IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 15401 of 2026

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XXXXXXXXX

Versus

STATE OF GUJARAT & ORS.

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Appearance:
MR D S GADHVI(11310) for the Applicant(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 2,3
MR.JAY MEHTA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**

Date : 23/10/2026

ORAL ORDER

1. The present application has been preferred by the applicant-victim under Articles 14, 21, 226, 227 of the Constitution of India as well as under the provisions of the Medical Termination of the Pregnancy Act, 2021, in connection with the FIR being No.11207076260618/2026 registered with the Vejalpur Police Station, Panchmahal for the offences punishable under 64(2)(j), 84(2)(m), 65(1), 54, 351(2) of BNS and section 4, 6, 12, 17 of POCSO.

2. On 22.10.2026, this Court passed the following order*:*

"1. Heard Mr.D.S.Gadhvi, learned advocate for the applicant-victim.

2. The applicant has prayed for the following reliefs:

"(A) YOUR LORDSHIPS may be pleased to issue an appropriate

writ, order or direction quashing and setting aside the impugned order dated 21.10.2026 passed by the learned Special Judge (POCSO) and Additional Sessions Judge, Panchmahals at Halol, below Criminal Misc. Application No. 541 of 2026, to the extent necessary for consideration of the petitioner's request for medical termination of pregnancy in accordance with law; (Annexure A)

(B) YOUR LORDSHIPS may be pleased to issue an appropriate writ, order or direction directing the respondent authorities to immediately constitute a multidisciplinary medical board consisting of qualified and experienced medical specialists, including obstetricians, gynaecologists, a radiologist, a physician, an anaesthesiologist and a psychiatrist or clinical psychologist, for examination of the minor petitioner and submission of a detailed medical report concerning her present gestational age, physical and mental health, risks of continuation of pregnancy, risks of termination and the medical feasibility of termination at the present stage;

(C) YOUR LORDSHIPS may be pleased to issue an appropriate writ, order or direction permitting and directing the respondent authorities to undertake medical termination of pregnancy of the minor petitioner at GMERS Medical College and Hospital, Godhra, or any other suitably equipped government hospital, subject to the opinion of the competent medical board, the required consent, medical safety and the satisfaction of this Hon'ble Court that such termination is permissible under the applicable law;

(D) YOUR LORDSHIPS may be pleased to direct the respondent authorities to provide all necessary medical facilities, treatment, counselling, psychological support, pre-procedure care and post-procedure care to the minor petitioner, at the expense of the State, as may be considered appropriate;

(E) Pending admission, hearing and final disposal of the present petition, YOUR LORDSHIPS may be pleased to direct the respondent authorities to immediately arrange examination of the minor petitioner by a multidisciplinary medical board at a suitably equipped government hospital and submit a detailed medical report

before this Hon'ble Court within 24 hours, or within such time as this Hon'ble Court may deem fit, so that appropriate further orders concerning termination of pregnancy may be passed without delay;

(F) YOUR LORDSHIPS may be pleased to grant such other and further reliefs as may be deemed just, fit and proper in the facts and circumstances of the present case."

3. The victim has lodged an FIR against the accused for the offences alleged under sections 64(2), (j), 64(2),(m), 65 (1), 54 and 351(2) of BNS, Sections 4, 6, 12 and 17 of the POCSO Act and Sections 3 (1) (w)(i), 3 (1)(w)(ii) and 3 (2) v) of the Scheduled Cast and Scheduled Tribes (prevention of Atrocities) Act with the concerned Police Station, which has been registered on 06.10.2026. The allegations made in the FIR against the accused prima facie suggest the applicant being a victim of sexual abuse. From the report placed on record at Annexure "A", it transpires that the victim is aged 13 years and 11 months at present, she is carrying pregnancy of approximately 26 weeks.

4. Considering the submissions made by the learned advocate for the applicant and the averments made, issue NOTICE making it returnable on 23.10.2026.

5. In the meantime, the victim may be examined by the Senior doctors of Gynecologist and Obstetrician, at respondent no.2 Hospital. The applicant is directed to appear before the panel on 23.10.2026 in the morning, for medical examination. The respondent no.2 is directed to submit a report to this Court before 2.30 p.m. on 23.10.2026 as to whether termination of pregnancy is medically feasible or not. Considering the fact that she is an alleged victim of rape and she also inclines to terminate the pregnancy. The Investigating Officer is directed to remain present on the next date of hearing, with the report of the medical examination of the victim.

6. Noticing the averments made in the petition, let the name of the victim may not be disclosed in the orders which may be subsequently passed as well as on the medical records or any documents which are publicly made available.

7. Copy of this order be given to learned APP for its compliance. Direct service is also permitted."

3. Pursuant to the order passed by this Court dated 22.10.2026, the Chief District Medical Officer Cum Civil Surgeon, GMERS Medical College Attached General Hospital, District Panchmahal, Godhra, has submitted a report dated 23.10.2026 which is produced before this Court today and taken on record wherein, it is stated that victim was examined by the Medical Board/ Committee at GMERS Medical College Attached General Hospital, District Panchmahal, Godhra. On perusing the report, the panel doctors have opined that there is no apparent medical contraindication to termination of pregnancy at present, and termination is medically feasible from an obstetric standpoint. The victim's pregnancy is 26 weeks and 5 days as per the certificate and with a specific report/opinion of the empaneled doctors that medical termination of pregnancy can be performed as per the guidelines of the MTP Amendment Act, 2021.

4. Learned advocate Mr.Gadhvi submits that as the petitioner is a victim of crime she does not wish to

continue with the pregnancy.

5. This Court has noticed that the applicant-victim is alleged to have been raped by the accused named in the FIR No.11207076260618/2026 registered with the Vejalpur Police Station, Panchmahal for the offences punishable under 64(2)(j), 84(2)(m), 65(1), 54, 351(2) of BNS and section 4, 6, 12, 17 of POCSO.

6. Learned APP has urged before this Court that the Court may, in a given set of circumstances, issue a direction for termination of pregnancy. However, the tissues from the fetus may be directed to be handed over for the purpose of DNA sampling in a scientific manner to the Investigating Officer.

7. In the case of ***X vs. Union of India and Another (Miscellaneous Application No.2157 of 2023 in Writ Petition (Civil) No.1137 of 2023)***, the Hon'ble Supreme Court has summarized the law regarding the medical termination of pregnancies. In paragraph-13, the Hon'ble Supreme Court has observed thus :

"Medical termination of pregnancies

13. The termination of pregnancies is governed by the MTP Act and the rules framed under it. The MTP Act is a progressive legislation which regulates the manner in which pregnancies may be terminated. Section 3

spells out certain conditions which must be satisfied before a pregnancy can be terminated. The conditions depend upon the length of the pregnancy. Where the length of the pregnancy does not exceed twenty weeks, one Registered Medical Practitioner must be of the opinion, formed in good faith, that:

a. 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. The anguish caused by a pregnancy which occurs due to the failure of a contraceptive method is presumed to constitute a grave injury to the mental health of the woman; or

b. There is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy is presumed to constitute a grave injury to the mental health of the woman. The presumption adverted to in (a) above makes it evident that the MTP Act recognizes the autonomy of the pregnant woman and respects her right to choose the course of her life.

14. Where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks, two RMPs must be of the opinion discussed in the preceding paragraph. The categories of women where a pregnancy beyond 20 weeks and up to 24 weeks may be terminated are permitted to be prescribed by rules made by the delegate of the legislature. Rule 3B of the MTP Rules (as amended in 2021) provides grounds for the termination of a pregnancy up to twenty-four weeks. The termination may be allowed in the following cases or for the following persons:

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 with a major disability in terms of the criteria laid down under the Rights of Persons with Disabilities Act 2016;

e. Mentally ill women including mental retardation;

f. Foetal malformation that has a substantial risk of being incompatible with life or where in the event of birth, the child may suffer from physical or mental abnormalities and be seriously handicapped; and

g. Women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.

In X v. Principal Secretary, Department of Health and Family Welfare, GNCTD, this Court held that the benefits of Rule 3B(c) extend equally to both single and married women and that the benefits of Rule 3B extend to all women who undergo a change in their material circumstances.

15. Significantly, if in the opinion of an RMP, the termination of a pregnancy is immediately necessary to save the life of a pregnant woman, the provisions of Section 3 which relate to the length of the pregnancy and the opinion of two RMPs shall not apply. Section 4 (which concerns the place at which a pregnancy may be terminated) shall not apply to such cases as well. The design of the statute makes it evident that saving the life of the pregnant woman is of paramount importance, notwithstanding the length of the pregnancy.

16. Further, the provisions of Section 3(2) relating to the length of the pregnancy shall not apply to the termination of a pregnancy by an RMP, where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board. The

Medical Board has the power to allow or deny the termination of a pregnancy the length of which is beyond twenty-four weeks. It may do so only after ensuring that the procedure would be safe for the woman at that gestation age and after considering whether the foetal malformation leads to a substantial risk of the foetus being incompatible with life, or where the child (if it is born) may suffer from such physical or mental abnormalities as to be seriously handicapped. Therefore, the outer temporal limit within which a pregnancy may be terminated is lifted in some cases."

8. The learned advocate appearing for the applicant-victim, relying upon the decision of the Hon'ble Supreme Court in the case of ***XYZ vs. The State of Gujarat & Ors*** *(SLP (Cri) Dy. No.33790 of 2023*, decided on 21.08.2023), has submitted that the Supreme Court, in paragraphs-10, 12 & 14, held as under :

"10. We find that in the absence of even noticing the aforesaid portion of the report, the High Court was not right in simply holding that "the age of the foetus is almost 27 weeks as on 17.08.2023 and considering the statements made by the learned advocate for the petitioner-victim and the averments made in the application the petition for medical termination of pregnancy stands rejected", which, in our view is ex facie contradictory. Being aggrieved by the said order the appellant has knocked the doors of this Court seeking expeditious relief.

12. Pursuant to the order of this Court dated 19.08.2023 as extracted hereinabove, the report of the Medical Superintendent, Dr.Kiran C.Patel Medical College & Research Institute, Bharuch and Chief District Medical officer-cum-Civil surgeon General Hospital, Bharuch, Gujarat has been placed on record, which states that the petitioner's pregnancy is of 27

weeks 2 days +/- 2 weeks duration and the live intrauterine foetus weights around 1088 grams as per the ultra sonography done on 19.08.2023. Paragraphs 3 to 6 of the report reads as under :-

"3. There is no indication for termination of pregnancy as per Maternal Physical Health but as per history given by survivor this pregnancy is due to sexual assault with her, continuation of this pregnancy can affect her mental health and in addition survivor want to terminate pregnancy; Medical Termination of Pregnancy (MTP) at this stage of pregnancy can be done in this hospital if Honourable Court Permits.

4. In that case the Medical Termination of Pregnancy would be done first by induction of Labour and if indicated then by Hysterotomy procedure after taking consent of survivor & explaining due risks to maternal health and fetal outcome.

5. At present the survivor is clinically fit for above mentioned procedure.

6. The Medical Termination of Pregnancy would not adversely affect child bearing capacity and General Health of the survivor in future."

14. In Suchita Srivastava vs. State (UT of Chandigarh) (2009) 9 SCC 1, this Court expressed that the right of a woman to have reproductive choice is an insegregable part of her personal liberty, as envisaged under Article 21 of the Constitution. She has a sacrosanct right to her bodily integrity.

9. In the case of ***Minor R through Mother H vs. State of NCT of Delhi and Another (W.P. (Cri) No.221 of 2023, decided on 25.01.2023)***, the Delhi High Court held as under :

"12. In the case of sexual assault, denying a women right to say no to medical termination of pregnancy and fasten her with responsibility of motherhood would amount to denying her human right to live with dignity as she has a right in relation to her body which includes saying Yes or No to being a mother. Section 3(2) of the MTP Act reiterates that right of a woman. To force the victim to give birth to child of a man who sexually assaulted would result in unexplainable miseries.

One will shudder to think what a victim who is carrying such fetus in her womb must be going through each day, being reminded constantly of the sexual assault that she has undergone. Cases where sexual assault results into pregnancy of the victim are even more traumatic as the shadow of such tragic moment lingers on each day with the victim. It is this mental agony which has been taken into account by the MTP Act which lays emphasis on not only grave physical injury but also mental health of a pregnant woman. It therefore provides under Section 3(2)(i) that if the continuance of pregnancy would involve grave injury to the mental health of a pregnant woman, she can legitimately seek to terminate the same. In furtherance of the same intent, Section 3(2) Explanation 2 of the MTP Act provides that -

> *"Explanation 2.- Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman."*

The present case stands covered under this explanation.

> *14. This Court takes note of the fact that Article 21 of the Constitution of India dealing with right to life invariably includes a life lived with dignity. The child herein is a victim of rape. Termination of pregnancy in cases, like present one, cannot be reduced merely to be defined as right of a woman sexually assaulted, but also to be recognized as a human right, as it affects dignified existence of a victim if the same is not permitted. It is not the privacy of the rape victim which is invaded by sexual assault, but her body is wounded and her soul is scared. It would not be appropriate to expect the minor victim who is a rape victim to take the burden of giving birth and raising a child, especially in a situation where she herself is passing through the age of adolescent. Doing so, will amount to asking a child to give birth and raise another child. Given the social, financial, and other factors that are immediately associated with the pregnancy, an unwanted pregnancy would surely have an impact on victim's mental health."*

10. At this stage, it would be profitable to refer to the decision of the Hon'ble Supreme Court, wherein 'the best interest' theory for the victim is settled. Moreover, considering the medical opinion given by the Medical Board as well as considering the trauma, mental agony and possible social ostracism which the applicant-victim has to undergo, this Court is inclined to allow the prayer for medical termination of the pregnancy.

11. Since the pregnancy of the applicant-victim exceeds 24 Weeks as of now, the Court directs three senior most Surgeons/Gynecologists of respondent no.2 - The Civil Surgeon/Medical Superintendent, GMERS Medical College and Hospital, Godhra, District -Panchmahal to examine the applicant-victim and also by a Psychologist attached to the same. The said team of doctors shall examine the applicant-victim, and after having interaction with her, undertake the procedure of surgery on urgent basis along with other required expert doctors like Physician, Anesthetic etc., if otherwise, there is unanimity amongst the doctors to the effect that such termination would be carried out safely.

12. Considering the fact that each day's delay will add to the victim's agony, the following directions are issued :

(i) The victim is permitted to get the pregnancy terminated at the GMERS Medical College and Hospital, Godhra, District- Panchmahal. The termination of pregnancy be carried out with all the necessary medical facilities available at the disposal of the Hospital and on ensuring proper care in pre-termination and post termination periods.

(ii) On production of this order, the Superintendent of the GMERS Medical College and Hospital, Godhra, District- Panchmahal shall take immediate measures for constituting a medical team for conducting the procedure.

(iii) the victim shall file an appropriate undertaking, authorizing to conduct the surgery at her risk.

(iv) If the baby is alive at birth, the hospital shall ensure that the baby is offered the best medical treatment available, so that it develops into a healthy child.

(v) If the victim is not willing to assume the responsibility of the baby, the State and its agencies shall assume full responsibility and offer medical support and facilities to the child, keeping in mind the best interests of the child and the statutory provisions in the Juvenile Justice (Care and Protection of Children) Act, 2005.

(vi) The doctors shall take the necessary tissue samples from the DNA identification by following the scientific practice for DNA identification and such samples shall be handed over to the Investigating Officer concerned.

13. The learned APP shall communicate about this order to the GMERS Medical College and Hospital, Godhra, District -Panchmahal, forthwith. A copy of this order shall also be sent by the Registry to the respondent no.2 - The Civil Surgeon/Medical Superintendent, GMERS Medical College and Hospital, Godhra, District - Panchmahal ***via fax/e-mail in expeditious manner***.

14. With above directions, the present petition stands disposed of. **Direct service today** is permitted.

(M. K. THAKKER,J)

ARCHANA S. PILLAI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ARCHANA SAJEEVKUMAR PILLAI(HC01899), PRIVATE SECRETARY, at High Court of Gujarat on 23/10/2026 15:48:27