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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15243 OF 2026

XYZ and Another ...Petitioners

Versus

The State of Maharashtra and Others ...Respondents

...

Mr. Kanchan Pawar for the Petitioners.
Ms. M. P. Thakur, AGP for Respondent-State.

...

CORAM : ADVAIT M. SETHNA AND
RANJITSINHA RAJA BHONSALE, JJ.

DATE : 9th NOVEMBER, 2026.
(VACATION COURT)

Judgment (Per : Advait M. Sethna, J.) :

1. Heard Ld. Counsel for the parties. Rule. Rule made returnable forthwith with the consent of the parties and accordingly, the matter is taken up for final disposal.

2. At the very outset, we find it necessary to reproduce our order dated 6th November, 2026, which reads thus :

> *"1) We have heard learned counsel for the parties.*
>
> *2) We have perused the earlier Order of this Court dated 4th November 2026, which reads thus:-*
>
> > *"1. The Petitioner, a minor unmarried girl and a victim of sexual assault, has approached this*

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Court through the present writ petition seeking to terminate the pregnancy of 27 weeks and 4 days. In the petition, even her father is a Petitioner, and by invoking the right to enjoy reproductive autonomy and the fact that it is an unwanted pregnancy, but because the timeline prescribed under the Medical Termination of Pregnancy Act, (MTP Act) has been surpassed, the Petitioners are before us.

We are informed by the counsel for the Petitioners that, at present, the Petitioner No.1 is hospitalized in KEM Hospital, but since is desirous of terminating the pregnancy, she will approach Sir JJ Group of Hospitals and, upon her examination by the Board constituted for the purposes of the MTP Act, she shall get hospitalized or otherwise undergo the necessary tests. A request is made that the Medical Board so constituted shall submit its report to consider the prayer made in the petition, permitting termination of the pregnancy despite the fact that it is beyond 24 weeks, which is permissible under the provisions of the MTP Act.

2. Ms. Thakur, who has marked appearance on behalf of the State, after having instructions, would submit that if the Petitioner No.1 report to Sir JJ Group of Hospitals tomorrow, i.e., 05/11/2026, at 11:00 a.m., the necessary tests shall be undergone and the submission of the report pursuant to the examination shall take at least 48 hours.

3. In the wake of the ensuing Diwali Vacation, since we have sitting of a Division Bench on 6th, 9th and 10th November, 2026, we deem it appropriate to place the present Writ Petition before the Division Bench presided over by Justice Advait Sethna and which is going to be

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hold its sitting on 09/11/2026. On the said date, the Government Advocate shall place the report of the medical examination, and then, appropriate orders will be passed.

4. Re-notify to 09/11/2026."

3) Pursuant to the above, we are informed by the learned AGP for the Respondent-State that the Petitioner has reported to the said Hospital only yesterday i.e., 5th November 2026 at 5:00 p.m. She submits that pursuant thereto, the medical examination is ongoing and the report of the Medical Board would positively be submitted in a sealed cover to this Court on 9th November 2026.

4) Considering the above, place the matter on 9th November 2026 for further consideration/Order.

3. When the matter was listed today in the morning session, we passed the following order :

"1. Heard Ld. Counsel for the parties.

2. Pursuant to our earlier order dated 6th November, 2026, the medical report in sealed cover has been placed before the Court and in the presence of learned counsel for the parties, the report is opened. The copy is shared with learned counsel for the Petitioner and learned AGP for the State.

3. Considering that the report is just now before us, the learned counsel for the Petitioner would like to peruse the same and even discuss with the Petitioner and family members.

4. In view thereof, place the matter in Chambers at 3:30 p.m. today for further consideration/passing orders.

5. The parents i.e. the mother and the father of the Petitioner with the Petitioner are requested to remain

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present in chambers along with learned counsel for the Petitioner and learned AGP.

6. All concerned to act on an authenticated copy of this order."

4. Pursuant to the above, we had a detailed interaction with the Petitioner No.1 and her parents, in Chambers, so as to understand their perspective in the matter.

[Editorial redaction: identifying factual background in paragraphs 5-9 omitted to protect the minor.]

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[Editorial redaction: identifying factual background in paragraphs 5-9 omitted to protect the minor.]

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[Editorial redaction: identifying factual background in paragraphs 5-9 omitted to protect the minor.]

10. Pursuant to the above facts and circumstances, the Petitioner No. 1 along with her father filed the present Petition before this Court.

11. Pursuant to this Court's order dated 4th November, 2026, a Medical Board was constituted at Sir J. J. Group of Hospitals, Mumbai. The said medical report dated 9th November 2026 was produced before us in a sealed cover and was opened in the presence of Ld. Counsel for the parties. The Medical Board consist of following medical experts :

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"Following members were present in Medical Board:

1) Dr. Amrita Jain, Associate Professor and Head of Unit, Dept. of Obstetrics and Gynecology, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai

2) Dr. Shubangi Patil, Associate Professor, Dept. of Paediatrics, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

3) Dr. Haritha kumar, Assistant Professor, Dept. of Psychiatry, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

4) Dr. Avinash Gutte, Professor & Head, Dept. of Radiology, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

5) Dr. Madhukar, Gangaram Gaikwad, Associate Professor and Head of Unit, Dept. of Medicine, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.

6) Dr. Swapnil Singh, Assistant Professor, Dept. of Anaesthesia, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai."

12. The opinion of the Medical Board is reproduced as under :

"COMMITTEE OPINION

The survivor is 17 year old Unmarried Primigravida with Writ Petition no 15243/2026 with 28 weeks of pregnancy with no lethal congenital anomaly. As the pregnancy has crossed 24 weeks and the foetus does not suffer from any lethal congenital anomalies, permitting the medical termination of this pregnancy is beyond the perview of this Medical Board. However, if the Hon'ble High Court so directs MTP can be performed in view of the possibility of grave and

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irreparable harm to the survivor's psychological health due to mental anguish, psychological distress and emotional trauma to the survivor adversely affecting her mental well-being.

If the pregnancy is terminated now, the foetus may be born alive requiring neonatal intensive care with significant comorbidity and mortality.

The survivor and her relatives have been made aware of all above and have accepted the same.

If the Court permits, the Petitioner can undergo Medical Termination of Pregnancy at any recognized institute of her choice."

13. The opinion of the expert doctors is primarily to the effect that medical termination of pregnancy of in case of Petitioner No. 1 can be permitted with due risks. However, the parents have been explained that feotus may be born alive and may require NICU Care. The opinion of the Assistant Professor, Department of Psychiatry is to the effect that the patient i.e. Petitioner No. 1 wants to terminate her pregnancy as she is underage and worried about her future and of the baby who would be born. However, she is certified to be fit even from the Psychiatry side.

14. In the aforesaid backdrop, we have heard Ld. Counsel for the parties and with their assistance, we have perused the record.

15. The submission of Ms. Kanchan Pawar, Legal Aid Counsel for the Petitioners, in sum and substance is that the Petitioner No. 1 is

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not mentally or physically ready to bear the child. She is determined to terminate the pregnancy as it was without her consent and/or knowledge. Considering the fact that she is a minor, she does not want to continue with the pregnancy. As doing so, would gravely endanger her mental, physical, emotional health causing grave mental anguish, trauma and pain, which she does not wish to endure. Ld. Counsel for the Petitioners would submit that the Petitioner No.1 has a right to live with dignity including the right of sexual and reproductive freedom as guaranteed under Article 21 of the Constitution of India. She would, therefore, urge that the Petition be allowed and the Petitioner No. 1 be permitted to terminate her pregnancy in terms of Section 3(2)(b) read with Section 5 of the Medical Termination of Pregnancy Act, 1971 (***"MTP Act"*** for short).

16. Ms. M. P. Thakur, Ld. AGP for the Respondent-State has placed reliance on report of the Medical Board dated 9th November, 2026 and would urge that this Court may pass an appropriate order after considering such report.

17. Besides hearing the Ld. Counsel for the parties, we have also interacted personally with Petitioner No. 1 and her parents at our chambers in detail, so as to gather their views in the given situation. It appears that the Petitioner No. 1 is a minor aged 17

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years and 7 months as on date. The record indicates that her pregnancy has advanced to 28 weeks gestation. It is undoubtedly an advanced stage of pregnancy.

18. During the interaction with her and her parents, we also made them aware of the report of the Medical Board and its opinion. The alternative of giving the newborn child in adoption was also explained to them. Moreover, we emphasized to them as certified in the report of the Medical Board that if the pregnancy is terminated now, at an advanced stage, the feotus has the possibility of being born alive and will require intensive medical care.

19. In our interaction, we have gathered that the parents who appear to be from a poor strata of the society are not in position to support such pregnancy. They, on behalf of the minor daughter, have conveyed in categorical terms that due to their precarious financial condition, coupled with several other impediments and insurmountable difficulties that they face for a daily living, they are not in a position to look after the newborn child. Moreover, they have emphasized that such pregnancy is unwarranted and the Petitioner No. 1 never consented for the same.

20. The Petitioner No. 1 in her quite elaborate interaction with us after being made aware of the totality of the facts and circumstances including the opinion of the Medical Board, has

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clearly conveyed that she does not desire to continue with the pregnancy under any circumstances whatsoever. It appears that considering her delicate age and the surrounding circumstances including the family background, she is not psychologically, much less even physiologically ready to bear the child. She has emphasized that as she has been in the Sir J. J. Group of Hospitals, Mumbai for undergoing medical treatment/tests, she is under immense mental and physical trauma already and the same would have dire consequences on her, if she is called upon to continue such pregnancy. She has in unequivocal terms expressed her mind that the pregnancy is unwanted and she does not wish to continue the same.

21. Considering the sensitivity of the matter, we have lent our anxious consideration to various factors including the advanced stage of the pregnancy, the delicate age of the Petitioner No.1 who was a minor when she conceived and continues to be so as on date, coupled with the family conditions and wishes of the parents. It is quite clear that the Petitioner No. 1 is determined to terminate the pregnancy and has completely detached herself from the considerations such as whether the child would be born healthy or is viable, which are not relevant to her. She is not in physical and/or mental state as it appears in the given case that she has

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any inclination whatsoever to undergo pregnancy. In this context, the opinion of the Medical Board becomes relevant and pertinent. The Board has *inter alia* observed that the medical termination of pregnancy can be performed considering the possibility of grave and irreparable harm to the psychological health of the survivor, due to mental anguish, psychological distress and emotional trauma to the survivor, adversely affecting her well-being. Equally, noted is the fact that that there is a possibility that the feotus may be born alive requiring intesive neo-natal care with significant comorbidity and mortality.

22. In the above context, we have carefully examined the provisions of MTP Act, more particularly, the preamble of MTP Act along with its statutory scheme, purport, intent and relevant provisions. We have also adverted to Section 3(2-B) of the said Act where the termination of pregnancy can be undertaken in case of diagnosis by the Medical Board of any substantial feotal abnormality. We have also perused the Rule 3-B of the MTP Rules, 2003, which *inter alia* provide for women being survivor of sexual assault or rape or incest; minors, as women eligible for termination of pregnancy upto 24 weeks. Here is a case before us where the Petitioner No. 1 is in an advanced stage of pregnancy of about 28 weeks gestation period.

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23. As we apply the provisions of MTP Act and rules framed thereunder to the given factual complexion, on the aspect of its applicability to the given case, we are guided by decisions, *inter alia*, of the Supreme Court.

24. To begin with is a decision of the Supreme Court in ***A (Mother of X) vs. State of Maharashtra and Others : Civil Appeal No. 827 of 2026 arising out of SLP (C) No. 4774 of 2026, decided on 6th February, 2026.*** This was a case where the Supreme Court was considering the medical termination of 30 weeks pregnancy of girl who conceived as a minor. The decision of High Court which had declined medical termination of pregnancy on the grounds of foetal viability and possibility of adoption was set aside. The Supreme Court enunciated key legal principles namely, priority of maternal rights and decisional autonomy. It held that the reproductive autonomy and bodily integrity of a pregnant woman must be given sufficient emphasis over the rights of unborn foetus. Moreover, the right to choose whether to carry a pregnancy to term is firmly rooted in her right to bodily autonomy, noting that forcing a woman to continue an unwarranted pregnancy causes visceral trauma and ignores the physical and mental transformation that a woman's body undergoes.

25. The Supreme Court further observed that when a pregnant

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woman is determined to terminate and has detached herself from the pregnancy, consideration such as whether the child would be born healthy or is viable, denote irrelevance of foetal viability, in other words, are not relevant. Even if, the woman has crossed 18 years of age, it would be irrelevant, as she continued to be a minor when she conceived and the pregnancy resulted from a relationship outside of the wedlock. The decision of High Court against which the Appeal was filed before the Supreme Court, relied on the report of the Medical Board which *inter alia*, opined that the foetus did not possess any congenital anomalies. However, the Supreme Court for the reasons narrated in the judgment and as summarised above, allowed the Application for medical termination, directing the hospital to conduct the procedure of medical termination, bearing in mind all medical safeguards.

26. In our view, the judgment as cited above would clearly and squarely apply to the given factual situation and we are bound to follow the same with due deference.

27. At this juncture, we may now advert to yet another crucial factor in such matters. This being that, what would be the situation after the child is born, despite permitting medical termination of the pregnancy. In this context, it would be apposite to refer to and rely upon the decision of the Co-ordinate Bench of this Court in

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XYZ Vs Union of India & Ors. (Writ Petition No. 10835 of 2018, decided on 3rd April 2019), where this Court categorically held that in exercise of powers under Writ jurisdiction, if the Court has permitted medical termination of pregnancy and the child is born alive, then, the registered medical practitioner and the hospital/clinic concerned will have to assume complete responsibility to ensure that such child is offered best medical treatment available in the circumstances, in order that it develops into a healthy child.

28. Further, if the parents of the child are not willing or are not in a position to assume responsibility of such child, then, the State and its Agency will have to assume full responsibility for such child including offering medical support and facilities to such child, as may be reasonably feasible, adhering always to the principle of best interest of such child as well as the statutory provisions under the Juvenile Justice (Care and Protection of Children) Act, 2015. This Court also directed the State to formulate a suitable policy to deal with such aspects more particularly, where children are born alive after medical termination of pregnancy.

29. Being in complete agreement with the views expressed in the decision of Co-ordinate Bench of this Court *(supra)*, we would also make it clear that under no circumstances, the child, if born alive in

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the present case, must be neglected or left to perish or completely at the hands of fate which is as uncertain as is unknown. This particularly, in a situation like present, where the women or her family members may not be in a position or are not willing to assume responsibility of the to be born child.

30. We have come across an extremely unfortunate and a situation of despair in one of the matter before the Circuit Bench of this Court in Kolhapur in ***XYZ Vs. The State of Maharashtra (Writ Petition (ST.) No. 1690 of 2026)***. In the said case, the child born alive was not given any treatment for about 11 hours and consequently, the new born baby passed away. As per a report, the Secretary-2, Public Health Department had recommended action against certain doctors including conducting a departmental inquiry against them. This Court in its order has directed the State of Maharashtra to take a decision regarding lodging of FIR against the said erring doctors/registered medical practitioners. We solemnly hope that this is only a single isolated case and an exception that should never recur, in times to come.

31. In the given facts and circumstances as we are inclined to allow the Petition by permitting medical termination of pregnancy of Petitioner No. 1, we except much less direct the Hospital to provide post-delivery care to the Petitioner No. 1 including neo-natal care

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for the baby, if so required.

32. In the event, the Petitioner No. 1 desires to give child for adoption after delivery, the State and its Agencies will assume complete responsibility of the child and take necessary steps to rehabilitate the child including placing the child in foster care/adoption by following due legal process. We immediately clarify that such observations ought not to be construed as a direction of this Court to bind the Petitioners in any manner whatsoever with a solemn hope that the State shall abide by the wishes as expressed at the appropriate stage and in any case, take due care of the child born alive after delivery in every possible manner, so that the child is not left unattended, lonely and abandoned.

33. With the above observations and directions, we allow the Petition in terms of permitting the Petitioner No. 1 to undergo medical termination of her pregnancy under the aegis of MTP Act and Rules framed thereunder. The Petitioner No. 1 may be permitted to carry out medical termination of pregnancy at J. J. Group of Hospitals, Mumbai which is stated to have adequate facilities, upon following the required medical protocol as mandated under Section 4 of the MTP Act.

34. The Petition stands allowed in the aforesaid terms. Rule is made Absolute accordingly.

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35. Before parting in the proceedings, we express our sincere appreciation to the much valuable assistance rendered by Ms. Kanchan Pawar, the Legal Aid Counsel for the Petitioner and Ms. M. P. Thakur, Ld. AGP for the State who truly have acted as Officers of the Court in performing their duties. This more particularly, in the given case where apart from legal nuances, the Court needs to strike a delicate balance between the facts, the law and human sentiments, sensibilities and feelings of parties.

36. All concerned to act on an authenticated copy of this Order.

[RANJITSINHA RAJA BHONSALE, J.] **[ADVAIT M. SETHNA, J.]**

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