



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

WRIT PETITION NO. 1812 OF 2026

Ku. XYZ, through her Father Pradeep Vyankatrao Bagde

Vs.

State of Maharashtra, thr. Principal Secretary, Public Health Services, Mantralaya,
Mumbai & Ors.

*Office Notes, Office Memoranda of Coram,
Appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Ms. S.H. Bhatia, Advocate (appointed) for the Petitioner.

Mr. H.D. Marathe, AGP for the Respondent/State.

CORAM : ANIL S. KILOR AND RAJ D. WAKODE, JJ.

DATE : 27.02.2026

Heard.

2. On 26th February, 2026, the following order was passed:

"1. Heard the learned counsel for the petitioner.

2. The petitioner, who is aged about 12 years girl and a victim of rape at the hands of her own real brother, has approached this Court, seeking directions to the respondents to terminate her pregnancy, which is about 26- 27 weeks old.

3. In view of above, issue notice to the respondents, returnable on 27.02.2026 at 2.30 p.m.

4. The learned AGP waives service of notice for the respondent/State.

5. Office objections(s), if any, shall be removed before the next date.

6. Considering the allegations set out in the First Information Report and having regard to the age of the child, we deem it appropriate to refer the present petitioner to the Medical Board duly constituted under the Medical Termination of Pregnancy Act, 1971, at respondent No.3-Government Medical College & Hospital, Nagpur, through its Dean/Medical Officer, Nagpur.

***7. The said Medical Board shall examine the petitioner and submit its report to this Court by tomorrow before 12:00 p.m.,** specifically indicating the present health condition of the petitioner and her medical suitability for undergoing the proposed medical termination of pregnancy procedure.*

8. *The Respondent No.2-Indira Gandhi Government Medical College, Nagpur, through its Medical Officer, where the petitioner is presently admitted, is directed to shift the petitioner to Respondent No.3 for further examination by the duly constituted Medical Board.*
9. *The learned AGP undertakes to communicate this order to the respondents.*
10. *An authenticated copy of this order be given to the parties.”*

3. In response to the aforesaid order, the learned Assistant Government Pleader Mr. H.D. Marathe has tendered across the bar a report of the MTP Board along with the covering letter dated 27th February, 2026 issued by the Government Medical College and Hospital, Nagpur. The aforesaid report is taken on record and marked “X” for the purpose of identification.

4. The recommendations of the Board for termination of pregnancy read as under:

*“ The MTP Board reviewed all her lab investigations and her ultrasound findings. The MTP board has **APPROVED** the permission for termination of pregnancy as per the guidelines. Maternal examination and investigations do not reveal any significant morbidity to mother. The mother has undergone psychiatric evaluation. The opinion of MTP Board is as follows:*

- *Patient is pregnant with single live intrauterine pregnancy of 26 WEEKS 6 DAYS.*
- *The patient is mentally and physically fit to undergo medical termination of pregnancy.*
- *Board has **APPROVED** termination of pregnancy to the patient”*

5. It is worth to mention here that the Medical Termination Board comprised of Senior Anaesthetist who opined that the petitioner is fit for anaesthesia. Also, the Senior Paediatrician opined that the cardiorespiratory status of the petitioner is stable. The Senior Psychiatrist opined that the petitioner is mentally fit to undergo the medical termination of pregnancy.

6. Thus, the opinion of the Medical Board substantiates that the petitioner, though she is 12 years old, is mentally and physically fit to undergo medical termination of pregnancy and thus, the Medical Termination of Pregnancy Board, Government Medical College and Hospital, Nagpur *vide* its report dated 27th February, 2026, has approved the termination of pregnancy of the petitioner.

7. As recorded in the order dated 26th February, 2026, the aforesaid pregnancy of the petitioner, who is only 12 years old, allegedly resulted from continuous rape committed by her real brother, because of which an offence bearing FIR No.0177/2026 was registered against her brother on 21st February, 2026 by the Police Station Kalmeshwar, District Nagpur (Rural).

8. In view of the aforesaid circumstances, considering the age of the petitioner and background that resulted into the petitioner's pregnancy, we concede to the petitioner's decision to terminate pregnancy, considering the judgment of the Hon'ble Supreme Court in the case of *XYZ Vs. State of Gujarat and Ors. (2023 CC OnLine SC 1573)*, wherein in an identical situation, the Hon'ble Supreme Court has 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."

9. In view of the observations of the Hon'ble Supreme Court, the circumstances in which the present petitioner has become pregnant, and the positive medical report approving the termination of pregnancy of the petitioner by the Medical Termination of Pregnancy Board, which has not reported any

direct threat to the life of the petitioner or the fetus, we pass following order:

ORDER

- (i) The present writ petition is allowed.
 - (ii) The Dean, Government Medical College and Hospital, Nagpur, 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 parents of the petitioner to undergo the procedure.
 - (iii) The Dean, Government Medical College and Hospital, Nagpur, shall perform DNA test of the fetus and forward the report to the Investigating Officer of Police Station Kalmeshwar, District Nagpur (Rural).
10. The fees of the appointed counsel Ms. S.H. Bhatia be quantified and paid as per rules.
 11. Authenticated copy of this order be provided to the parties.
 12. The writ petition is disposed of in the above terms. No costs.

(RAJ D. WAKODE, J.)

(ANIL S. KILOR, J.)