Supplementary List
Serial 139

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP (C) 2211/2026

Minor Victim (X) through her father

… **Petitioner**

Through: Ms. Asifa Rashid, Advocate

Vs.

UT of J&K and others

… **Respondents**

Through: Mr. Faheem Nisar Shah, GA

CORAM:

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

O R D E R

09.09.2026

1. Heard.

2. The petitioner, who happens to be a victim of sexual assault that gave rise to FIR no. 90/2026 dated 31.8.2026 registered with P/S Uri, has been examined by the Medical Officer during course of investigation, and today when the Investigating Officer, Mohammad Iqbal, SHO P/S Uri (belt no. 109315/ARP), appeared through virtual mode, he apprised this court that the victim has been examined under section 183 BNSS 2023 as well. The investigating officer further informed that the accused has been found to be

juvenile, whereas the victim at the time of incident was 15 years old and was found pregnant.

3. The petitioner, a minor and a victim of sexual assault, has become pregnant. According to the petitioner, the pregnancy has advanced beyond 26 weeks of gestation. Being of tender age, the petitioner asserts that she is unable to bear the physical and psychological trauma arising from the sexual assault and the resultant pregnancy. She has, therefore, approached this Court through her father by way of the present writ petition, seeking permission to undergo immediate medical termination of pregnancy, notwithstanding the advanced gestational age. With a view to arriving at an informed decision in the matter, this Court directed the respondents to constitute a Medical Board for examination of the victim. Pursuant thereto, the Medical Board examined the victim on 08.09.2026 and recorded that she was “conscious and oriented” and that the “fetal heart sounds were present and regular”. The Medical Board has further opined that the victim may be taken up for termination of pregnancy after transfusion of two to three units of packed red blood cells, as may be clinically indicated.

4. The Medical Board has opined that the pregnancy may be terminated, provided the procedure is undertaken at an

appropriately equipped tertiary-care facility under the supervision of the concerned specialists, with adequate blood and blood products readily available and with all necessary medical precautions and supportive measures in place. The Board has further recommended that the victim be provided appropriate psychological support and counselling both before and after the procedure. Significantly, the opinion has been rendered by a Medical Board comprising nine specialists.

5. The Investigating Officer has also submitted a report before this Court dated 10.09.2026, stating that, upon recording the statement of the victim under Section 183 of 2023 (BNSS), offences under Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), have been found to be made out against the accused, who has been found to be a juvenile. Accordingly, an application has been moved before the Juvenile Justice Board seeking permission for collection of DNA samples of the victim as well as the accused. The report further states that the clothes of the victim were seized in the presence of a lady doctor at SDH Uri and were thereafter sealed in a parcel in the presence of the Executive Magistrate 1st Class, Uri, for transmission to the Forensic Science Laboratory, Srinagar.

6. Learned counsel for the petitioner, while pressing for immediate medical termination of the victim's pregnancy, has placed reliance upon the judgment of the Hon'ble Supreme Court in ***S v. Union of India*, SLP No. 14454/2026, decided on 24.04.2026**. It is submitted that the Supreme Court has reiterated that no Court ought to compel a woman, much less a minor child, to carry a pregnancy to its full term against her express wishes. Such compulsion would not only disregard her decisional autonomy but may also expose her to grave mental, emotional and physical trauma by compelling her to give birth.

7. The Supreme Court further observed that, in such circumstances, denial of the relief sought would compel the minor to endure irreversible consequences and that such an approach would be contrary to the constitutional ethos and the settled principles recognising reproductive choice as a fundamental right. The Court emphasised that what assumes significance is the choice of the pregnant woman rather than the interest of the unborn child, observing:

> "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."

The Hon'ble Supreme Court thereafter, in paragraph 11.3 of the aforesaid judgment, held as under:

> *"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."*

8. In the case at hand, applying the principles of law enunciated in the judgment referred to hereinabove, this Court is of the considered view that the victim, being a minor, cannot be compelled to carry to term a pregnancy allegedly resulting from the sexual assault committed upon her and forming the subject matter of the aforesaid FIR. The victim has expressed her unwillingness to continue with the pregnancy.

Compelling her to do so would inevitably aggravate the physical and psychological trauma already suffered by her as a consequence of the alleged sexual assault and may also expose her to social stigma and its attendant consequences.

9. The present petition has been instituted on behalf of the minor victim through her father, Abdul Rashid. The medical record further reveals that, being a child in need of appropriate care and protection, she was produced before the Child Welfare Committee, Baramulla, for necessary legal protection, care and intervention, having regard to the gravity of the alleged offence and her vulnerable condition. Upon interacting with the victim and her family, the Child Welfare Committee counselled them regarding the need for urgent medical attention as well as appropriate legal and psychological support.

10. At this stage, it would be apposite to notice the relevant statutory framework. Under the provisions of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as "the MTP Act"), read with the Medical Termination of Pregnancy Rules, 2003, certain specified categories of women, including survivors of sexual assault, rape or incest and minors, are eligible for termination of pregnancy for a gestational period extending up to twenty-four weeks. In this

regard, Rule 3-B of the Medical Termination of Pregnancy Rules, 2003, deserves to be noticed and reads as under:

> **"3-B. Women eligible for termination of pregnancy up to 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;
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> (c) change of marital status during the ongoing pregnancy (widowhood and divorce);
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> (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];
>
> (e) mentally ill women including mental retardation;
>
> (f) the fetal 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."

11. A plain reading of Rule 3-B makes it evident that survivors of sexual assault, rape or incest, as well as minors, fall within the categories eligible for termination of pregnancy up to twenty-four weeks. In the present case, however, the medical report submitted before this Court records the uterine size of the victim as corresponding approximately to 24–26 weeks of gestation. The pregnancy has, therefore, either reached or crossed the statutory threshold of twenty-four weeks prescribed for the categories specified under Rule 3-B.

12. The question that consequently arises for consideration is whether, in the peculiar facts and circumstances of the present case, this Court can permit medical termination of the pregnancy notwithstanding the gestational period having crossed twenty-four weeks. In considering the aforesaid question, this Court may profitably refer to the judgment rendered by a Coordinate Bench of this Court in *Ms. X (Minor) v. Union Territory of J&K and others*, WP(C) No. 527/2023, wherein permission was granted for medical termination of the pregnancy of a minor victim despite the pregnancy having advanced to about thirty weeks. The Coordinate Bench, while considering the statutory framework under the MTP Act in conjunction with the constitutional rights and welfare of the minor victim, observed as under:

> *"From the foregoing enunciation of law on the subject, by the Supreme Court, it is clear that a woman, whether married or unmarried, has a right to get rid of her unwanted pregnancy. It is on the basis of this principle that various High Courts of the Country and also the Supreme Court have allowed the termination of pregnancy of more than 24 weeks, though the Statute does not provide for the same."*

13. The minor victim has already undergone considerable mental, psychological and emotional trauma as a consequence of the alleged sexual assault and cannot, against her wishes, be compelled to continue with the resultant pregnancy. The opinion

rendered by the Medical Board indicates that the pregnancy is medically terminable, subject to the precautions and safeguards recommended by it. The Board has not opined that termination of the pregnancy would pose such a risk to the life or health of the victim as would preclude the procedure. Although the victim has been found to be anaemic, the Medical Board has advised transfusion of two to three units of packed red blood cells, as may be clinically indicated, before undertaking the procedure. In these circumstances, compelling the minor victim to continue with an unwanted pregnancy arising out of the alleged sexual assault would only compound the trauma already suffered by her and may have lasting consequences for her physical and psychological well-being. Denial of the relief sought, particularly when the victim has unequivocally expressed her unwillingness to continue with the pregnancy and the Medical Board has found termination to be medically feasible subject to the stipulated safeguards, would amount to compelling her to endure the consequences of the alleged sexual assault for the remainder of the pregnancy and potentially for years thereafter.

14. Learned counsel for the petitioner has further submitted that any delay in granting the relief sought would result in further advancement of the gestational age, thereby adding to the medical complexities as well as the mental and psychological

distress of the minor victim. Having regard to the nature of the relief sought and the advanced stage of the pregnancy, the matter admits of no avoidable delay.

Relief

15. Having considered the peculiar facts and circumstances of the case, the wishes and welfare of the minor victim, the opinion rendered by the Medical Board, and the legal position noticed hereinabove, this Court is satisfied that the prayer made in the petition deserves to be allowed. Accordingly, the present petition is **allowed** and a writ of mandamus is issued commanding the respondents to forthwith take all necessary steps for medical termination of the pregnancy of the minor victim/petitioner in FIR No. 90/2026 dated 31.08.2026, registered at Police Station Uri, notwithstanding that the gestational age has crossed the limit of twenty-four weeks prescribed under the MTP Act read with the Rules framed thereunder.

16. The Principal/Medical Superintendent, Associated Hospital, Government Medical College, Baramulla, shall ensure that the procedure for termination of pregnancy is undertaken at the earliest, subject to the medical fitness of the petitioner as assessed by the treating specialists and strictly in accordance

with the recommendations and precautions stipulated by the Medical Board. The procedure shall be undertaken under the supervision of the concerned specialists, with adequate blood and blood products readily available and with all necessary medical precautions, supportive measures and facilities in place. The recommendations of the Medical Board regarding transfusion of packed red blood cells, as clinically indicated, shall also be duly complied with. The petitioner shall be permitted to remain accompanied by her mother and/or lawful guardian, subject to applicable medical protocol. She shall also be provided appropriate psychological support and counselling before and after the procedure, as recommended by the Medical Board.

17. Having regard to the pendency of the criminal proceedings arising out of FIR No. 90/2026 and the requirement of preserving relevant forensic evidence, the respondents shall ensure that the foetal tissue/material, as medically and legally appropriate, is preserved in accordance with the prescribed protocol for the purpose of DNA analysis and other forensic examination. The same shall be properly collected, preserved, sealed and transmitted to the competent forensic laboratory in accordance with law and the requirements of the investigating agency.

18. The identity of the minor victim shall be protected at all stages. The respondents shall maintain strict confidentiality with regard to her identity and medical records, and no information capable of identifying the victim shall be disclosed except to such authorities or persons as may be strictly necessary for her treatment, investigation of the case, or pursuant to any requirement of law.

19. The respondents shall bear the medical expenses incurred in connection with the termination of pregnancy, including the treatment required preparatory to the procedure and the necessary post-procedure care, in accordance with law and the recommendations of the Medical Board. This Court has been informed that Government Medical College, Baramulla, is equipped with the requisite tertiary-care facilities. The procedure shall, therefore, be undertaken there under the supervision of the concerned specialists, subject always to their assessment that the requisite facilities, specialists, blood and blood products, and other necessary medical support are available. Should the treating specialists consider referral to a higher centre necessary in the interest of the safety of the minor victim, the respondents shall arrange such referral and transportation forthwith without awaiting any further order from this Court.

20. In view of the advanced gestational age and the attendant medical and psychological considerations, the aforesaid directions shall be acted upon **forthwith and without any avoidable delay**, subject to the medical protocol and safeguards indicated by the Medical Board.

21. The petition stands disposed of in the above terms.

(SANJAY PARIHAR)
JUDGE

Srinagar
09.09.2026
N Bhat

Whether the order is speaking: *Yes*
Whether the order is reportable: *Yes*