Redacted by NyayVidhan: the FIR number and date, the police station, the Medical College order reference, the age recorded by the Medical Board and the Medical Board doctors' names are withheld.

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 27255/2026
CNR: RJHC011126242026 | URN: CW / 47224U / 2026

Xxx

----Petitioner

Versus

1. The State Of Rajasthan, Through The Principal Secretary Dept. Of Medical And Health Services Govt. Secretariat Jaipur Raj.
2. Chief Medical And Health Officer, Dist. Jodhpur
3. The Superintendent Of Police, Dist. Jodhpur

----Respondents

For Petitioner(s) : Ms. Vandana Bhansali
For Respondent(s) : Mr. N.S. Rajpurohit, AAG
Mr. Kanchan Jodha

HON'BLE DR. JUSTICE NUPUR BHATI

Order

04/11/2026

1. The present writ petition has been filed by the petitioner with the following prayers:

> "(i) By an appropriate writ, order or direction, the respondent authorities be directed to take immediate steps for termination of the pregnancy of the petitioner in a safe manner, at a suitable government hospital and with due regard to her privacy, under the provisions of the Medical Termination of Pregnancy Act, 1971, as amended, and the Rules framed thereunder;
> (ii) By an appropriate writ, order or direction, the respondent authorities be directed to forthwith constitute a fresh Medical Board of experts to re-examine the petitioner and to report on her present physical and mental condition and on the risks of continuation of the pregnancy as against its termination;
> (iii) In the alternative, a direction be issued to the concerned hospital to bear all expenses of the

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> petitioner's hospitalisation, and of her re-admission to the hospital for delivery as and when required, and, in the event that the petitioner and her parents wish to give the child in adoption after delivery, the Respondent-State be directed to take all necessary steps, in accordance with the applicable provisions of law, to facilitate the same; and
> (iv) Any other appropriate order or direction which this Hon'ble Court considers just and proper in the facts and circumstances of the case be passed in favour of the petitioner."

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2. The brief facts of the case are that the petitioner has preferred the present writ petition under Article 226 of the Constitution of India, seeking appropriate directions for urgent consideration of her request for medical termination of pregnancy, having regard to the circumstances in which the pregnancy is alleged to have arisen, her medical condition and the statutory provisions governing medical termination of pregnancy. In this regard, FIR No. dated came to be registered at Police Station District Jodhpur Rural, for offences under Sections 64(1) and 3(5) of the Bharatiya Nyaya Sanhita, 2023. Pursuant thereto, a Medical Board was constituted at Umaid Hospital, Jodhpur, in compliance with the order dated 17.10.2026, which submitted its report dated 18.10.2026, recording that the petitioner was carrying a single live fetus at a gestational age of approximately 26 weeks and 5 days, with an estimated fetal weight of 934 grams. The report further recorded that the petitioner was suffering from moderate anaemia, with a haemoglobin level of 9.7 g/dL, and highlighted the risks associated with termination of pregnancy at such an advanced gestational stage, including the possibility of prolonged neonatal intensive care in the event of premature delivery. The Medical Board ultimately opined that medical termination of pregnancy

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could not be undertaken at the said gestational age. Thereafter, the District Legal Services Authority, Jodhpur, vide communication dated 29.10.2026, referred the petitioner's application and the Medical Board's report to the Rajasthan High Court Legal Services Committee, Jodhpur, for further necessary legal steps. In these circumstances, the petitioner seeks an urgent and comprehensive assessment of her current medical condition, including the risks associated with continuation of pregnancy as well as those involved in any proposed medical intervention, and appropriate consideration of her request in accordance with the provisions of the Medical Termination of Pregnancy Act, 1971, as amended, and the Rules framed thereunder. Hence, the present writ petition.

3. Learned counsel for the petitioner submits that the instant writ petition has been preferred seeking termination of the pregnancy of the petitioner ‘M’ as it does not want to continue with the said pregnancy.

4. Pursuant to the directions of the Court given on 02.11.2026, learned counsel for the state has produced before the Court the opinion of the so constituted Medical Board dated 03.11.2026.

5. Upon perusal of the opinion of the Medical Board, consisting of Dr. (Sr. Prof. & HOD, Dept. of Pediatrics), Dr. (Sr. Prof & HOD, Dept. of OBGY), Dr. (Medical Officer, Dept. of Radiology), this Court finds that the Medical board has, after conducting the Sonography, opined that the petitioner ‘M’ is having single live intrauterine fetus of gestational age of 28 weeks 2 days in cephalic presentation and the fetal weight is 1199 grams with a further opinion that in case the pregnancy is terminated, there shall be high risk to the

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mother because of anemia (increased risk of post partum hemorrhage), increased chances of caesarean delivery due to failed induction and non progression of labour and that the new born will have multiple complications of prematurity and prolonged NICU stay. The board has also opined that incase the pregnancy is continued, the medical outcome of mother and new born baby will be better.

6. The report of the Medical Board is taken on record and the same is reproduced hereunder:

"To

The Principal & Controller
Dr. S.N. Medical College
Jodhpur
Subject:- Regarding information of Medico legal case
Through Proper Channel

Respected Sir,

This is to inform you that in compliance of your order No.

Dated-3/11/2026 the medical board has examined Miss "M" Age- Medical Examination & investigations are done.

According to Ultrasonography obstetrics Miss "M" is having single live intrauterine fetus of gestational age of 28 weeks 2 days in cephalic presentation.

fetal weight is 1199 grams

Her blood investigations shows her Hemoglobin is 8.6 gm/dl indicating moderate anemia, her LFT show SGOT -42.6 U/L.

This pregnancy can be terminated with high risk to the mother because of anemia (increased risk of post partum hemorrhage), increased chances of caesarean delivery due to failed induction and non progression of labour. New born will have multiple complications of prematurity and prolonged NICU stay.

The board is of the opinion that the said pregnancy if continue medical outcome of mother & new born baby will be better.

Dr.	Dr.	Dr.
Sr. Prof. & HOD	Sr. Prof & HOD	Medical Officer

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Dept. of Pediatrics Dept. of OBGY Dept. of Radiology"

7. At this juncture it would be appropriate to take into consideration the relevant provisions of the Medical Termination of Pregnancy Act, 1971('MTP Act') and the Medical Termination of Pregnancy Rules, 2003. Section 3 of the MTP Act is being reproduced as under:

> ***"3. When pregnancies may be terminated by registered medical practitioners. —****(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), 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 twenty weeks, if such medical practitioner is, or*
> *(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the 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 any serious physical or mental abnormality.*
> *Explanation 1.—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.*
> *Explanation 2.—For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.*
> *(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at*

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different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:—

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.]

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub section (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 1 [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."

6.1. It is clear from the perusal of Section 3 of the MTP Act that Section 3(2) provides for two categories of cases in which a pregnancy can be terminated by a registered medical practitioner subject to the conditions mentioned therein. These categories are based on the length of the pregnancy i.e., a. upto 20 weeks; b. more than 20 weeks but upto 24 weeks. However, the pregnancy in the present case has already crossed the period of 24 weeks,

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thus, the case of petitioner does not fall under Section 3(2). Further, Section 3(2A) provides that the norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational stages shall be such as may be prescribed by rules made under the MTP Act. Section 3(2B) provides that in a case where termination is necessitated by the diagnosis of any substantial foetal abnormalities diagnosed by a medical board, the provisions of Section 3(2) relating to the length of the pregnancy do not apply; Thus, as per Section 3(2B) even if the length of pregnancy is of more than 24 weeks, termination may be done if the medical board has diagnosed any substantial foetal abnormalities which necessitates such termination.

6.2. Section 5 of the MTP Act is being reproduced as under:

*"**5. Sections 3 and 4 when not to apply.—**(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.*

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

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(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.—For the purposes of this section, the expression "owner" in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2.—For the purposes of this section, so much of the provisions of clause (d) of section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply."

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The bare perusal of Section 5(1) makes it evident that the provisions of Section 3(2) as relate to the length of the pregnancy and the opinion of atleast two registered medical practitioners shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he, in good faith, forms an opinion that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

6.3. This Court also takes into consideration Rule 3A of the Medical Termination of Pregnancy Rules, 2003('MTP Rules') which is being reproduced as under:

"3A. Powers and functions of Medical Board.— For the purposes of section 3,—

(a) the powers of the Medical Board shall be the following, namely:-

(i) to allow or deny termination of pregnancy beyond twenty-four weeks of gestation period under sub-section (2B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if

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the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped;

(ii) co-opt other specialists in the Board and ask for any additional investigations if required, for deciding on the termination of pregnancy,

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(b) the functions of the Medical Board shall be the following, namely:

(i) to examine the woman and her reports, who may approach for medical termination of pregnancy under sub-section (2B) of section 3;

(ii) provide the opinion of Medical Board in Form D with regard to the termination of pregnancy or rejection of request for termination within three days of receiving the request for medical termination of pregnancy under sub-section (2B) of section 3;

(iii) to ensure that the termination procedure, when advised by the Medical Board, is carried out with all safety precautions along with appropriate counselling within five days of the receipt of the request for medical termination of pregnancy under sub-section (2B) of section 3."

Thus, Rule 3A of the MTP Rules provides for the power and functions of Medical Board for the purpose of Section 3 of the MTP Act. Rule 3A(a)(i) provides for the power of the Medical Board to either allow or deny termination of pregnancy beyond 24 weeks of gestation period under Section 3(2B) of the Act, however, such power can be exercised after due consideration and ensuring that- (I) the procedure would be safe for the woman at such gestation age, and (II) whether foetal malformation has substantial risk of it being incompatible with life, or (III) if the child is born it may suffer such physical or mental abnormalities to be seriously handicapped.

6.4. Thus, the position of law which emerges from the conjoint reading of Sections 3, 5 of the MTP Act and Rule 3A of the MTP

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Rules is that the termination of pregnancy can be allowed in cases where the gestation period/pregnancy has crossed the mark of 24 weeks, if:

(i) There is diagnosis of any substantial foetal abnormalities by a Medical Board or that the foetal malformation has substantial risk of it being incompatible with life and the procedure would be safe for the woman at that gestation age, or

(ii) The registered medical practitioner, in good faith, forms an opinion that termination of pregnancy is immediately necessary to save the life of the pregnant woman.

7. In the present case, the Medical Board has opined that Ms. 'M' is carrying a pregnancy of 28 weeks and 2 days. The Board has further observed that termination of the pregnancy at this advanced stage would involve a high degree of risk to the petitioner, a higher likelihood of operative or caesarean delivery, and an increased risk of excessive blood loss during delivery and postpartum haemorrhage. The Medical Board has also observed that the fetus is viable; however, premature delivery may expose the newborn to complications associated with prematurity and necessitate a prolonged stay in the Neonatal Intensive Care Unit (NICU). Thus, upon perusal of the report submitted by the Medical Board, it is clear that the case of the petitioner does not fall under the provisions of law which have been enumerated in the preceding paragraph of this judgment so as to allow termination of pregnancy which is beyond 24 weeks.

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8. Therefore, in view of the above, this Court is not inclined to permit the petitioner to the terminate the pregnancy. Accordingly, the writ petition is disposed of with the following directions:

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(i) The respondents are directed to provide the petitioner all necessary care, nutritious food and medical attendance before and after delivery.

(ii) Superintendent of Umaid Hospital, Jodhpur is directed to ensure that all medical facilities are made available to the petitioner before and after delivery of the petitioner without payment of any fee, charges or expenses of any nature and to ensure that the delivery takes place in a safe environment.

(iii) The privacy of the petitioner shall be maintained at all stages and her identity shall not be disclosed in the course of hospitalization, treatment and admission.

(iv) If the parents of the petitioner so wish, the child, on birth, may be handed over to the Child Welfare Committee of Jodhpur and the petitioner/parents of the petitioner shall fulfill all necessary documentation and all formalities as may be so required under the law for handing over custody of the child to the Child Welfare Committee.

(v) The Child Welfare Committee, Jodhpur shall take care of all the needs and facilities of the child.

(vi) The Rajasthan State Legal Services Authority (RSLSA) as well as District Legal services Authority (DLSA), Jodhpur are directed to pay suitable amount of compensation to the

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petitioner, who is a victim in terms of the provisions contained under the Rajasthan Victim Compensation Scheme, 2011 within a period of three months from the date of receipt of certified copy of this order and the amount of compensation be kept in Fixed Deposit in the name of the victim for a period of two years.

9. Copy of this order be provided to the counsel for the petitioner as well as the counsel for the State respondents for necessary compliance. Let the copy of this order be also sent to Member Secretary, RSLSA and Secretary, DLSA for necessary compliance.

(DR.NUPUR BHATI),J

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