A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.10425 of 2025

(In the matter of application under Section 483 of BNSS, 2023).

Ramesh Chandra Sahoo … ***Petitioner***

-versus-

State of Orissa … ***Opposite Party***

For Petitioner : ***Mr. S.C.Mohapatra, Sr.Advocate along with Mr.S.Mohapatra, Advocate***

For Opposite Party : ***Mr. C. Mohanty, Addl. PP***

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:16.10.2025(ORAL)

G. Satapathy, J.

1. This is a bail application U/S.483 of BNSS by the petitioner for grant of bail in connection with Raghunathpur PS Case No.155 of 2025 corresponding to Spl. GR Case No.74 of 2025 pending in the file of learned Additional Sessions Judge-Cum-Special Judge under the Protection of Children from Sexual Offences Act, 2012 (in short, "the POCSO Act"), Jagatsinghpur, for commission of offences punishable U/Ss.74 of

Bharatiya Nyaya Sanhita, 2023 (in short, "the BNS") r/w Sections 12/21(2) of POCSO Act.

2. The facts as emerged out from the record are that the petitioner was the Principal of Swami Arupananda Higher Secondary School of Education & Technology, Kurtanga and the victim girl was a student of that school at the relevant time of occurrence in which the victim girl was subjected to sexual harassment and misbehavior by the accused Math Lecturer namely, Saswat Kumar Mohanty and on 15.01.2025, the victim girl had accordingly lodged one complaint before the petitioner about the misbehavior and harassment to her by the accused Math Lecturer Saswat Kumar Mohanty, but the petitioner being the Principal of the College suppressed the matter in nexus with co-accused Math Lecturer despite co-accused Math Lecturer admitting his mistake and confessing his guilt for the misbehavior and sexual harassment towards the victim girl as per report of the petitioner. Even thereafter, the petitioner neither reported to the President of the Governing Body nor to

the higher authorities which prompted the victim to make complaint before the Sub-Collector, Jagatsinghpur in Jana Sunani (General Grievance) and thereafter, the Sub-Collector, Jagatsinghpur called for a report from the present petitioner. On this fact, the Sub-Collector, Jagatsinghpur lodged a FIR before the IIC, Jagatsinghpur which paved the way for registration of Jagatsinghpur Zero FIR No. 07 dated 22.07.2025.

While the matter stood thus, the petitioner approached this Court for grant of pre-arrest bail in ABLAPL No. 9129 of 2025 & co-accused in ABLAPL No. 9395 of 2025, but this Court while not being inclined to entertain ABLAPL No. 9129 of 2025 passed an order directing the petitioner to surrender before the Court in seisin over the case and move an application for his release on bail and in that event, the said bail application of the petitioner was directed to be considered on its own merit on the same day. Accordingly, the present petitioner unsuccessfully approached the Court in seisin over the matter and

thereby, the petitioner landing before this Court for grant of post-arrest bail.

3. Heard, Mr. Soura Chandra Mohapatra, learned Senior Counsel, who is being assisted by Mr. S. Mohapatra, learned counsel for the petitioner and Mr. C. Mohanty, learned Additional Public Prosecutor in the matter and perused the record.

3.1. The only ground that is canvassed by the petitioner through his learned Senior Counsel at this stage is that the offence alleged against him U/S. 21(2) of the POCSO Act being bailable in nature in view of the maximum punishment provided therein for one year, he should have been granted bail by the Court in seisin over the matter and he having not granted bail, this Court may kindly indulge its discretion to grant bail to him.

4. After having considered the rival submission, this Court before dwelling upon the bail application of the petitioner on merit considers it proper to address the core issue raised by the petitioner as to whether the offence as alleged against him is bailable in

nature or not?. In addressing such issue, it appears that the POCSO Act although is a self contained Act with respect to definition of offences enumerated therein and the punishment prescribed thereon as well as the procedure required to be followed in the proceedings before the Special Court, but it does not provide for the classification of offences as to whether they are cognizable/non-cognizable and bailable/non-bailable, no matter the individual punishment has been prescribed for each of the penal offences along with its definition/ingredients. In absence of any provision for classification of the offences as referred to, since Sec.31 of the POCSO Act provides for application of Code of Criminal Procedure, 1973 (in short, "CrPC") which is *pari-materia* to Bharatiya Nagarik Surakshya Sanhita, 2023 (in short, "BNSS") to the proceeding before a Special Court including the provisions as to bail and bonds, the penal offences under POCSO Act can be classified by referring to Table II of First Schedule of BNSS/CrPC which reads as under:-

[Table II of First Schedule of BNSS]

CLASSIFICATION OF OFFENCES AGAINST THE OTHER LAWS.

Offence under Other Laws			
Description of Offence	**Cognizable or Non-cognizable**	**Bailable or Non-bailable**	**By what Court Triable**
If punishable with death, imprisonment for life, or imprisonment for more than 7 years	**Cognizable**	**Non-bailable**	**Court of Sessions**
If punishable with imprisonment for 3 Years, and upwards but not more than 7 years	**Cognizable**	**Non-bailable**	**Magistrate of the First Class**
If punishable with imprisonment for less than 3 Years or with Fine only	**Non-cognizable**	**Bailable**	**Any Magistrate**

5. A perusal of Item-02 of table II of the First Schedule of the BNSS makes it apparently clear that if an offence is punishable with imprisonment for 3 years and upwards, but not more than 7 years, then the said offence would be a cognizable and non-bailable, and shall also be triable by a Magistrate of the first class *(second category)*. However, if an offence is punishable with imprisonment for less than 3 years or with fine only, then it would be a non-cognizable and bailable offence that shall be tried by any Magistrate *(third category of the table)*.

6. In the absence of any specific provision for classification of offences by other laws as to cognizable/non-cognizable and bailable/non-bailable, this Court considers it profitable to refer to the decision in ***Knit Pro International v. State of NCT of Delhi and Anr; 2022 SCC Online SC 668/ (2022) 10 SCC 221,*** the Supreme Court while holding the offence under Section 63 of the copyright Act to be cognizable and non-bailable offence has further observed in paragraph 10 as follows:

> *"10. Thus, for the offence under Section 63 of the Copyright Act, the punishment provided is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine. Therefore, the maximum punishment which can be imposed would be three years. Therefore, the learned Magistrate may sentence the accused for a period of three years also. In that view of the matter considering Part II of the First Schedule of the Cr.P.C., if the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence.* ***Only in a case where the offence is punishable for imprisonment for less than three years or with fine only, the offence can be said to be non-cognizable****. In view of the above clear position of law, the decision in the case of* ***Rakesh Kumar Paul (supra)*** *relied upon by learned counsel appearing on behalf of respondent no. 2 shall not be applicable to the facts of the case on*

hand. The language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever."

7. On careful scrutiny of the allegation leveled against the petitioner, it appears that he being the Principal of the School, on the complaint of the victim being presented to him and enquiring the same has allegedly failed to report commission of an offence in terms of Sec. 19(1) of the POCSO Act which provides that notwithstanding to anything contained in CrPC/BNSS, any person(including the child), who apprehends that an offence under the POCSO Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to the Special Juvenile Police Unit(SJPU) or the local police and Sub-Sec.(2) to Sec.19 mandates that every report given under Sub-Sec.(1) to Sec.19 shall be entered in a book to be kept by the police unit. Sec. 21 of the POCSO Act provides for the punishment for failure to report or record a case and accordingly, Sec.21(1) states that any person, who fails to report the commission of an offence under sub-section (1) of

Section 19 or Section 20 or who fails to record such offence under sub-section (2) of Section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both and Sec.21(2) prescribes that any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of Section 19 in respect of a sub-ordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine. In the present case, the facts demonstrates allegations against the petitioner in the capacity of Principal, Swami Arupananda Higher Secondary School of Education & Technology, Kurtanga for not reporting to the police the commission of offence of sexual harassment as contemplated U/S.12 of the POCSO Act against the victim girl student by the accused math teacher despite the same being brought to knowledge of him by the victim girl student through a complaint and thereby, the petitioner is alleged to have abdicated his duty cast upon him by the provision of

Sec.19 r/w Sec.21(2) of the POCSO Act, but such allegation is subject to proof in the trial, however, such allegation gives rise to penal action against the petitioner for commission of offence U/S.21(2) of the POCSO Act which provides with maximum punishment for imprisonment of one year and thereby, the allegation against the petitioner discloses commission of bailable offence in view of item no.3 of table-II of the first schedule of BNSS/CrPC. It is not in dispute that all the offences under POCSO Act are triable by a Special Court who is normally Court of Sessions, to be notified by the State Government in consultation with the Chief Justice of the High Court as per Sec. 28 of the POCSO Act and such Special Court is also empowered by Sec. 33(1) of the POCSO Act to take cognizance of any offence without the accused being committed to it for trial upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

8. It is no more *res-integra* that no person shall be deprived of his life or personal liberty except according to procedure established by law as guaranteed

under Article 21 of the Constitution of India and therefore, a person cannot be detained in custody without the sanction of law. In a case for commission of bailable offence, the accused has the fundamental right to be released on bail with or without any surety provided he is prepared to furnish bail and he shall even be released on personal bond without any surety if he is an indigent person and is unable to furnish surety, but denial of bail to an accused involved in commission of bailable offence is deprivation of personal liberty and it violates Article 21 of the Constitution of India. From the materials placed on record and the specific allegation raised against the petitioner in this case, the culpability of the petitioner being for commission of offence only U/S. 21(2) of the POCSO Act which provides for maximum imprisonment of one year and with fine, the learned special Court should not have remanded the accused petitioner to custody by refusing bail to him, but the learned Special Court has failed to take notice of the allegation and erroneously remanded the petitioner to custody by refusing to grant bail in gross-violation of

Article 21 of the Constitution of India. It is strange, but true that despite making an in-depth analysis of facts and allegations raised against the petitioner, the learned trial Court has rejected the bail application of the petitioner and remanded him to custody. This Court therefore, has no other option left, but to quash the impugned order remanding the petitioner to jail custody by refusing bail to him and directs his release on bail on such terms and conditions as deems fit and proper by the learned special Court.

9. In the result, the BLAPL of the petitioner stands allowed and he be released on bail in accordance with law by the Court in seisin over the matter. As a necessary corollary, the impugned order refusing to grant bail to the petitioner is hereby, set aside/quashed.

10. A copy of this order be immediately transmitted to the concerned Court through E-mail or any other faster mode of communication. Further, the petitioner may utilize the downloaded copy of this order from the website of the High Court to furnish bail before the Court in seisin over the matter, who shall not make

delay in accepting the bail of the petitioner irrespective of closure of Court on holiday inasmuch as the petitioner is in custody for commission of bailable offence in which he has right to be released on bail.

11. The learned Registrar General, High Court of Orissa, is requested to circulate the soft copy of the aforesaid judgment to all the Courts dealing with offences under POCSO Act for guidance, so that bail application of the accused person allegedly found in commission of bailable offence shall not be rejected. Accordingly, the BLAPL stands disposed of.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 16th day of October, 2025/Kishore