

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP(C) No. 2206/2026

Reserved on: 21.09.2026

Pronounced on: 22.09.2026

Uploaded on: 22.09.2026

*Whether the operative part or full
judgment is pronounced: **Full***

XXXX (Minor aged 11 years)
D/o Mohammad Farooq Bokad (aged
52 years)
Through her Father Mohammad
Farooq Bokad S/o Mohammad
Qasim Bokad
R/o Mahore, Reasi, Jammu &
Kashmir
At present address Wussan Bangil,
Kwarhama, Baramulla

...Petitioner(s)/Appellant(s).

Through: Mr. Shabir Ahmad Najar, Advocate with
Mr. Sajad Ahmad Shah, Advocate

Vs.

1. Union Territory of Jammu & Kashmir
through its Commissioner/Secretary to
Govt. Health & Medical Education
Department, Civil Secretariat
Srinagar/Jammu
2. Commissioner/Secretary to Govt. Hom
Department, Civil Secretariat,
Srinagar/Jammu
3. Directorate of Health Services
Kashmir at Srinagar
4. Medical Superintendent of Lala-Ded
Hospital Srinagar
5. Inspector General of Police Kashmir at
Srinagar
6. Senior Superintendent of Police
Baramulla
7. SHO Police Station Kunzer, Baramulla

...Respondent(s).

Through: Mr. Faheem Nisar Shah, GA

CORAM:HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGEMENT

22.09.2026

1. Through the medium of the instant petition, the petitioner seeks the following reliefs from this Court:

- I. “MANDAMUS Commanding the respondents especially to respondent No.’s 2-4 to terminate the pregnancy of the minor girl petitioner herein in order to avoid any complicacy and to save her life as she is of unsound mind and physically weak.**
- II. MANDAMUS Commanding the respondent No.’s 5-7 ascertain the whereabouts of the accused and arrest & take a crimes stern and stringent action, in order to contain such heinous crimes within the society.**
- III. MANDAMUS Commanding the State Legal Service Authority, to compensation to the victim under the Victim Compensation Scheme, as the petitioner has become the worst victim of the crime.”**

FACTS

2. The brief facts of the case are that the petitioner being minor, aged about 11 years, who along with her family, shifted from their native place at Reasi to Village Wussan Bangil Kwarhama, Baramulla, in March, 2026, for rearing cattle and livestock. During her stay in Kashmir, the minor developed fever, vomiting, cough and abdominal pain. She was initially taken to a local medical practitioner and, upon there being no improvement in her condition, was thereafter taken to the Sub-District Hospital, Magam, where she was medically examined and advised an

ultrasound examination. The ultrasound revealed that the minor was pregnant.

3. Upon being questioned by the doctors, the minor disclosed that she had been forcibly subjected to sexual intercourse by an unknown person during her stay in Kashmir. The incident had not been disclosed by her to her family earlier. The matter was thereafter brought to the notice of the police, whereupon the minor was taken into protective custody and, after completion of the medico-legal formalities, was lodged in a Shelter Home. It is stated that, despite investigation, the person allegedly responsible for the offence has not yet been identified or arrested.
4. The petitioner submits that, being only 11 years of age, continuation of the pregnancy would expose her to serious risks to her life and health and would cause grave injury to her physical and mental well-being. It is further stated that the medical reports and prescriptions relating to the pregnancy are in the custody of the police authorities and that the petitioner herself was unaware of the exact duration of the pregnancy.

SUBMISSIONS ON BEHALF OF THE PETITIONER

5. Learned counsel appearing for the petitioner submits that the pregnancy is the consequence of an alleged rape committed upon an 11-year-old minor and is, therefore, wholly involuntary and without consent. It is contended that, having regard to the tender age of the petitioner and the attendant physical and psychological risks, continuation of the pregnancy would seriously endanger her life and cause grave injury to her physical and mental health.

6. Learned counsel submits that the petitioner, being a minor, cannot reasonably be expected to undergo pregnancy and childbirth in the circumstances in which she has been placed. It is urged that the right to life and personal liberty guaranteed under Article 21 of the Constitution of India encompasses the right to bodily integrity, dignity and protection of physical and mental health and that appropriate directions may, therefore, be issued for medical termination of the pregnancy in accordance with law.
7. Learned counsel also submits that the alleged offender has not yet been apprehended and that necessary directions may be issued to the investigating agency to identify and arrest the person responsible for the alleged offence. It is further prayed that the petitioner be extended the benefit of compensation in accordance with the applicable Victim Compensation Scheme.
8. Mr. Faheem Nisar Shah, learned GA, appearing for the respondents, submits that the respondents have no objection to the relief sought by the petitioner being granted, particularly in view of the opinion rendered by the Medical Board and the law laid down by the Hon'ble Supreme Court in a catena of judgments on the subject.

HEARD AND CONSIDERED

9. Heard learned counsel for the petitioner and learned counsel appearing for the respondents and perused the material on record.

10. A bare perusal of the material available on record reveals that, vide order dated 08.09.2026, this Court, taking note of the fact that the instant petition had been filed seeking medical termination of the pregnancy of the minor victim, directed the Principal, Government Medical College, Baramulla, to constitute a Medical Board to furnish its opinion as to whether termination of the pregnancy of the minor victim was medically feasible.

11. The Court further directed the Senior Superintendent of Police (SSP), Baramulla, to ensure that the minor victim was produced before the Medical Board under appropriate protection and further directed the SSP, Baramulla, to personally ensure compliance with the order. The Medical Board was directed to submit its opinion before this Court.

12. In compliance with the aforesaid order, a Medical Board was duly constituted. The Medical Board, upon examining the minor victim, has furnished its opinion in sealed cover which has been perused by this Court. The relevant portion of the opinion rendered by the Medical Board is reproduced hereunder:

“After multidisciplinary clinical, gynaecological, radiological, psychiatric/psychological, general medical, paediatric, anaesthetic and forensic assessment, the Medical Board is of the considered opinion that the victim is physically and mentally fit to undergo Medical Termination of Pregnancy (MTP), subjected to the applicable legal provisions, consent requirements, and appropriate specialist supervision (Note: MTP Act allows us to terminate a healthy pregnancy upto 24 weeks).

The USG shows a single live intrauterine pregnancy of approximately 22 weeks, 05 days. From the medical standpoint, termination at the present gestational age is feasible, but carries increased maternal and procedural risks, including haemorrhage/bleeding, infection, need for blood transfusion, transfusion-related complications, prolonged

hospitalisation and Complications anaesthetic/procedure-related complications.

Subject to the applicable provisions of law and the directions of the Hon'ble High Court, the Medical Board is of the considered opinion that termination of the approximately 20-22 weeks, pregnancy is medically feasible, provided the procedure is undertaken in an appropriately equipped tertiary-care facility under the supervision of the concerned specialists, and all necessary medical precautions and supportive measures in place."

13. A bare perusal of the opinion of the Medical Board makes it clear that the termination of pregnancy of minor is medically feasible. The Board, after undertaking multidisciplinary clinical, gynaecological, radiological, psychiatric/psychological, general medical, paediatric, anaesthetic and forensic assessment, has opined that the minor is physically and mentally fit to undergo medical termination of pregnancy. The Board has further recorded that the pregnancy is of approximately 22 weeks and 05 days as on 11.09.2026 and that termination at the present gestational age is medically feasible, subject to appropriate specialist supervision and necessary medical precautions.

14. 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;

(c) change of marital status during the ongoing pregnancy (widowhood and divorce);

(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 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.”

15. 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, the Medical Board has assessed the gestational age at approximately 22 weeks and 05 days as on 11.09.2026.

16. In the facts and circumstances of the present case, this Court is conscious of the fact that the Medical Board, upon examining the minor petitioner on 11.09.2026, assessed the gestational age at approximately 22 weeks and 05 days and opined that medical termination of pregnancy was feasible, subject to the applicable provisions of law and appropriate specialist supervision. At the time of such assessment, the pregnancy was within the gestational period contemplated under Rule 3-B of the Medical Termination of Pregnancy Rules, 2003. However, by the date of pronouncement of this judgment, i.e. 22.09.2026, the gestational age would have advanced to approximately 24 weeks and 02 days. The

pregnancy has thus crossed the statutory period contemplated under Rule 3-B in the intervening period during which the matter remained under consideration before this Court.

17. However, the mere fact that the pregnancy has crossed twenty-four weeks by the date of pronouncement cannot, in the peculiar facts of the present case, be considered in isolation or result in the denial of constitutional protection to the minor petitioner. The pregnancy is the consequence of sexual assault upon an 11-year-old child, and the Medical Board has specifically opined, upon comprehensive multidisciplinary assessment, that termination is medically feasible. The delay in the present case is not attributable to any deliberate inaction on the part of the petitioner, but arises in the course of obtaining the medical opinion and judicial consideration of the relief sought.

18. The statutory framework under the MTP Act and Rule 3-B is therefore required to be read harmoniously with the constitutional jurisdiction of this Court under Article 226 of the Constitution.

19. The Hon'ble Supreme Court in **S v. Union of India, SLP No. 14454/2026, decided on 24.04.2026**, has recognised that the constitutional remedy cannot be denied merely because the circumstances of a case do not fall within the four corners of the statutory remedy. The Court, while considering such a case, is required to examine the circumstances from the perspective of the pregnant woman and her constitutional rights, rather than mechanically compelling continuation of an unwanted pregnancy merely because the

statutory period has elapsed. For the facility of reference the relevant part of judgment is observed as under:

“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's right to be born.....

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.”

20. In the case at hand, applying the principles of law enunciated in the judgment referred to hereinabove coupled with the opinion of Medical Board, this Court is of the considered view that the victim, being a minor child aged about 11 years, cannot be compelled to carry to term a pregnancy resulting from the sexual assault committed upon her. The Medical Board constituted pursuant to the directions of this Court, has,

upon multidisciplinary assessment, opined that the victim is physically and mentally fit to undergo medical termination of pregnancy and that termination at the present gestational age is medically feasible.

21. The present case stands on a particularly significant footing inasmuch as the pregnancy is alleged to be the consequence of sexual assault upon an 11-year-old minor. The victim's tender age, her vulnerability, the circumstances in which the pregnancy has arisen, her physical and mental condition and the medical opinion furnished by the duly constituted Medical Board are all relevant circumstances which this Court cannot lose sight of while considering the prayer for termination.

22. Having regard to the totality of the circumstances, the tender age of the minor, the nature of the allegations and the medical opinion rendered by the duly constituted Medical Board and the law laid down by the Hon'ble Supreme Court, this Court finds sufficient grounds to grant the relief sought. The petition is, accordingly, allowed. The respondents are directed to take immediate and all consequential steps necessary for carrying out the medical termination of the pregnancy of the minor victim.

23. The Principal/Medical Superintendent, Associated Hospital, Government Medical College, Baramulla, shall make all necessary arrangements for undertaking the procedure at the earliest possible opportunity. The petitioner shall be allowed to have her mother and/or lawful guardian present with her at the time of termination procedure, subject to the applicable medical protocol. Necessary psychological counselling and support shall also be extended to the petitioner before

and after the procedure, in terms of the recommendations of the Medical Board, as already constituted by an order dated 08.09.2026 of this Court.

24. Since the accused has not, as yet, been apprehended and the material arising from the termination may have relevance to the ongoing investigation, the respondents shall take appropriate steps to preserve the foetal tissue/material, wherever medically and legally permissible, in accordance with the applicable forensic protocol. Such material shall be duly collected, identified, preserved and sealed and thereafter forwarded to the competent forensic laboratory for DNA profiling and such other examination as may be required by the investigating agency, strictly in accordance with law.

25. The privacy and identity of the minor victim shall be safeguarded throughout. The respondents shall ensure that her identity, medical records and other particulars which may lead to her identification remain confidential. Disclosure thereof shall be restricted only to such persons or authorities to whom the same is necessary for the purposes of her treatment, investigation or compliance with any statutory or legal requirement.

26. All expenses connected with the medical termination, including the treatment and care required prior to the procedure and the post-procedure medical care, shall be borne by the respondents in tandem with each other in accordance with law and the recommendations of the Medical Board. The procedure shall ordinarily be undertaken at Government Medical College, Baramulla. The same shall remain subject to the assessment of the treating specialists regarding the availability of

appropriate infrastructure, specialist medical personnel, and other necessary life supporting mechanism. In case, at any stage, the treating specialists are of the opinion that the petitioner requires treatment at a better medical centre in the interest of her safety, the respondents shall ensure her immediate referral and transportation to such centre, without requiring any further order from this Court.

27. Considering the advanced stage of gestation and the medical as well as psychological considerations involved, the directions contained hereinabove shall be complied with ***forthwith and without any delay***, subject to the medical assessment of the treating specialists and the safeguards and protocol prescribed by the Medical Board. The medical opinion rendered by Medical Board shall be kept in sealed cover and form the part of the instant file.

28. The petition is, accordingly, disposed of in the above terms.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
22nd September, 2026
Mubashir

Whether the order is speaking: Yes
Whether the order is reportable: Yes/No