

Kerala High Court

Xxxxxx vs State Of Kerala on 3 September, 2025

2025:KER:66324

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.

JUSTICE EASWARAN S. WEDNESDAY, THE 3RD DAY OF SEPTEMBER 2025 / 12TH BHADRA, 1947 WP(C)

NO. 32917 OF 2025 PETITIONER: XXXXXXXXXX

XXXXXXXXXX XXXXXXXXXX BY ADV SMT.M.SHAJNA

RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY ITS

SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE,

SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001. 2

THE DIRECTOR OF MEDICAL EDUCATION DIRECTORATE OF MEDICAL

EDUCATION, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM,

PIN - 695 011. 3 THE SUPERINTENDENT

T.D MEDICAL COLLEGE HOSPITAL, VANDANAM P.O,

ALAPPUZHA DISTRICT, PIN - 688 005. 4 THE STATION

HOUSE OFFICER EDATHWA POLICE STATION, ALAPPUZHA DISTRICT,

PIN - 679 322. BY ADV SHRI. ARUN CHANDY (GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR

ADMISSION ON 03.09.2025, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING:

2025:KER:66324

WP(C)No.32917/2025 2 EASWARAN S.,

J -----

WP(C) No. 32917 of 2025 -----

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September, 2025 Dated this the 3rd day of

JUDGMENT

The petitioner, whose identity is made anonymous for obvious reasons, has approached this Court seeking termination of the pregnancy of her minor daughter, aged 16 years and three months, which she conceived on account of an alleged rape inflicted upon her. A crime has been registered as Crime no.615/2025 on Edathwa Police Station, Alappuzha district for offences punishable under Sections 75, 64(1), 64(2)(m), 65(1) of the Bharatiya Nyaya Sanhita, 2023 (BNS) and Sections 3(a), 4, 5j(ii), 5i and 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. According to the petitioner, the rape victim and her parents have a valuable right to take a decision regarding 2025:KER:66324 termination of pregnancy, and such a right is embodied under Article 21 of the Constitution of India. In support of the said plea, reliance is placed on the decision of the Supreme Court in XYZ v. The State of Gujarat and Others [MANU/SCOR/113703/2023] and the decision of this Court in Xxxx v. Union of India [2024 (7) KHC 367]

3. When this writ petition came up for hearing on 01-09-2025, the following order was passed:

"Learned Government Pleader submitted that a Medical Board will be constituted tomorrow (02.09.2025) for considering the physical condition of the petitioner.

*Referring to a decision of this Court in XXXX v. Union of India reported in 2024 (7) KHC 367. The learned counsel appearing for the petitioner submitted that it is imperative to consider the mental condition of the petitioner as well while assessing her physical condition. In view of the same, the 3rd respondent is directed to include a mental health expert as well in that Medical Board.*

*For report, post on 03.09.2025."*

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4. Pursuant to the said order, a Medical Board was constituted on 02-09-2025, and a report was placed before this Court. The relevant portion of the report is extracted as follows:

● "Opinion of Radiologist.

Going through the previous USS report the fetal age is corresponding to GA as per the LMP and it is more than 28 weeks. This gestational age and presence of foetal cardiac activity has been verified by doing an ultrasound today for this purpose and found to be corresponding to the LMP.

● Examined by Paediatrician On examination:- patient conscious, oriented Pulse rate-78/min No Pallor (Hemoglobin-11.2 g/dl on 14/8/2025) No fresh complaints Appreciating fetal movements well. LMP-16/2/2025 GA-28 weeks+2 days USG done on 2/9/2025-SLIUG/cardiac activity + /EFW-1.2 kg As the gestational age >28 weeks, there is a chance that the baby may survive after birth. If the baby survives, the baby will be provided with appropriate resuscitative measures and 2025:KER:66324 standard neonatal care. As born preterm, the baby can still develop complications like intracranial bleed, respiratory distress syndrome, ROP, NEC."

5. Heard Smt. M. Shajna, the learned counsel for the petitioner, who appeared on legal aid, and Sri. Arun Chandy, the learned Government Pleader appearing on behalf of the State of Kerala.

6. The entitlement of a person to terminate the pregnancy is no longer a res integra. A Division of this Court in XXXX (supra) held as follows:

*"14. In case after the procedure, the child born is alive, the Medical Practitioner carrying out the procedure shall ensure that necessary facilities are provided to such child to save the life. If the child is born alive and the minor or parents are not willing to take responsibility of the child, then the State and its agency will have to assume full responsibility of the child."*

A similar view was expressed by the Supreme Court in XYZ (supra). Paragraphs 18 and 19 in XYZ (supra) read as follows:

*2025:KER:66324 "18. In the context of abortion, the right of dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the State. The right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being also injures the dignity of women.*

*19. The whole object of preferring a Writ Petition under Article 226 of the Constitution of India is to engage with the extraordinary discretionary jurisdiction of the High Court in exercise of its constitutional power. Such a power is vested with the constitutional courts and discretion has to be exercised judiciously and having regard to the facts of the case and by taking into consideration the relevant facts while leaving out irrelevant considerations and not vice versa."*

Considering the law on the point settled through precedents and also the report of the Medical Board, it is 2025:KER:66324 inevitable for this Court to conclude that the termination of the pregnancy of the minor daughter of the petitioner is required to be ordered. Though the learned Government Pleader voiced his apprehension based on the concluding portion of the report of the Medical Board, this Court is of the view that, in the light of the specific finding rendered by the Division Bench in paragraph No.14 of the judgment (Xxxx (supra)), this Court finds that, even if the child survives the process and the parents of the minor are not willing to take care of the child, it is the responsibility of the State and its agencies to take care of the child. In the light of these compelling facts, this Court orders the writ petition as follows:

*(a) The respondent-State of Kerala, shall make arrangements to carry out the termination of the pregnancy of the minor child of the petitioner as found by the Medical Board in its report dated 02-09-2025 forthwith.*

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(b) On making such arrangements, the team of doctors constituted by the State to carry out the termination of the pregnancy shall, without any delay, perform the required acts on the petitioner's daughter.

(c) If, in the event, the child survives the termination of the pregnancy, the State shall provide appropriate measures and standard neonatal care.

(d) If the child still develops complications, as voiced by the report of the Medical Board, the necessary medical aid shall be provided by the State to the child as and when it arises.

(e) If, in the event of the termination of the pregnancy, the child does not survive, the respondent shall preserve tissues and blood samples of the foetus for necessary medical tests including DNA, fingerprinting and mapping, since 2025:KER:66324 the FIR has been registered. The hospital shall also preserve the blood samples of the foetus and tissues to carry out the necessary medical tests, including DNA and other tests as ordered.

Sd/-

EASWARAN S. JUDGE ats

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