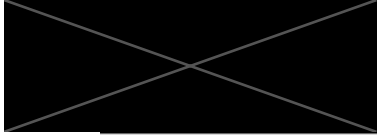


**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP(C) 2532/2026
CM No. 6870/2026



.....Non-Applicant/Petitioner(s)

Through:

*Mr. Owais Qadri, Advocate vice
Mr. Asif Wani, Advocate.*

Versus

Union Territory of J&K and Ors.

.....Applicants/Respondent(s)

Through:

*Mr. Mohsin. Qadri, Sr. AAG with
Ms. Maha Majid, Assisting counsel*

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER

06.10.2026

1. Mr. Mohsin. S. Qadri, Id. Sr. AAG with Ms. Maha Majid, assisting counsel accepts notice on behalf of the respondents.
2. Heard the learned counsel for the parties in respect of the matter.
3. The petitioners who are legally wedded wife and husband seek intervention of this Court through the medium of instant petition filed in terms of Article 226 of the Constitution of India for directing the respondent Nos. 3 & 4 , i.e., Principal Government Medical College, Srinagar and Medical Superintendent, Lalla Ded Hospital, Srinagar for immediate constitution of a Medical Board for examination of the petitioner No. 1/mother for medical termination of her pregnancy on the main grounds that although the fetus carried by her was diagnosed upon early scanning at the gestational age of 12 weeks and 6 days on 08.05.2026 and 21 weeks and 4 days on 26.07.2026 to be normally with no gross congenital anomaly, yet

it was only on 24.09.2026, at the gestational age of 31 weeks, 6 days, serious fetal abnormalities were detected for the first time. The ultrasound revealed polyhydramnios, a large communicating cystic structure in the fetal lumbar spine measuring approximately **83 × 72 × 82 mm**, mild ventriculomegaly and findings suggestive of Arnold Chiari Type-II malformation. That a Fetal MRI dated 25-09-2026 subsequently confirmed a large posterior spinal defect with a cystic sac measuring approximately **6.0 × 6.5 × 8.3 cm**, consistent with open spinal dysraphism with a large myelomeningocele. That subsequent medical consultations at GMC Anantnag and Lalla Ded Hospital, Srinagar, corroborated the abnormalities. That medical record dated 29.09.2026, reveals “that the prognosis regarding morbidity and mortality was explained to the parents and that the mode and time of termination was to be decided by the parents in consultation with the Obstetrician. That however, due to advanced stage of the fetus, the termination cannot be undertaken without intervention of this Court”.

That the delay in seeking termination is not attributable to the petitioner No.1/mother as the serious abnormalities were not detected in the earlier scan despite the petitioner No. 1 having undergone regular antenatal care. That the present case also warrants consideration under the statutory framework governing termination beyond the ordinary gestational limit in cases of substantial fetal abnormalities. That the Petitioners accordingly seek immediate constitution/convening of the competent Medical

Board, for examination of the petitioner No. 1 and evaluation of the fetal abnormalities.

5. The learned Sr. AAG, appearing for the respondents submitted that the medical termination of pregnancy Act, 1971 (MTP Act for Short) and the Rules of 2003, framed thereunder, prescribes a complete mechanism for termination of pregnancy. He submitted that the petitioner-mother may be referred to the maternity tertiary-care, Lalla Ded, Hospital with the direction to the Superintendent of the hospital concerned to get her examined through a competent Medical Board, qualified in terms of the provisions of the Act and to take appropriate decision on the basis of the opinion of the Medical Board, keeping in view the provisions of the medical termination of pregnancy Act especially as contained under Sections 3, 4 & 5.
6. This Court has gone through the memo of petition and the copies of medical records, enclosed with the same as annexures and has also given its thoughtful consideration to the submissions advanced at the Bar.
7. In the backdrop of the aforementioned facto legal scenario of the case, this Court is of the opinion that the matter needs to be disposed of at this threshold stage by passing of appropriate direction in accordance with the provisions of the Medical Termination of Pregnancy Act, 1971 and the Rules framed thereunder.

8. It is felt appropriate to reproduce the relevant Provisions of the Section 3 of the MTP Act and the Rule 3-B of the Rules of 2003, which deal with the law on the subject 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.

(2-A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2-B) 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.

(2-C) 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.

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

(a) a Gynecologist;

(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 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;

Rule 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) 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.

9. **It is also profitable to reproduce the provisions of Section 5 of the MTP Act which are in the form of an exception to the provisions of Sub-Section (2) of Section 3 of the MTP Act as herein before mentioned.**

(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.

(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.

9. Accordingly, the instant petition is disposed of with the direction to the Superintendent Government, Lalla Ded Hospital, Srinagar, to constitute a competent Medical Board, qualified in terms of the provisions of the Act for the medical examination of the petitioner No. 1 with a further direction to take IMMEDIATE consequent action on the basis of the opinion of the Medical Board regarding the early medical termination of the pregnancy of the petitioner No.1/mother, through an approved and recognized medical procedure. In case the early termination of pregnancy of the petitioner No.1 is done on the advice of the Medical Board, the baby, if born alive may need the immediate treatment in neonatal ICU which facility shall be provided within the Hospital in that eventuality. However, the procedure, if needed be undertaken at an earliest as per medical board advice and should be so undertaken after completion of all the requisite formalities as per medical protocol which includes the consent of the husband/parents of the petitioner No. 1.

10. Before parting it deserves a needful mention that the registered medical practitioners especially doctors working in the associated hospitals of medical colleges and in other district hospitals do not shoulder their statutory responsibilities in terms of the provisions of Medical Termination of Pregnancy Act, 1971 and the rules of 2003 framed thereunder in justified cases thereby leaving the aggrieved mothers at the mercy of the God who, in search of some solace feel constrained to shoulder further mental agony and burden of approaching the courts of law for legal directions.
11. It is needless to mention that where statutory directions are clear, the responsible medical practitioners especially the Medical Board in place under the provisions of the MTP Act and the rules framed thereunder in almost every district shall not unnecessarily avoid to attend such emergent cases.

The provisions of Clause 2-B of Section 3 and Clause 1 of Section 5 of the MTP Act clearly reveal that the provisions relating to length of pregnancy shall not apply to 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 and/or immediately necessary to save the life of the pregnant women.

The provisions of Section 3 Sub-Clause 2-B and Section 5 Clause 1 of the MTP Act are reproduced for the sake of convenience.

(2-B) 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.

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.

12. The writ petition is, accordingly, disposed of along with connected CM.

13. A copy of this order shall be forthwith forwarded to the superintendent Lalla Ded Hospital, Srinagar for compliance.

(MOHD YOUSUF WANI)
JUDGE

Srinagar
06.10.2026
"Abdul Rashid"

Whether the order is speaking	Yes
Whether approved for reporting	Yes