

CNR NO. SKHC010000572026

THE HIGH COURT OF SIKKIM: GANGTOK
(Criminal Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

CRL. M.C. No. 2 of 2026

- (1) Rxxx Rxx,
(name, age and address redacted)
- (2) Ms. Nxxxx
(name, age and address redacted)
- (3) Shri Sxxx Lxxx Lxxx
(name, age and address redacted)
- (4) Smt. Lxxx Lxxx Lxxx
(name, age and address redacted)
- (5) Shri Mxxx Kxxx Rxxx
(name, age and address redacted)
- (6) Smt. Dxx Mxx Rxx
(name, age and address redacted)

..... Petitioners

versus

State of Sikkim

..... Respondent

**Application under Section 528 of the
Bharatiya Nagarik Suraksha Sanhita, 2023**

Appearance:

Mr. Safal Sharma, Advocate (Legal Aid Counsel) for the Petitioners.
Mr. Thinlay Dorjee Bhutia, Public Prosecutor and Mr. Yadev Sharma,
Additional Public Prosecutor, for the Respondent.

Date of hearing : 26th August 2026
Date of order : 2nd September, 2026
Order uploaded on: 3rd September, 2026

O R D E R

Bhaskar Raj Pradhan, J.

The petitioners have invoked the provision of Section 528 of
the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for quashing the

First Information Report No. 113/2023 dated 1.07.2023 (FIR) of Sadar Police Station, Gangtok and the criminal proceedings in S.T. (POCSO) Case No. 1 of 2024 (*State of Sikkim vs. Rxxx Rxx*) pending before the Court of the learned Special Judge (POCSO), Gangtok, Sikkim.

2. Section 528 of the BNSS reads as under:-

"28. Saving of inherent powers of High Court. Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

3. The accused is petitioner no.1, the petitioner no.2 is the survivor-now aged 20 years, petitioners no. 3 and 4 are the survivor's parents and petitioners no.5 and 6 are the parents of the accused.

4. It is the petitioners' case that on 3.08.2025, the petitioners no. 3 to 6, i.e., the parents of the survivor and the accused, out of their free will and consent, executed a *deed of compromise* wherein after considering the tender age of the accused, the parents of the survivor decided that they did not want to pursue the said case any further at the cost of the petitioner no.1 losing precious part of his life in jail on account of this case. The petitioners state that the *deed of compromise* is not a result of any force, coercion or threat. It is stated that the accused and the survivor have indulged in sexual activity unaware of the consequences of such act. It is also stated that the case has already reached towards the end of the trial and if the learned Trial Court convicts the accused under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act, 2012), the future of the accused will be hampered and he will never be able to rehabilitate

himself in society even after his completion of period of punishment as he would have spent his youth inside prison.

5. The records placed before this Court reveals that the FIR was lodged on 30.06.2023 regarding the offence that was allegedly committed on 26.11.2022. The complainant was the survivor who was as per the FIR a student aged 17 years. According to the FIR, the sexual intercourse between them was initially not consensual but due to his persistent persuasion she succumbed to it. The FIR was registered under Section 5(j)(ii)/6 of the POCSO Act, 2012 as well as under Section 376 of the Indian Penal Code, 1860 (IPC).

6. According to the petitioners, the prosecution has closed their evidence and the next date has been fixed for examination of the accused person under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.). The petitioners have not disclosed when charges were framed against the accused person, however, noting that the survivor's deposition was recorded on 21.08.2024, it is evident that charges were framed before that.

7. As stated earlier, the *deed of compromise* is dated 03.08.2025 and therefore, it was entered after the survivor's deposition was recorded on 21.08.2024. The *deed of compromise* is entered between the parents of the survivor and the accused only. The survivor and the accused have signed on it but not as parties to the *deed of compromise*.

8. The learned Counsel for the petitioners submit that since on the date of the *deed of compromise*, the survivor was still a minor, therefore, she was not a party to the *deed of compromise*. There is no explanation as to why the accused did not sign as a party to the *deed of compromise*.

9. Therefore, the two crucial questions which are required to be answered by this Court are:

(i) Can a deed of compromise entered between the parents of the survivor and the accused person could be acted upon as a deed of compromise between the accused and the survivor who are both adults today?

(ii) Whether the power under Section 528 of the BNSS could be exercised to quash the criminal proceedings initiated for offence of aggravated sexual assault/rape under the POCSO Act and the IPC on the basis of a deed of compromise?

10. Before answering the two questions, it may be important to analyse some facts that would be relevant for the purpose of disposing of the present petition.

11. The FIR was lodged on 30.06.2023 by the survivor alleging the offence on 26.11.2022 was committed by the accused person who was her good friend and known to her since she was in Class VI. She alleged that initially when he had proposed to have sex with him, she had said no but he had convinced her stating that nothing would happen and after which she gave in and became pregnant. Thereafter, it seems that the survivor decided to lodge the FIR due to substantially two reasons. Firstly, although he had promised to get her medicine and

take her to the hospital and send her money, he delayed doing that for a fairly long time making excuses. Secondly, her mother realised that she had become pregnant after which the FIR was lodged.

12. The *deed of compromise* records that the survivor and the accused were classmates at school both having passed Class XII in the year 2022. They had gone to attend a training programme in Gangtok during November 2022 when they indulged in a physical relationship and as a result of which the survivor conceived a child. The survivor has since delivered a child who has now been adopted by responsible parents with the help of Child Welfare Committee. The survivor is now pursuing higher education. The accused is barely 22 years. The accused and the survivor were in a love relationship and indulged in physical relationship in youthful spirit, unaware of its future consequences. The *deed of compromise* which was entered between the parents of the accused and the survivor has also been signed by both of them. Additionally, the petition filed for quashing of the FIR has been filed not only by the parents but also by the survivor as well as the accused.

13. Section 2(d) of the POCSO Act defines the word 'child' to mean 'any person below the age of 18 years'. Since the result of the trial is not before this Court, but from the records which are available, it is evident that the survivor was a child when they indulged in a physical relationship and had sexual intercourse. Since, on 03.08.2025 the accused is said to be barely 22 years, so on the date of the alleged incident, i.e., 26.11.2022, he would have been 19 years old. Therefore, at this stage of the proceeding it could be a reasonable perception that

the accused and the survivor may have had a love relationship as pleaded which culminated in the sexual intercourse on 26.11.2022.

14. Section 5(j)(ii) of the POCSO Act, 2012 relates to aggravated penetrative sexual assault on a child resulting in her pregnancy. The punishment prescribed under Section 6 thereof is rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life, which shall mean imprisonment of remainder of natural life of that person, and shall also be liable to fine or with death.

15. The POCSO Act, 2012 does not define the term 'consent', although, it is considered settled law that a consent of a child is no consent at all. Therefore, it may be important in the facts of the present case to understand the meaning of the word 'consent'.

16. In ***Society for Enlightenment and Voluntary Action & Another vs. Union of India & Others***¹, the Supreme Court opined:

"80. The POCSO Act applies to all children regardless of their gender, Section 2(d) defines a child as being under the age of eighteen. The Act elevates the age of consent to eighteen years for all persons. The 2013 amendments to the IPC increase the age of consent under the rape provision from sixteen to eighteen. ..."

17. In ***Re: Right to Privacy of Adolescents*** in Suo Motu Writ Petition (C) No. 3 of 2023², the Supreme Court examined a judgment of the Division Bench of the High Court of Judicature at Calcutta dated 18.10.2023 which concluded that the offence punishable under Sections 363 and 366 of the IPC had not been made out against the

¹ 2024 INSC 790

² 2024 INSC 614

accused person and acquitted him of the two offences. Further, the High Court considering the factual scenario exercised the power under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 to set aside the conviction of the accused person under Section 6 of the POCSO Act and sub-section 2(n) and (3) of Section 376 of the IPC. In that case, the survivor was fourteen years old at the time of the incident. The survivor's mother had lodged the FIR stating that the survivor had escaped from her home without informing anyone and on inquiry it was found that the accused had enticed her to leave her house with the help of his two sisters. The survivor's mother repeatedly visited the house of the accused and requested him to facilitate the return of her daughter. However, the survivor did not come back. A female child was born to the survivor. Admittedly, the accused was the biological father of the child. There was gross delay in the investigation. The learned Special Judge had convicted the accused for the offences punishable under Section 6 of the POCSO Act and Sections 363 and 366 of the IPC. For the offence under Section 6 of the POCSO Act, the accused was sentenced to undergo rigorous imprisonment of twenty years and pay a fine of Rs.10,000/-. He was also sentenced to rigorous imprisonment for four and five years, respectively, for the offences punishable under Sections 363 and 366 of the IPC.

18. The Supreme Court examined the scope of power under Section 482 of the Cr.P.C. coupled with Article 226 of the Constitution of India to set aside the conviction of the accused person. While doing

so, the Supreme Court made various observations some of which I quote hereinbelow:-

"21. On a plain reading of "sixthly" in Section 375 read with Section 376(2)(n) of the IPC, notwithstanding the consensual sexual relationship, the offence punishable under clause (n) of sub-section (2) of Section 376 of the IPC, was made out. One of the objectives of the POSCO Act is to effectively address sexual exploitation and sexual abuse of children, as both offences are very heinous. To give effect to the United Nations Convention on the Rights of Children ratified by India on 11th December 1992, the POSCO Act has been enacted. As noted earlier, in the facts of the case, the accused was not an adolescent, but his age was about twenty-five years on the date of the commission of the offence, and the victim was only fourteen years old. When such offences of rape and aggravated penetrative sexual assault are committed, by exercising its jurisdiction under Article 226 of the Constitution of India and/or Section 482 of the Cr.PC, the High Court cannot acquit an accused whose guilt has been proved.

22. Perhaps the consideration of sympathy and the so-called welfare of the victim and her child prevailed on the Judges of the High Court. The Court was influenced by the fact that the victim's parents did not support her, and therefore, by sending the accused to jail, she and her child would be miserable as the accused and his family were taking care of them.

23. There are various decisions of this Court holding that the High Court can exercise jurisdiction under Section 482 of the Cr.PC to quash a prosecution on the grounds of settlement or by consent. One such judgment is in the case of *Gian Singh v. State of Punjab & Anr.*³ Paragraph 58 of the said decision reads thus:

"58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the wellbeing of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. **In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in**

³ (2012) 10 SCC 303

that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender b being convicted and by not quashing the Suo Motu Writ Petition (C) no.3 of 2023 etc. Page 22 of 50 criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and-fast category can be prescribed.”
(emphasis added)

23.1 Therefore, in view of the settled position of law, in the facts of the case, even if the accused and the victim (who has now attained majority) were to come out with a settlement, the High Court could not have quashed the prosecution.”

.....

44. Hence, we pass the following order:

- (a) The impugned judgment of the High Court is set aside and the judgment of the Special Court is restored to the extent of the conviction of the accused for the offences punishable under sub-sections (2)(n) and (3) of Section 376 of the IPC and Section 6 of the POCSO Act. Accordingly, the accused stands convicted. The acquittal of the accused for the offences punishable under Sections 363 and 366 of the IPC is confirmed. The appeal is partly allowed. The issue regarding sentencing will be considered after receiving the report of the committee in terms of clause (h) below.
- (b) We direct the Government of West Bengal to constitute a committee of three experts, including a clinical psychologist and a social scientist. The State Government may take the assistance of NIMHANS or TISS for constituting the committee. A child welfare officer shall be appointed to assist the committee as its coordinator and secretary;
- (c) The committee shall be formed within three weeks from today;
- (d) Within one week from the date of formation of the committee, the State Government shall provide all the material particulars/details of the benefits which it is willing to extend to the victim as stated in paragraph 5 of the note submitted on 9th May 2024 by the learned senior counsel appearing for the State;
- (e) Thereafter, the committee shall meet the victim of the offences at such a place as it desires to communicate what the State Government is offering to her. The Committee must also inform the victim about the availability of the benefits of the scheme of the

CRL. M.C. No. 2 of 2026

Government of India. The duty of the committee shall be to help the victim to make an informed choice whether she wants to continue to remain in the company of the accused and his family or wants to avail of the benefits offered by the State Government. This exercise will naturally require meetings with the victim on multiple occasions. In what manner this task should be performed is left to the committee to decide;

(f) The committee members must perform their duties very carefully and sensitively while ensuring that the victim does not develop a feeling of insecurity. While doing the exercise, the committee will endeavour to carefully ascertain the kind of support, if any, the victim and her child are getting from the accused and his family members;

(g) The State Government and its officials shall render all possible facilities and help to the committee members;

(h) The coordinator of the committee shall submit a report in a sealed cover to this Court by 18th October 2024 through the Advocate-on-Record for the State Government. The report can be a preliminary report or a final report. The report should contain the details of the interactions with the victim and the opinion and recommendations of the committee. The committee is free to give its opinion on the action which would be in the best interest of the victim and her child; and

(i) We direct the Registry to forward copies of this judgment to the Secretaries of Law and/or Justice Departments of all the States and Union Territories. The Secretaries shall convene meetings of the Secretaries of the concerned departments and other senior officials. The object of holding such meetings is to ensure that appropriate directions are issued to all concerned to strictly implement the provisions of Section 19(6) of the POCSO Act and the relevant provisions of the JJ Act, which we have elaborated above. The State/Union Territories must create machinery to do so. The State/Union Territories shall also assist the victims in getting the benefits under the scheme of the Government of India and the scheme of NALSA, which we have referred to above. In the meetings, the issue of framing Rules by the States to give effect to the provisions of Section 46 of the JJ Act, shall also be considered. The Secretaries shall forward the compliance reports to the Secretary of the Ministry of Women and Child Development, Government of India, within a period of two months from today. The Secretary of the Ministry of Women and Child Development shall compile the reports and submit an exhaustive report before this Court within three months from today. A copy of this judgment shall also be forwarded to the Secretary to the Ministry of Women and Child Development, Government of India.

45. To consider the report submitted by the expert committee and for considering the sentencing, list this petition/appeal on 21st October 2024 at 03:00 p.m. before this Bench."

emphasis supplied

19. Subsequently, in **Re: Right to Privacy of Adolescents** (supra), the Supreme Court on receipt of the report as sought for, passed the following orders:

“31. Hence, we pass the following order:

- a) We exercise our extraordinary jurisdiction under Article 142 of the Constitution of India and hold that though the accused stands convicted, he will not undergo sentence for the reasons stated earlier;
- b) We direct the State to take following measures:
 - i) To act as a true guardian of the victim and her child;
 - ii) To provide a better shelter to the victim and her family within a period of few months from today;
 - iii) To bear the entire expenditure of the education of the victim till Xth standard examination and if she desires to take up education for a degree course, till the completion of degree course. After she passes her Xth standard examination, the State can offer her vocational training, obviously, at the cost of the State;
 - iv) To bear the entire expenditure of the education of the child up to Xth standard and ensuring that she is educated in a very good school in the vicinity of the place of residence of the victim; and
 - v) To endeavour to take the assistance of NGOs or public-spirited citizens for the purpose of securing the debts incurred by the victim as a one-time measure.
- c) We direct the State to file compliance report giving details of the implementation of the directions contained in clause (b) above. The first compliance report shall be filed by 15th July 2025. Thereafter, compliance reports shall be filed after the interval of every six months. The first compliance report will be considered on 25th July 2025. We direct the Registry to list the case on 25th July 2025.
- d) Issue notice to the Union of India through the Secretary of the Ministry of Women and Child Development. The notice is made returnable on 25th July 2025. A copy of the judgement dated 20th August 2024 and this judgement shall accompany notice;
- e) Immediately on service of notice, the Secretary of the Ministry of Women and Child Development shall appoint a Committee of experts to deal with the suggestions of the learned amici curiae. Senior officers of the State shall be a part of the Committee. If necessary, the Committee can also consult the learned senior counsel appointed as amici curiae. Immediately on service of notice, the Secretary shall constitute a Committee. The members of the Committee constituted by this Court shall be permanent invitees to the said Committee; and

f) The Committee will submit a detailed report before the returnable date to this Court. To consider the implementation of the suggestions of the learned amici curiae based on the said report, this Court will pass further directions from time to time;”

emphasis supplied

20. Thus, in view of the clear and unequivocal pronouncement of the Supreme Court that it is a settled position of law that even if the accused and the survivor who has now attained majority were to come out with a settlement, the High Court could not have quashed the prosecution under Section 482 of the Cr.P.C. or under Article 226 of the Constitution. This is so, even if the learned Counsel for the petitioners has been able to impress upon me that the punishment which may be meted out to the accused who indulged in voluntary sexual intercourse with the survivor with whom he was having a romantic relationship when she was almost seventeen and he nineteen is very harsh and may relegate his entire life in prison.

21. In ***X vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Another***⁴, the Supreme Court while examining Rule 3B(b) of the MTP Act and the POCSO Act opined that:

“Rule 3B(b) includes minors within the category of women who may terminate their pregnancy upto twenty-four weeks. They have been included in the special categories of women because adolescents who engage in consensual activity may be unaware that sexual intercourse results in pregnancy or be unable to identify the signs of pregnancy. The Protection of Children from Sexual Offences Act, 2012 is gender neutral and criminalises sexual activity by those below the age of eighteen. Under the POCSO Act, factual consent in a relationship between minors is immaterial. The proscription contained in the POCSO Act does not – in actuality – prevent adolescents from engaging in consensual sexual activity. We cannot disregard the truth that such activity continues to take place and sometimes leads to consequences such as pregnancy.

⁴ (2022) SCC OnLine SC 1321

The legislature was no doubt alive to this fact when it included adolescents within the ambit of Rule 3B of the MTP rules."

Emphasis supplied

22. The Supreme Court further held:

"81. To ensure that the benefit of Rule 3B(b) is extended to all women under 18 years of age who engage in consensual sexual activity, it is necessary to harmoniously read both the POCSO Act and the MTP Act. For the limited purpose of providing medical termination of pregnancy in terms of the MTP Act, we clarify that the RMP, only on request of the minor and the guardian of the minor, need not disclose the identity and other personal details of the minor in the information provided under section 19(1) of the POCSO Act (in a reference to a minor seeking medical termination of pregnancy of the MTP Act) is also exempt from disclosing the minors identity in any criminal proceedings which may follow from the RMPs report under Section 19(1) of the POCSO Act. Such an interpretation would prevent any conflict between the statutory obligation of the RMP to mandatorily report the offence under the POCSO Act and the rights of privacy and the reproductive autonomy of the minor under Article 21 of the Constitution. It could not possibly be the legislature intent to deprive minors of safe abortions."

23. The above observations and findings of the Supreme Court although related to medical termination of pregnancy of a child also reflects that the Supreme Court is alive to the fact that adolescents children do indulge in sexual activity in India and perhaps in my view the present case before this Court is also one of many such cases.

24. A deed of compromise is an agreement between the parties to the agreement. Resultantly, the *deed of compromise* entered between the parents of the survivor and the accused person cannot be termed as a deed of compromise between the accused and the survivor. However, in so far as the present matter is concerned, the fact that the present petition has been preferred supported by an affidavit of each of the petitioners, i.e., the accused, the survivor and their respective parents, the intention to compromise the issue would

be evident. The first question in paragraph '9' above is answered accordingly. In view of the opinion rendered by the Supreme Court in ***Re: Right to Privacy of Adolescents*** (supra), the second question posed by this Court in paragraph '9' above is answered in the negative. It is held that the power under Section 528 of the BNSS could not be exercised to quash the criminal proceedings initiated for offence of aggravated sexual assault/rape under the POCSO Act and the IPC on the basis of a *deed of compromise*.

25. The petition under Section 528 of the BNSS which is *pari materia* to Section 482 of the Cr.P.C., is therefore rejected. However, if the parties are inclined, they may pursue and approach the Supreme Court for relief. Copy of this order be sent to the Court of the learned Judge (POCSO) at Gangtok, for information.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet: **Yes**
bp