



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANDEEP N. BHATT

ON THE 29th OF JUNE, 2026

WRIT PETITION No. 22392 of 2026

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Appearance:

Shri Govind Pal Singh Songara - Advocate for the petitioner

Ms. Pranjali Yajurvedi - GA for the State.
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ORDER

1. Heard learned counsel for the petitioner on admission.
2. Present petition has been filed by the petitioner under Article 226

of the Constitution of India for seeking following reliefs :

- (i) Issue an appropriate writ, order or direction permitting the Petitioner to undergo medical termination of her pregnancy, presently of approximately 13 weeks, through a Registered Medical Practitioner at any Government Hospital or recognized Private Hospital in accordance with Section 3(2) of the Medical Termination of Pregnancy Act, 1971 read with Rule 3B of the Medical Termination of Pregnancy Rules, 2003;
- (ii) Direct the Respondents/concerned medical authorities to immediately constitute, if deemed necessary, an appropriate Medical Board for examination of the Petitioner and for assessing.
- iii) Whether it is safe for the petitioner to undergo the procedure for medical termination of pregnancy.
- iv) To pass such other or further order(s), direction(s) or relief(s) as this Hon'ble Court may deem fit, proper and expedient in the facts and circumstances of the present case, in the interest of justice.



3. The peculiar facts and circumstances of the present case is that the mother, who is carrying fetus of 13 weeks and 1 day at the time of filing present petition is before this Court by praying that she be permitted to terminate her pregnancy as she was married with respondent no. 3 /

and thereafter, they have decided to file proceeding for divorce. It is also stated at bar that in view of some criminal proceeding, compromise is taken place between the respondent no. 3 / husband and wife and at the relevant point of time, the husband as well as wife, both are agreed for divorce, that too in presence of police at the police station. It is also stated at bar that thereafter, husband has not shown any willingness for divorce and the petitioner being wife, who is carrying fetus of more than 13 weeks is praying to grant permission to terminate the pregnancy on the ground that continuation of present pregnancy will subject the petitioner to grey out mental trauma, insecurity and also potential threats to her mental as well as physical well being and also it will cause emotional suffering to her and therefore, the present petition is filed by making prayer as prayed in the petition.

4. Learned counsel for the petitioner has submitted that at present, pregnancy of the petitioner is within the permissible statutory limit prescribed under section 3(2) of the Medical Termination of Pregnancy Act, 1971 and the petitioner is legally entitled to seek termination of pregnancy through registered medical practitioner in accordance with law. It is further submitted that Rule 3 B of the Medical Termination of Pregnancy Rules, 2003 specifically recognizes women undergoing change in marital status



including separation on the basis involving domestic violence as eligible category for termination of pregnancy upto the prescribed statutory provision.

5. He has also submitted that in view of the fact that the petitioner is presently residing separately at the parental home and has decided not to continue the matrimonial relationship with her husband with intent to seek divorce proceeding in accordance with law, therefore, compelling the petitioner to continue with the pregnancy would seriously prejudice her future for supply of mental stability and social-economic status, therefore, he prays for grant of relief, though it is not mandatory to seek from the High Court in view of the specific provision under section 3 of the Act. In view of the facts and circumstances of the case, as the husband is also party, who may raise any objection about termination of pregnancy, therefore, present petition is filed to get appropriate direction by this Court. He has further referred to the documents annexed with the present petition and submitted that the petition may be allowed in accordance with law.

6 Though the notice is issued and served to respondent no. 3 / husband, no one is appearing on behalf of respondent no. 3. The report of service surrendered by the concerned police officer through counsel for the State is perused and it is verified that the notice is served on respondent no. 3. Looking to the urgency involved in the matter, the matter is proceeded further and after hearing the submissions made at bar by counsel for the State, the matter is considered.

7. Counsel for the State has submitted that as such, the State has no



objection if appropriate order is passed looking to the facts and circumstances of the case and has submitted that in view of the recent judgment of Hon'ble Apex Court reported in *2023(9) SCC page 433* and paragraphs no. 94, 101 and 114 indicates that considering the Article 21 of the Constitution of India and considering the right to reproductive autonomy, no one is ultimate decision maker, whether to continue pregnancy or to terminate unwanted pregnancy and therefore, she has submitted that in view of this decision also, though the notice is issued and served to the husband to address the Court, if he is having any objection, his presence may not require as his consent will become insignificant. Looking to the totality and facts and circumstances of the case and in view of the judgment of Hon'ble Apex Court as also the submissions made at bar, the matter is taken up for final disposal.

8. It is relevant to reproduce the Section 3 (2) of the Medical Termination of Pregnancy Act, 1971 prescribes as under :

3. When Pregnancies may be terminated by registered medical practitioners.-

(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 twelve weeks if such medical practitioner is,

or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are.

9. Rule 3B of the Medical Termination of Pregnancy Rules, 2003 is reproduced hereunder for the sake of reference.

3B. Women eligible for 'termination of pregnancy upto twenty-four -weeks.—

The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub-section (2) of 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 disability [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016. (49 of 2026)]
- (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:] .~

10. In the present case, it is an admitted fact that at the time of filing present petition, the fetus of the petitioner was 13 weeks and 1 day, therefore, *prima facie*, as such no need to seek any indulgence from this Court as any Medical Practitioner, after forming of opinion, can undergo the process of termination of pregnancy, which is permissible in view of section 3 of the Act.

11. It is also relevant to note that in view of the judgment of Hon'ble Apex Court delivered in the case of *X Vs. Principal Secretary, Health and Family*, reported in *2023 (9) SCC 433*, para nos. 94, 101 and 114, which are reproduced as under :

94. Rule 3-B(c) states that a “change in the marital status during the ongoing pregnancy (widowhood and divorce)” renders women eligible for termination of their pregnancy under Section 3(2)(b) of the MTP Act. The impact of the continuance of an unwanted pregnancy on a woman's physical or mental health should take into consideration various social, economic, and cultural factors operating in her actual or reasonably foreseeable environment, as provided in Section 3(3). The rationale behind Rule 3-B(c) is comparable to the rationale for Rule 3-B(g) i.e. a change in a woman's material circumstances during the ongoing pregnancy.

(i) The right to reproductive autonomy

101. 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.

114. 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.

12. Considering all these aspects as well as the facts that this Court has also considered the various cases, where fetus is more than 24 weeks and even in that case also, after considering the report from the Medical Board, the Court has granted permission to terminate the pregnancy. It is relevant to refer to one of the Writ Petition no. 13794 of 2026 by order dated 17/04/2026 whereby the Jabalput Bench of this Court has passed the order and para nos. 2 to 5 are relevant and reproduced as under :

2. As per report, termination of pregnancy is possible under the supervision of the Specialists of the Govt. Medical College.

3. The Division Bench of this court in W.P.No.5184/2025 (In Ref. (suo motu) Vs. State of Madhya Pradesh and others) dated 20.02.2025 has given following directions :-

"(b) SOPs to be followed in case where the age of foetus/pregnancy of survivor of sexual assault or rape or incest is exceeding 24 Weeks:-

Whenever a case of rape is registered at any police station, the following procedure shall be adopted:-

(i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant and the pregnancy is more than 24 weeks, shall forthwith forward the victim to the concerned District Court, preferably Special Judge/POCSO;

(ii) The learned Judge of the District Court preferably Special Judge/POCSO, regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the victim to the concerned medical officer/Board to expeditiously submit its report, if the pregnancy of the victim can be terminated;

(iii) The District Court, preferably Special Judge/POCSO after obtaining the said



medical report, under intimation to the victim and her parents, directly refer such case and report to the nearest Registry of the High Court;

(iv) The Registry of High Court, in turn, shall register such reference as a Writ Petition under Article 226 of the Constitution, Suo Motu, and list the matter immediately before the concerned Bench having the roster, so that appropriate orders regarding termination of pregnancy can be passed by the High Court without any undue delay;

(v) If directed by the High Court that termination of pregnancy is required then, the procedure of termination of pregnancy will be carried out in the presence of the expert team of doctors. The expert doctors will explain to the family members as well as the petitioner the risk of getting the termination of her pregnancy and also other factors;

(vi) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention and other medical facilities including that of a presence of a Pediatrician as well as a Radiologist and other required doctors will be made available to the victim;

(vii) The post operative care, upto the extent required, will be extended to the victim;

(viii) The doctors will ensure that a sample from the fetus is protected for DNA examination and will be handed over to the prosecution for using in the criminal case.

14. Needless to mention here that nothing in the aforesaid SOPs shall be construed as to abridge or limit the power of the concerned medical officer/Board to terminate the pregnancy in the cases where the termination of pregnancy of woman is necessitated in accordance with the provisions of the Section 3(2B) and Section 5(1) or other applicable provisions of the Medical Termination of Pregnancy Act, 1971.

15. It is also directed that any forensic evidence/foetus collected in the course of termination of pregnancy must be preserved for DNA profiling or other investigative purposes in the same manner as provided under rRule 6(6) of the Protection of Children from Sexual Offences Rules, 2020.

16. It is further directed that the privacy of the victim be maintained strictly in view of statutory provisions of Section 5A of the Medical Termination of Pregnancy Act 1971."

4. Considering the totality of facts and circumstances of the case and considering the directions given by the Division Bench of this court in aforesaid judgment and the opinion of the Medical Board aforesaid, permission is granted.

5. Let the team of Specialists be constituted by Chief Medical & Health Officer comprising of at least one specialist Gynecologist, Pediatrician, Anesthesiologist and one Medical Officer to carry out the process of termination of pregnancy by following the directions given in the Division Bench judgment in strict manner. The doctors will also ensure that a sample from the fetus is protected for DNA examination and as and when required will be handed over to the prosecution for



using in the criminal case itself. It is also directed that all necessary care and caution be taken by the doctors while carrying out the procedure for termination of pregnancy and considering the finding of the Medical Board, the Hospital and its medical team would take care to ensure sensitive treatment and handling of the petitioner in connection with all procedures, whether medical or administrative, keeping her emotional and mental health at the forefront.

13. Considering this aspect as well a considering the fact that the Co-ordinate Bench of this Court has also considered certain aspect in Writ Petition no. 13893 of 2023 decided on 23/06/2023, Para nos. 5 to 8 are relevant and reproduced hereunder :

5] On the last date of hearing i.e. 21/06/2023, this Court had already directed the Medical Board, M. Y. Hospital, Indore to submits a report regarding the status of pregnancy of the petitioner and whether its termination is possible, and today, learned counsel for the State has placed on record a report of the Superintendent, M.Y. Hospital, Indore in which it is stated that the petitioner can be taken for medical termination of pregnancy. The aforesaid report is prepared by the Board comprising 6 doctors.

6] So far as the decision rendered by the Supreme Court in the case of X Vs. Principal Secretary (supra) is concerned, the relevant paras of the same read as under:-

“89. Rule 3B(c) states that a “change in the marital status during the ongoing pregnancy (widowhood and divorce)” renders women eligible for termination of their pregnancy under Section 3(2)(b). The impact of the continuance of an unwanted pregnancy on a woman’s physical or mental health should take into consideration various social, economic, and cultural factors operating in her actual or reasonably foreseeable environment, as provided in Section 3(3). The rationale behind Rule 3B(c) is comparable to the rationale for Rule 3B(g) i.e., a change in a woman’s material (sic) circumstances during the ongoing pregnancy.

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91. A change in material (sic) circumstance may also result when a woman is abandoned by her family or her partner. When a woman separates from or divorces her partner, it may be that she is in a different (and possibly less advantageous) position financially. She may no longer have the financial resources to raise a child. This is of special concern to women who have opted to be a homemaker thereby forgoing an income of their own. Moreover, a woman in this situation may not be prepared to raise a child as a single parent 4 or by coparenting with her former partner. Similar consequences may follow when a woman’s partner dies.

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108. 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 recognizes 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.

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116. In the context of abortion, the right to dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the state. The right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being also injures the dignity of women.”

7] In the decision rendered by the High Court of Kerala in the case of X Vs. Union of India and others passed in W.P.(C) No.29402 of 2022(A) dated 26/09/2022, the Kerala High Court has also taken note of the fact that even in the MTP Act, there is no provision that before medical termination pregnancy is taken up by a woman, it is necessary for her to obtain her husband’s permission.

8] In such facts and circumstances of the case, considering the fact that the petitioner has already filed an FIR against her husband as aforesaid, and also relying upon the decision rendered by the Supreme Court, this Court finds it expedient to allow this petition and permit the petitioner to have her pregnancy medically terminated.

14. Otherwise also, as such there is no need to obtain any further permission from this Court, however, considering the facts and circumstances of the case that the petitioner is legally wedded wife and now she does not want to continue her matrimonial relationship with her husband / respondent no. 3 and seeking termination of pregnancy.

15. Considering the Article 21 of the Constitution of India and the judgment of Hon'ble Courts, I am of the view that on any count, the permission is required to be granted. However, it is expected that the concerned Doctor, who will perform the process of termination of pregnancy, will take necessary precaution as indicated in the guidelines issued by the Ministry of Health as well as the guidelines issued by various



judgments of the High Courts and the Apex Court for performing such process. In the present case, as such the pregnancy is not related to any criminal offence or criminal proceeding, therefore, that aspect is not required to be taken into consideration. The permission for termination of pregnancy is required to be granted as prayed in the present petition.

16. Accordingly, present petition is allowed and disposed of in terms of the prayer as prayed in the petition.

CC as per rules.

(SANDEEP N. BHATT)
JUDGE

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