IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 15837 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE MOOL CHAND TYAGI

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Approved for Reporting	Yes	No

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ABC
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR. MAULIK M SONI(7249) for the Applicant(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 2,3
MR. SOAHAM JOSHI, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

Date : 05/11/2026

JUDGMENT

1. The captioned petition is preferred under Article 14, 21, 226 & 227 of the Constitution of India read with provisions of Medical Termination of Pregnancy Act, 1971 and Section 528 of BNSS, 2023, seeking the following reliefs:-

A) YOUR LORDSHIP MAY be pleased to Admit /Allow this Petition;

B) YOUR LORDSHIP MAY be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order(s), or Direction(s)

Directing the Respondent No. 3 Authority to Terminate the Pregnancy of the. Petitioner / Victim Girl at the Earliest, as the continuation of preg2nd trimesternancy would cause grave injury to the Petitioner / Victim as required under the provisions of the Medical Termination of Pregnancy Act, 1971, in the larger interest of justice;

C) *Pending the Admission and final disposal of this Petition, YOUR LORDSHIP MAY be pleased to direct the Respondent Authorities to conduct the Medical Termination of Pregnancy of the Petitioner /Victim with Two Qualified Surgeons, including a Gynecologist and Obstetrician, and in the presence of a Qualified Medical Practitioner with proper care and precaution so as to avoid any likelihood of any type of harm to the Petitioner / Victim Girl, after necessary Medical check-ups, as required under the provisions of the Medical Termination of Pregnancy Act, 1971, in the larger interest of justice;*

D) *YOUR LORDSHIPS MAY be pleased to award any such other and further reliefs as deemed fit expedient in the interest of justice;*

2. Issue Rule to the respondents, returnable forthwith. Learned APP accepts and waives service of Rule on behalf of respondent No.1 – State.

3. Vide order dated 03.11.2026, this Court directed the Investigating Officer as well as the Chief Medical Officer, Zydus Medical College & Hospital, Dahod to file a report as to whether termination of pregnancy would be medically advisable and in the best interests of the victim. Today, learned APP has placed the report on record. The same is taken on record.

4. Learned counsel for the petitioner submitted that the petitioner herein is the victim of rape and aggravated penetrative sexual assault. FIR being C.R. No. 11821005260830 of 2026 was registered before the Devdadh Baria Police Station, Dist : Dahod for the offenses punishable under Sections 137(2), 87, 64(2)(m) & 65(1) of BNS, 2023 read with Sections 4 & 6 of the POCSO Act, 2012. He further submitted that the present age of the victim is 15 years, nine months and seven days. He further submitted that as per the medical report, the victim is currently in the 2nd trimestor of pregnancy and is fit for termination pregnancy. He has placed reliance upon the judgment rendered by the Hon'ble Apex Court in ***S vs. The Union of India & Ors., SLP (C) No. 14454/2026,*** decided on ***24th April, 2026*** and prayed that considering the best interest of the victim, necessary directions be given, thereby permitting the termination of pregnancy.

5. In response, learned APP submitted that considering the report of the medical board, an appropriate order may be passed.

6. This Court has considered the submissions advanced by the learned counsel for the parties and has also gone through the material available on record. Before proceeding further, it would be apposite to refer to the recent judgment rendered by the Hon'ble Apex Court in ***S vs. The Union of India & Ors.,*** (supra), wherein the Hon'ble Apex

Court has observed as under:-

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> *11. The Court must, while exercising jurisdiction under Article 226 or Article 32 of the Constitution of India, therefore, prioritize the best interests of the minor mother-to- be in the present case, over the procedural and statutory limitations under the MTP Act. If the interest and welfare of the mother-to-be are to be given due consideration, her reproductive autonomy must be accorded the highest importance. This is particularly having regard to the facts and circumstances of the present case.*
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> *11.1 The right to make decisions concerning one's body, particularly in matters of reproduction, is an integral facet of personal liberty and privacy under Article 21 of the Constitution of India. This right cannot be rendered ineffective by imposing unreasonable restrictions, especially in cases involving minors and unwanted pregnancies, such as in the instant case.*
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> *11.2 No court ought to compel any woman and more so a minor child, to carry a pregnancy to full term against her express will. Such compulsion would not only disregard her decisional autonomy but could also inflict grave mental, emotional and physical trauma in case she is compelled to give birth. In these circumstances, denying the relief sought would compel the minor to endure irreversible consequences. Such an approach would be contrary to the constitutional ethos and the settled principles recognizing reproductive choice as a fundamental right. What is of relevance is the choice of the pregnant woman rather than the interest of an unborn child. It is easy to say*

that if the pregnant woman is not interested in raising the child, she may give away the child in adoption and therefore must be compelled into giving birth to the child. However, that cannot be the correct approach, particularly, in cases where the child to be born is unwanted. In such a situation, directing the pregnant woman to give birth to the child against her wishes and to forcefully continue her pregnancy would negate the welfare of the pregnant woman and make it subordinate to the child yet to be born.

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.

1.4 Further, if the Constitutional Court adopts the view that even an unwanted pregnancy must be continued, then instead of approaching the Court for permission, pregnant women would visit illegal abortion centres and secretly undergo termination of such pregnancies which would only make such women more vulnerable and expose them to more dangerous procedures. It is under such considerations that a Constitutional Court must decide what is best in the interest of the pregnant woman, particularly, when the pregnancy is unwanted as in the present case.

12. It is necessary to revisit the facts in the present case. The appellant's daughter is herself a minor girl of fifteen years. The pregnancy is an unwanted pregnancy which is outside the wedlock and continuing the pregnancy is not in the interest of the pregnant minor particularly when she has attempted to foreclose her life on two occasions. The minor is willing to undergo the medical risk of a termination of pregnancy. The termination of pregnancy would be bearing in mind the long term social, economic and emotional interest of the pregnant minor.

13. Further, the mental health of a pregnant woman carrying an unwanted pregnancy also must be borne in mind and given its due importance. If she is forced to continue her pregnancy and give birth the consequences would be adverse. An unwanted pregnancy and the effect thereof on the mindset of such a pregnant woman will also have a bearing on the

child to be born. The decision not to continue a pregnancy and to seek termination with all attendant risks must be respected rather than compelling such a pregnant woman to continue such a pregnancy.

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.

15. Thus, what is relevant is whether the pregnant woma intends to give birth to a child or not. In the instant case, the facts of the case reveal that the minor girl intends not to give birth.

15.1 Keeping that in view, when Constitutional Courts are approached by unintending mothers seeking termination of pregnancy, they ought not take a prohibitory approach. The consequence of such an approach will not be the cessation of late-term terminations, which will happen anyway, but only their displacement outside the law. Pregnant women may be driven to seek termination through unregulated means, often at a greater risk to their life and health. Thus, the unintended consequence of judicial reluctance to permit termination beyond the statutory period reinforces the very conditions that the MTP Act seeks to avoid, namely unsafe abortions.

15.2 Moreover, the invocation of foetal normalcy or the fact that the pregnancy has been carried for a considerable duration as grounds to deny termination is of no constitutional persuasiveness. These arguments proceed on the assumptions: first, that in the absence fetal abnormality, the continuation of pregnancy is unobjectionable, and second, that the passage of time extinguishes the pregnant woman's claim to decisional autonomy.

15.3 We wish to lay to rest both the above arguments. Firstly, to predicate access to termination on the existence of foetal anomaly is to make the exercise of a

fundamental right over one's body contingent upon pathology of the fetus, which is not in the hands of the unintending mother. In other words, her rights are subordinated to the condition of the fetus over which she has no control. As a matter of constitutional principle, this cannot be allowed. Rights are not functions of circumstance, they attach to humans for the reason that they are free moral agents. To say that termination of pregnancy is thinkable only in the presence of foetal defect instrumentalises the pregnant woman into a conduit who is required to sustain a pregnancy no matter her will. Secondly, the passage of time does not extinguish the right to make reproductive choices. This argument rests on the untenable presumption that delay means acquiescence, disregarding the manifold reasons that may account for late presentation of pregnancy including but not limited to delayed detection due to irregular menstrual cycles or lack of reproductive awareness, limited access to healthcare services, financial constraints that impede timely medical consultation, and hesitation to disclose a pregnancy coercion, abuse, or lack of familial support: all of which may prevent earlier disclosure.

15.4 Constitutional courts cannot overlook that parties approach them in such hard cases precisely because no effective statutory right remains available. The absence of a legal remedy under the MTP Act is the very reason for the court's jurisdiction being invoked in the first instance. Therefore, to defer mechanically to statutory limitations is to disregard the distinct role of the Constitutional Court in protecting individual rights even when no other statutory remedies exist. The effect of such an approach is to render the fundamental right to bodily autonomy nugatory.

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7. Considering the opinion of the Medical Board that the victim is fit for medical termination of pregnancy, and having regard to the ratio of the aforesaid judgment, I am of the view that this Court shall decide this matter keeping in mind the best interests of the victim. Hence, the instant petition deserves to be allowed and accordingly, this Court, keeping in mind the best interests of the victim, hereby allows the present petition and permits the medical termination of pregnancy, subject to the safeguards and directions as detailed below:-

1. Respondent No.3 – Chief Medical Officer, Zydus Medical College and Hospital is directed to:

    a) Obtain a written undertaking from the victim authorizing her consent to conduct the procedure at her risk.
    b) Upon receiving the undertaking, shall immediately constitute a Medical Board comprising three senior-most Gynecologists/Surgeons, along with a Physician, Anesthetist, Radiologist, Pediatrician, obstetrician and Psychologist, to evaluate the victim's physical and mental health. They shall explain to the victim as well as her guardian, about the risks involved in terminating the pregnancy and also other factors, such as surgical and clinical implications of terminating a pregnancy at this stage, more particularly considering the fact that the victim is in the 2nd trimestor of pregnancy.
    c) Proceed with the procedure on an urgent basis with the help of the afore experts, only upon a unanimous medical opinion that the termination can be carried out safely

without endangering the life of the victim.

d) shall ensure that all necessary care and caution is taken by the doctors while carrying out procedure for termination of pregnancy. Provide all necessary medical infrastructure, including reserving a dedicated special room for the victim and her family, ensuring continuous psychological support and counseling throughout her admission.

e) Preserve and seal requisite fetal tissue samples strictly in accordance with standard medical and scientific protocols for DNA profiling, and hand them over to the Investigating Officer for onward transmission to the Forensic Science Laboratory (FSL).

f) Retain the victim in the hospital for all necessary post-operative care and observation, discharging her only after the Medical Board certifies that she is clinically stable, fully recovered, and fit for discharge.

2. In the event of the infant being alive at birth, the Hospital Authorities and State are directed to:

a) Extend immediate, state of the art intensive medical care to the newborn, either within the hospital or by arranging an immediate transfer to a specialized facility, ensuring all measures are taken for the infant's health and survival.

b) If the victim declines to accept the child, the State and its relevant child welfare authorities under the Juvenile Justice (Care and Protection of Children) Act, should assume full legal, physical and medical responsibility.

3. The Secretary, District Legal Service Authority is directed to:-

a) Take immediate statutory steps, in the event the family refuses custody, to place the child under the care of a recognized Specialized Adoption Agency in accordance with the law and statutory adoption guidelines.
b) Process and disburse interim compensation to the minor victim on a priority basis under the applicable Victim Compensation Scheme upon receipt of the records from the Investigating Officer, and take necessary measures for the expeditious release of the final compensation.
c) Formulate and supervise a long-term rehabilitation plan for the victim, taking into account the trauma suffered, shall offer counseling and ensure the provision of educational support, vocational training, and ongoing psychosocial assistance aligned with her wishes.

4. The Investigating Officer (I.O.) is directed to:

a) Receive the sealed fetal tissue samples from the hospital authorities and promptly transmit them under proper chain of custody to the Forensic Science Laboratory (FSL) for forensic DNA analysis.
b) Immediately transmit certified copies of the First Information Report (FIR), case diary, and complete medical records to the concerned DLSA to expedite the determination and disbursal of victim compensation.

5. The Principal Secretary, Department of Health and Family Welfare, Government of Gujarat, is directed to:

a) Provide immediate nutritional, travel, and incidental medical requirements.
b) Bear all medical expenses incurred toward the termination procedure, in-patient stay, medication, nutritional requirements, and complete postpartum care for both the victim and the child for a minimum period of six months.

8. A Copy of this judgment shall be provided to the learned APP for onward transmission to the concerned I.O., concerned Hospital and other concerned departments, if any, for its compliance and for taking appropriate action. A copy shall also be given to the learned counsel for the petitioner; and further, the concerned hospital shall be also intimated about this judgment through **e-mail**.

9. Direct service **today** is permitted.

(MOOL CHAND TYAGI, J)

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Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ARUN B(HC02368), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 05/11/2026 15:24:20