



IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.1805 of 2025

Hamid Sha

Petitioner (s)

Mr. Kshirod Kumar Rout, Adv.

-Versus-

State of Odisha

Opposite Party (s)

Mr. Pradipta Satpathy, ASC

CORAM:

DR. JUSTICE S.K. PANIGRAHI

ORDER

13.05.2025

(I.A. No.547 of 2025)

Order No.

02.

1. This matter is taken up through hybrid arrangement.
2. Heard learned counsel for the Parties.
3. This I.A. has been filed by the Petitioner for grant of interim bail for a period of six months.
4. The petitioner is in custody in connection with Niali P.S. Case No.28 of 2023 corresponding to Spl. G.R. Case No.08 of 2023 pending in the court of learned Ad-hoc Additional District and Sessions Judge (First Track Special Court under POCSO Act-1), Cuttack for commission of alleged offences punishable under Sections 376(1)/376(2)(n)/313/323/294/417/344/506/34 of IPC read with Section 6 of the POCSO Act.



5. The case arises from a written complaint lodged by one _____ at Niali Police Station, alleging that the petitioner established physical relations with her since 2019 under the promise of marriage while she was a minor, leading to pregnancy in 2020 which was allegedly terminated by the petitioner. Despite assurances from the petitioner's family regarding marriage, the relationship continued and another pregnancy occurred. It is further alleged that on 29.12.2022, the petitioner forcibly engaged in sexual relation with the informant. Upon confrontation by her father, the petitioner and his family members allegedly abused, assaulted and issued threats.

6. The petitioner claims innocence, asserting the case was falsely foisted after he refused to marry Sabnam, who was a minor at the time. He argues no witnesses support the allegations, the investigation was improper, and his bail was rejected without judicial consideration. He highlights his family's hardship, his ailing mother and financial distress, and assures no risk of absconding or evidence tampering, seeking bail with conditions.



7. He further submits that, following the intervention of certain local gentries and well-wishers of both the Petitioner and the informant, the matter has been amicably resolved between the parties. It is further submitted that the families of both sides have mutually agreed that the Petitioner shall marry the informant. The Petitioner has expressed his consent to this arrangement and has undertaken to solemnize the marriage upon his release. In light of the above, learned counsel prays that the Petitioner be released on interim bail for a period of one month.

8. The counsel for the State vehemently opposes prayer for interim bail, arguing the seriousness of the offences, especially under POCSO Act, and the gravity of the allegations, including repeated exploitation of a minor. He contends that the petitioner's release could intimidate witnesses and undermine justice, given the strong prima facie case and the need to protect the victim's interests.

9. Upon careful consideration of the submissions made by learned counsel for the parties and the facts placed on record, this Court is of the view that the present case requires a more



nuanced and contextual approach rather than a mere mechanical application of statutory provisions.

10. The allegations, though serious in their statutory framing, arise out of a consensual relationship between two individuals who are very close in age and shared a personal bond prior to the filing of the present case. While the statutory mandate under the POCSO Act and relevant sections of the Indian Penal Code aims to safeguard minors and deter sexual offences, judicial discretion must also take into account the evolving social realities where romantic relationships between adolescents or young adults often take form outside the rigid structures of marriage or parental approval.

11. It is not the purpose of the law to criminalize youthful romance when both parties are nearly of the same age and there exists no apparent element of coercion, exploitation, or abuse of trust. Where the age difference is negligible and the relational dynamic does not suggest a disparity in authority or influence, courts must be cautious in treating such relationships as inherently criminal. The rigidity of statutory interpretation must not override the requirement for justice to be humane contextual and proportionate.



12. The so-called Romeo and Juliet clauses recognized in various comparative jurisdictions acknowledge that not all technical violations of age-of-consent laws are criminal in intent or effect. Such provisions reflect a recognition that the spirit of the law is to protect vulnerable individuals and not to punish consensual peer relationships that may temporarily fall afoul of the age criteria. Although our legal system may not expressly incorporate these principles in legislative text, judicial reasoning rooted in equity and proportionality may well draw inspiration from such doctrines.

13. One such case is that of Madras High Court in the case of *Sabari @ Sabarinathan @ Sabarivasan v. The Inspector of Police*¹ wherein the Court resonated the abovementioned principle and held as follows:

“When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where the age of the

¹ Criminal Appeal No. 490 of 2018.



girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, the provisions of the POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so called offender of sexual assault, warranting a severe imprisonment of 7/10 years."

14. Likewise, the Bombay High Court has reaffirmed that a consensual relationship between adolescents, particularly where the age difference is minimal, cannot per se be construed as exploitative. The Court observed that in such circumstances, the accused cannot be said to have taken undue advantage of the prosecutrix. In the case of ***Sunil Mahadev Patil v. The State of Maharashtra***² the Court held as follows:

"11. Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into

² BAIL APPLICATION NO. 1036 OF 2015.



puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such case.

12..When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

- (i) What is the age of the prosecutrix, who is minor.*
- (ii) Whether the act is violent or not.*
- (iii) Whether there are antecedents or not.*
- (iv) Whether the offender is capable of repeating the Act or not.*
- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released.*
- (vi) Whether any chance of tampering with the material witness when their statements are recorded.*
- (vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future."*



15. Thus applying the abovementioned precedents to the case in hand makes it clear that the relationship in question does not prima facie exhibit characteristics of force, coercion, or exploitation. The rationale adopted by the respective courts becomes relevant and persuasive in assessing whether continued custody is justified or whether a calibrated relief such as interim bail may be granted without undermining the interests of justice.

16. It is often observed that in cases involving adolescents or young adults, especially where the relationship is not formally sanctioned by families, legal proceedings may become a proxy for familial disapproval rather than a genuine invocation of victimhood. Parental objections sometimes arise not from a concern for protection but from a desire to enforce social conformity or assert authority over their children's choices. In many instances, the trigger for initiation of criminal proceedings stems from a perceived loss of control rather than actual harm caused. This is especially so in societies still deeply influenced by conservative gender norms, where the honour of the family is disproportionately tied to the decisions of young



women and the autonomy of the individual is seen as secondary to collective tradition.

17. The Court must therefore distinguish between cases where a complaint reflects genuine violation of bodily autonomy and cases where the law is invoked to discipline or deter consensual but socially nonconforming behavior. The intention of the legislation is not to provide a tool for enforcing outdated moral codes but to serve as a shield against exploitation and abuse.

18. Of course, this Court is equally mindful that statutory protections are vital where consent is vitiated by manipulation force or undue influence. In scenarios where there exists a significant age gap or a marked difference in maturity or social standing, or where the relationship carries signs of coercion or predatory behavior, the protections of the law must be applied with full force. A situation where the accused occupies a position of trust authority or influence over the prosecutrix demands a strict interpretation of the statutory framework, as it is precisely, such power asymmetries that the law seeks to correct.

19. However, when the relationship in question emerges from mutual familiarity between individuals close in age, and where



there is no material to suggest abuse of position intimidation or exploitation, the prosecutorial lens must be realigned with compassion and realism. The criminal justice system should not be weaponized to punish emotional intimacy between peers simply because it offends the sensibilities of others.

20. At the interim stage, especially in matters concerning bail, the Court is not required to deliver a verdict on culpability but to assess whether the continued incarceration of the accused serves the ends of justice. In doing so, factors such as the consensual nature of the relationship, the minimal age gap, absence of antecedents, and lack of threat or coercion must be accorded due weight. The possibility of reconciliation, the familial understanding now reached, and the future prospects of both parties further tilt the balance in favor of extending temporary liberty without compromising the integrity of the ongoing investigation or the dignity of the prosecutrix.

21. Bail jurisprudence rests on the presumption of innocence until proven guilty, and it is not designed to serve as a tool of pretrial punishment. The grant of interim bail in such contexts does not erode the seriousness of the offence if established at trial, but rather affirms the constitutional principle that personal



liberty must not be curtailed save for compelling and demonstrable reasons. In the present formulation of facts, such reasons appear to be insufficient to justify prolonged pretrial custody.

22. In view of the facts and circumstances and considering the fact that the marriage of the Petitioner and the informant, it is directed that the Petitioner (Hamid Sha) be released on interim bail for a period of one month reckoning from the date of his actual release on interim bail by the court *in seisin* over the matter in the aforesaid case on such terms and conditions as deemed just and proper by the court *in seisin* over the matter with further conditions that:

- i. the Petitioner shall not indulge himself in any criminal offence while on interim bail; and
- ii. the Petitioner shall not tamper the evidence of the prosecution evidence in any manner.

23. The Petitioner shall surrender before the court *in seisin* over the matter on or before the exact date of completion of interim bail period.



24. The I.A. is, accordingly, disposed of.

(Dr. S.K. Panigrahi)
Judge

Sumitra