opportunities in life including right to employment and contribution to the income of the family."

16. The petitioner victim of sexual exploitation herself carry stigma in her life. In facts situation of the case, if she is not permitted to terminate her pregnancy, which is result of sexual exploitation, then it would be against her liberty and right to decide whether she continues with the pregnancy or not ?

17. The Hon'ble Supreme Court in the matter of **S vs. The Union of India & Ors.** Reported in **2026 LiveLaw (SC) 446** held in paragraphs No.11.3, 14 & 14.1, reads as under:-

> 11.3. We find that in cases of unwanted pregnancy, often the decision to terminate is made beyond the statutory period prescribed under the MTP Act owing to several reasons. It is under such circumstances that Constitutional Courts must weigh the circumstances in which a case in relation to the welfare of the pregnant woman has to be considered rather

than the child to be born. In fact, under certain grounds, the MTP Act itself permits termination of pregnancy which is therefore recognised in law. The Constitutional Court is approached only when the statutory remedy is not available to a party. Can the Constitutional Court then say that since the statutory remedy is not available, no constitutional remedy would be available. That, in our view, cannot be the approach. A lack of remedy under a statute does not bar a constitutional remedy. The statute codifies a part of the constitutional remedy. If a case is not covered within the four corners of a statute then, can the constitutional relief be also denied? In our view, in such circumstances, the Constitutional Court ought to weigh all facts and circumstances from the lens of the party who intends to terminate the pregnancy and is willing to undertake the medical risk, rather than compelling her to complete the pregnancy term and give birth to an unwanted child. If the pregnant woman carrying an unwanted pregnancy is compelled to continue such a pregnancy, then the constitutional rights of the pregnant woman would be breached.

14.We may usefully refer to a three-Judge Bench judgment of this Court in X v. Health Family Welfare Department, 2022 SCC OnLine SC 1321, wherein it has been authoritatively held that a woman's right to reproductive autonomy includes the right to choose whether and when to have children, the number of children to have, and the right to access safe and legal abortion and reproductive healthcare. This Court recognized that the decision to continue or terminate a pregnancy arises out of complex and deeply personal circumstances, which only the woman herself is best placed to evaluate. Reproductive autonomy, therefore, necessarily entails that every pregnant woman has the intrinsic right to

decide whether to undergo an abortion. Importantly, this Court also observed that a mere clinical description of pregnancy cannot capture the profound physical and psychological consequences of forcing a woman to carry an unwanted pregnancy to term. Consequently, the decision to either continue or terminate a pregnancy is firmly rooted in the woman's right to bodily integrity and decisional autonomy, which are integral facets of her fundamental rights under Article 21 of the Constitution.

14.1 In the context of the present case, we may refer to the decision of A (Mother of X) V. State of Maharashtra & Others in Civil Appeal No.827 of 2026, where, on similar facts, this Court had allowed medical termination of pregnancy of 30 weeks of a minor girl. In that case too, the pregnancy in question arose out of a consensual relationship, and much like the present case, the continuation of the pregnancy was stated to be traumatic both mentally as well as physically to the minor girl as it was an unwanted pregnancy.

18. At this stage, it would be relevant to notice that Explanation 2 appended to Section 3 of the Medical Termination of Pregnancy Act, 1971, as amended in 2021, creates a statutory presumption that where a pregnancy is alleged to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. The legislative intent underlying the said provision is clear and unambiguous. A woman who is compelled to carry a pregnancy resulting from rape is presumed in law to suffer grave mental injury. The trauma arising from sexual assault, coupled with the social, emotional and psychological consequences of an unwanted pregnancy, has a profound impact upon the life and future of the victim.

19. This Court cannot lose sight of the fact that the petitioner is a 21-year-old woman who was subjected to sexual exploitation on the false pretext of marriage. The pregnancy is not the result of a consensual relationship but is alleged to be the outcome of offences punishable under Section 376 of the IPC. To compel such a victim to continue with the pregnancy against her wishes would amount to subjecting her to further trauma and would seriously impinge upon her bodily integrity, dignity, privacy and reproductive autonomy, all of which are facets of the right to life guaranteed under Article 21 of the Constitution of India.

20. The victim has expressed her free and informed desire not to continue with the pregnancy. The pregnancy is alleged to be the consequence of repeated sexual assault upon a women. Therefore, the statutory presumption of grave injury to the mental health of the petitioner stands attracted and there exists no legal impediment in permitting medical termination of pregnancy.

21. Consequently, and in the interest of securing the physical, mental and emotional well-being of petitioner, the present writ petition deserves to be and is hereby **allowed**. It is directed that petitioner shall be admitted, within a period of one week from today, in the District Hospital/Associated Government Medical College Hospital, Bilaspur, or any other Government Hospital having the requisite facilities, where the procedure for medical termination of pregnancy shall be undertaken strictly in accordance with the provisions of the Medical Termination of Pregnancy Act, 1971, as amended in 2021, and the applicable medical protocol. The procedure shall be

carried out by a duly constituted team of qualified medical experts, including at least two Gynecologists and a Surgeon, along with such other specialists as may be considered necessary by the hospital authorities.

22. Before undertaking the procedure, informed written consent of petitioner shall be obtained in accordance with law. In addition thereto, having regard to the peculiar facts and circumstances of the case and the continued involvement and support of the family, the consent and concurrence of her father/guardian shall also be obtained. The medical team shall fully explain to petitioner and her family members the nature of the procedure, attendant risks and post-operative requirements before proceeding further.

23. The Chief Medical and Health Officer, Bilaspur, is directed to immediately establish contact with the father of petitioner and extend all necessary assistance to petitioner and her family members for effective implementation of this order. The CMHO shall ensure that appropriate transportation, including ambulance facilities, is made available to petitioner for her travel to and from the hospital and for any medical exigency connected with the procedure. The CMHO shall also coordinate with the concerned medical experts and fix an appropriate date for admission and termination of pregnancy within a period of one week from today. The State authorities shall render all possible logistical, medical and administrative assistance to petitioner and her family members so that the procedure is carried out in a safe, dignified and expeditious manner without causing any inconvenience or hardship to the victim.

24. It is further directed that all necessary pre-operative, operative and post-operative medical care shall be provided to petitioner by the hospital authorities. The identity, privacy and confidentiality of petitioner shall be strictly protected at every stage of the proceedings and medical treatment.

25. Since a criminal case arising out of the alleged sexual assault is stated to be pending investigation/trial, the concerned hospital authorities shall preserve appropriate samples, including fetal tissue/DNA samples, in accordance with the applicable medical and forensic protocols and shall make the same available to the investigating agency, if required, for the purposes of investigation and prosecution.

26. A copy of this order be communicated forthwith to the Chief Medical and Health Officer, Bilaspur for immediate compliance. Learned State counsel shall also ensure prompt transmission and compliance of this order.

27. The Chief Medical and Health Officer, Bilaspur, shall ensure due compliance of the directions contained in this order and, after completion of the procedure and necessary post-operative care, shall submit a compliance report before the Registrar (Judicial) of this Court within a period of two weeks from the date of completion of the medical termination procedure. The report shall indicate the steps taken pursuant to this order, the date on which the procedure was carried out, the medical condition of petitioner after the procedure and the assistance extended by the authorities to petitioner and her family members. The Registrar (Judicial)

shall place the said report before the appropriate Bench for necessary information.

28. In the result, the writ petition stands **allowed**.

29. The sealed-cover report of the Medical Board is accordingly taken on record.

30. The particulars of victim and her father has been screened in the final order.

Sd/-

(Amitendra Kishore Prasad)

Judge

Priyanka