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**IN THE COURT OF THE HON'BLE 6th
ADDITIONAL SESSIONS JUDGE, SURAT.**

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CRI. MISC. APPLICATION No. 1779 of 2026

Sr. No.	Name of The Applicant	Age	Occupation
	Mother of the Victim	42 years	Household
V/s			
Sr. No.	Name of The Opponent	Age	Occupation
	The State of Gujarat, Through District Government pleader, Surat.	-	-

Subject: Application to permit the abortion of the fetus.

Appearance :-

Ld. Advocate for the applicant :- Mr. M. D. Solanki.

Ld. A. P. P. for the opponent :- Mr. V. L. Faldu.

:- Judgment :-

1. This is an application by the mother of the victim to give permission of abortion of fetus in the womb of the victim caused as a result of rape in the case arising out of FIR bearing Utran Police station Crime Register No. Part - A

11210065260370/2026 for the offense punishable U/s.137(2), 87, 64(2)(I)(M), 75(2), 76 of The BNS and under Section 4, 5(L), 5(J)(2), 6, 11(1)(6) & 12 of Protection of Children from Sexual Offenses Act, 2012.

2. Ld. Advocate for the applicant has submitted that applicant is the mother of the victim of rape and that as a result of rape the victim got impregnated. It is further submitted that if the pregnancy is not terminated, victim and her family shall face innumerable mental, physical, social and all her responsibilities in the future will be borne by the complainant. It is also submitted that, victim is minor and yet to be marriage. It is also submitted that the present case falls under Sec. 3 & 4 of the Medical Termination of Pregnancy Act, 1971. It is also submitted that the report of the penal doctor also shows that the termination of pregnancy of the victim is in the interest of mental and physical health. In the end, it is prayed to pass an order directing the SMIMER Hospital, Surat to terminate the pregnancy of the Victim.

3. Upon filing of the application the applicant, the victim was referred to Smimer Hospital, Surat for her medical examination with a direction to the concerned Doctors to opine about feasibility of termination of pregnancy as well as the fact that whether it is possible and/or in the interest of victim to terminate such pregnancy or not vide order dated 10.03.2026 passed below Exhibit: 1. In the turn, the panel doctor has given their report below list Exh. 4. The

penal of three doctors has opined that *as per her USG ANC report dated on 08/03/2026, she is having 18 weeks 3 days of pregnancy at present(today). As victim's age is less than 18 years, continuation of pregnancy may be harmful physically as well as psychologically for her. According to MTP act, second trimester medical termination of pregnancy can be done up to 24 weeks of gestation. Victim and her parents wants termination of pregnancy at present. Risk of complications of second trimester medical termination of pregnancy, includes incomplete abortion, retained products of conception, bleeding, infection, uterine rupture, failure of termination of pregnancy. She may need surgical intervention (hysterotomy) and may suffer psychological complications. The mortality(death) risk is 0.6 /100000.*

4. I have heard the Id. Advocate for the applicant and Id. Public Prosecutor for the State and perused the case file carefully.

At the very outset it is important to reproduce the provisions of section 3 of Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'MTP Act' for short) which are as follows:-

Section 3 (2) (b) of the Medical Termination of Pregnancy Act, 1971

stream as under-

SECTION 3: When pregnancies may be terminated by registered medical practitioners (1) Notwithstanding anything contained in the Indian Penal Code, a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the

time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(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, of opinion, formed in good faith, that-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1. Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2. Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in subsection (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a ["mentally ill person"], shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

5. In the present case the opinion at below list Exhibit 4 has been given by doctors. In this context it is worthwhile to mention here that even though it has been mentioned in the aforesaid report that termination of pregnancy involves physical risk for victim but carrying on with the pregnancy involves grave risk to physical and psychological health of the victim. That being the position keeping in view the duration of pregnancy, condition of the victim and the fact that she is a victim of rape, it will be more traumatic for the victim in case the present application is not allowed. Even otherwise as per the report of termination of pregnancy involves risk to physical health of the victim whereas carrying on with the same involves grave risk to physical and psychological health of the victim.

6. At this stage, it would be profitable to refer the principle laid down by Hon'ble The Supreme Court in **Suchita Srivastava Vs. Chandigarh Administration reported in 2009 (3) GLH 468**, more particularly para 19, which is reproduced hereunder.

19. As evident from its literal description, the 'Best interests' test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of other stakeholders such as guardians or society in general. It is evident that the woman in question will need care and assistance which will in turn entail some costs. However, that cannot be a ground

for denying the exercise of reproductive rights."

It would also be profitable to rely and refer the principle laid down by Hon'ble The High Court of Gujarat in the matter between **Bhavikaben vs. State of Gujarat reported in 2016 (3) RCR(Cri) 362**, more particularly para 16 and 17, which are reproduced hereunder.

16. **If the opinion of the team of Doctors is taken into consideration, it could be noticed that her mental status will adversely be affected, if pregnancy continues. She, therefore, falls under the criteria set out in the MTP Act. This continuance of pregnancy since involves grave injury to her mental health as her pregnancy being the result of rape, the anguish caused also is to be constituted as a grave injury to the mental health of the victim, and therefore also, termination of pregnancy is permitted.**
 17. **This Court had noticed, before referring the victim to the team of medical experts, that she is being frail physical and mental health is on account of trauma of rape she underwent and it appears almost an impossibility for her to look after herself. All these factual circumstances that emerge on record, particularly very young age of the victim leads this Court to conclude in favour of grant of applicant request. Delay in approaching this Court has placed statutory constraints which is because of various grounds narrated - chief amongst the same is her poor health and poverty stricken condition of parents. However, when medical opinion does not indicate this act of termination to risk her life, following the best interest test, request warrants to be acceded to."**
7. Further, statutory provisions u/s. 3 (2) also provides for termination of pregnancy in certain conditions. Explanation 1 of Sec. 3 (2) (b) clarifies that where any pregnancy is alleged by the pregnant woman to have been

caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. Therefore, the statutory provisions under the Medical Termination of Pregnancy Act, 1971, in the instant case, appears to have been satisfied in view of the opinion certificate issued by the Doctors, who have examined the victim. In these facts & circumstances of the case on hand, this court finds that, the right of bodily integrity calls for a permission to allow the victim to terminate her pregnancy. The opinion of the Doctors clearly warrant the inference that the continuance of the pregnancy involves the risk of a possible grave injury to her mental health as required by Section 3 (2)(i) of the Medical Termination of Pregnancy Act, 1971. It has also not to be forgotten that age of the victim is less than 18 years, thus, the victim is minor at present, who is poignantly a rape victim. Looking to victim's condition coupled with her physical, mental and social backgrounds and upon going through the opinion of the Doctors produced, it can certainly be said that the termination of pregnancy will be in the best interest of the victim girl.

8. This Court has earlier asked for the medical opinion of the penal of three doctors of the Hospital, Surat. That the said report has been presented by the prosecution along with affidavit of the IO at **Exh. 4**. As per record, the age of the victim is less than 18 years, thus, the victim is minor at present. The present application has been preferred by the mother of the victim and there is consent of the parents of

the victim for the termination of pregnancy as per S. 3(4) of the Medical Termination of Pregnancy Act, 1971. The opinion dated 12/03/2026 of the panel of doctors of SMIMER Hospital, Surat issued by Dr. Krunal Modi (Senior Resident), Dr Himanshi Agarwal (Assistant Professor), and Dr. Meghana Shah (Asso. Professor) of SMIMER Medical College. Upon perusal of Medical Certificate along with affidavit **Exh. 4**, it appears that, Continuation of pregnancy in this patient may be more harmful physically as well as psychologically. Termination of pregnant can be advisable in this patient for better management of patient. So, termination of pregnancy of victim may be considered with due risk as per provisions of law as applicable.

Thus, as discussed above, the pregnancy of the victim is as a result of rape on her and an FIR was also lodged in this case. That as per the opinion and has contentions of the application, it appears that, if the pregnancy is continued, it will cause grave injury to her mental or physical health. Thus, it appears that explanation 1 to S. 3 (2)(b) is satisfied in so far as the pregnancy on account of rape is concerned. In light of all these, it can be concluded and said that the pregnancy of the minor victim is on account of rape and she does not want to continue the pregnancy and that continuing the same will entail risk of injury to her mental or physical health and her future. In view of all these, it shall be in the interest of minor victim, if the pregnancy is terminated forthwith, hence following

order is passed in the interest of justice.

-: O R D E R :-

1. The present application is allowed in following terms.
 - [i] The Medical Superintendent of SMIMER Hospital, Surat is directed to conduct medical termination of pregnancy of minor Victim w/r Utran Police station Crime Register No. Part A 11210065260370/2026 for the offense punishable U/s.137(2), 87, 64(2)(I)(M), 75(2), 76 of BNS and under Section 4, 5(L), 5(J)(2), 6, 11(1)(6) & 12 of Protection of Children from Sexual Offenses Act, 2012, with two (or more than that) qualified surgeons including Gynecologist, Obstetrician in presence of a qualified physician with due care and precaution so as to avoid any likelihood of untoward harm to the physical or mental health of minor after carrying out necessary medical check-up forthwith.
 - [ii] It is clarified that if the concerned panel of doctors are of the opinion that termination of pregnancy would affect the life and safety of said minor, they shall not terminate the pregnancy, otherwise they shall terminate the pregnancy.
 - [iii] Special arrangement be made or providing adequate quantity of blood to minor victim in the event of necessity.
 - [iv] The fetus be preserved to enable the Investigating Agency to send it for DNA test.
 - [v] Minor victim be discharged from the hospital after termination of pregnancy, only, if she is found to be medically fit to reside with her parents and thereafter, she may be called for periodical check-up to know about

status of her health as and when required and found necessary and she be provided medicine, proper diet and nutritious food as may be necessary for her health. It is also directed to take all necessary and proper care and cautions as per rules as applicable.

The Medical Superintendent of SMIMER Hospital, Surat is directed to submit report with regards to termination of pregnancy to this Court within a week.

Yadi be issued with a copy of FIR and present application.

The copy of the order be sent forthwith to all The concerned authority.

Order is passed and Pronounced in the Open Court on this 13th Day of March, 2026.

Date :- 13/03/2026
Place :- Surat

Hiteshkumar Mukundray Vyas
6th Addl. District & Sessions Judge, Surat.
Judge Code No. GJ00834

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