



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.598 of 2023

(From the order dated 03.07.2023, passed by the learned Additional Sessions Judge-cum-, Special Court (under POCSO Act), Sambalpur in Spl. G.R. Case No.23 of 2023).



....

*Petitioner (s)**-versus-**Naresh Suna & Anr.*

....

Opp. Party (s)

Advocates appeared in the case:

For Petitioner (s)

:

*Mr. Tarachand Bag, Adv.**-versus-**For Opp. Party (s)*

:

*M/s. M. Mustak Ansari, Adv.***CORAM:****DR. JUSTICE S.K. PANIGRAHI****DATE OF HEARING:-07.02.2025****DATE OF JUDGMENT:-14.02.2025****Dr. S.K. Panigrahi, J.**

1. In this Criminal Revision Petition, the petitioner seeks to set aside and quash the order dated 03.07.2023, passed by the Additional Sessions Court in Spl. G.R. Case No.23 of 2023, which erroneously treated the accused as a Child in Conflict with Law (CICL). Additionally, the petitioner urges this Court to cancel the bail granted to the accused under the Juvenile Justice Act and to stay the proceedings in JGR Case No. 56/56 of 2023, pending before the PMJJB, Sambalpur, to prevent further miscarriage of justice.



I. FACTS AS PRESENTED BY THE REVISIONIST:

2. The prosecution's case may be summarized as follows:

- (i). On 18.06.2023, [REDACTED] daughter of [REDACTED] resident of IR Colony, Burla, Sambalpur) lodged a written report at Burla Police Station. She alleged that on 20.06.2017, when she was 14 years old, the accused Naresh Suna forcibly entered her house, established a physical relationship with her without consent, and took obscene/nude photographs and videos.
- (ii). The accused repeatedly exploited her by threatening to viral the obscene content if she resisted or disclosed the incident. The accused also demanded money (Rs. 10,000/- and Rs. 8,000/-) through WhatsApp messages, threatening to release the explicit material.
- (iii). On 16.06.2023, the accused again forcibly established a physical relationship with the victim, threatening to kill her if she revealed the said incident to anyone.
- (iv). The police registered Burla P.S. Case No. 0271 dated 18.06.2023 under:
 - a) Section 376(2)(n), 376(3), 354-C, 323, 506 IPC.
 - b) Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012
- (v). The case was assigned as Special G.R. Case No. 23 of 2023 in the court of Additional District & Sessions Judge-cum-Special Court (POCSO Act), Sambalpur.



- (vi). Debashish Khilar, S.I. of Burla Police, investigated the case with the assistance of a lady Sub-Inspector. The victim's statement was recorded under Section 161 of Cr.P.C. with audio-video recording.
- (vii). The police seized the victim's school certificate, her clothes, and the accused's educational certificate from National Institute of Open Schooling (NIOS).
- (viii). The accused, Naresh Suna (aged 20+) was arrested on 19.06.2023 and remanded to Circle Jail, Sambalpur. The victim's statement was also recorded under Section 164 Cr.P.C. by JMFC, Sambalpur.
- (ix). An application under Section 2(12) of the Juvenile Justice (Care and Protection) Act, 2015 was filed on 26.06.2023.
- (x). The Secondary School Examination Certificate of the accused issued by the NIOS showed his date of birth as 02.08.2002.
- (xi). On 03.07.2023, the Special Court noted that the name and date of birth of the accused matched the certificate, and his age on the date of the first alleged incident (20.06.2017) was 14 years, 10 months, and 18 days. The Court concluded that the accused was a Child in Conflict with Law (CICL) at the time of the alleged offence and lacked the jurisdiction to try the case. The case was transferred to the Principle Magistrate, Juvenile Justice Board (PMJJB), Sambalpur.
- (xii). The accused filed a bail petition on 04.07.2023, which was rejected on the same day. A successive bail petition also met with same fate on 01.09.2023.



- (xiii). However, on 15.09.2023, the Additional Sessions Judge-cum-Special Court granted bail to the accused, and he was released on 16.09.2023.

II. REVISIONIST'S ARGUMENTS:

3. The counsel for the revisionist urged the following submissions:

- (i). The revisionist contends that the Special Court mechanically relied on the NIOS certificate of the accused without verifying its authenticity. The NIOS certificate was issued by an autonomous institute under the Ministry of Education, not by a recognized school or board, and its genuineness was not examined.
- (ii). He further argued that the Special Court is neither a Juvenile Justice Board (JJB) nor a Child Welfare Committee (CWC) under the Juvenile Justice (Care and Protection) Act, 2015. Therefore, the Special Court lacked jurisdiction to determine the age of the accused under Section 94 of the Act.
- (iii). The revisionist contends that the offence was a continuing offence from 2017 to 2023, during which the accused repeatedly exploited the victim physically, mentally, and financially. The accused used threats, violence, and social media (WhatsApp) to coerce the victim into compliance.
- (iv). He further alleges that the Special Court passed the order dated 03.07.2023 mechanically without applying a judicious mind. The Court failed to consider the contents of the FIR, the victim's statement, and witness testimonies.



- (v). The revisionist challenges the bail granted to the accused under the Juvenile Justice Act, arguing that the accused exploited the privileged provisions of the Act despite committing a heinous crime.
- (vi). The revisionist criticizes the Special Public Prosecutor for not objecting to the NIOS certificate, which was not issued by a recognized school or board.

III. THE ORDER OF THE SPECIAL COURT:

- 4. As per the Special Court, the case concerns CICL (Child in Conflict with Law), Naresh Suna, aged 20 years, son of Kiran Suna, residing at IR Colony, Burla, Sambalpur.
- 5. The accused was charged with offenses under 376(2)(n), 376(3), 354-C, 323, 506 of IPC (Indian Penal Code), and Section 6 of the POCSO Act (Protection of Children from Sexual Offenses Act).
- 6. The primary allegations against the accused was that he forcibly engaged in physical relations with the victim, took obscene photos of her, and threatened to make the photos viral via WhatsApp.
- 7. The Juvenile Justice Board (JJB), Sambalpur, in its order dated 01.09.2023, denied bail to the accused. The accused, through his father (guardian), Kiran Suna, challenged this decision by filing an appeal under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015.
- 8. The accused contended that the charges against him are false, concocted, and fabricated. He has been in custody since 19.06.2023, for almost eight months, and there is no evidence to suggest that his release



would expose him to criminal elements or pose any danger to society. Additionally, he has no prior criminal record except for the present case. His father, a government servant, is willing to take responsibility for his rehabilitation.

9. The court observed that the investigation in the case has been completed, and the charge sheet has already been filed. However, there is no evidence to suggest that the appellant was involved in taking obscene photos or making them viral on WhatsApp. Additionally, a Social Investigation Report conducted by the Legal-cum-Probation Officer, Sambalpur, did not include any adverse remarks against the appellant. It was also noted that the appellant's parents are government employees and that he is now a major, currently working as an attendant at Thalassemia, VIMSAR Burla.
10. Furthermore, the court took into account the appellant's prolonged detention, as he has been in jail since 19.06.2023, a period exceeding eight months. Given the lack of concrete evidence concerning the WhatsApp allegations and the duration of his custody, the court found sufficient grounds to grant him bail.
11. The court allowed the bail prayer of the appellant and set aside the order of the Juvenile Justice Board (JJB) dated 01.09.2023. It was directed that accused Naresh Suna be released under the care and protection of his father (guardian), Kiran Suna.



IV. COURT'S ANALYSIS AND REASONS:

12. I have given my anxious consideration to the submissions of the counsel appearing for both the parties.
13. In considering the arguments of the revisionist and the judgment of the special court, it is necessary to determine whether the court has properly weighed the claims of the parties and the evidence before it. The revisionist points to the FIR, which makes clear that while the accused first committed the offense in 2017 at the age of 14, his last alleged act in 2023 occurred when he was well over 18.
14. The FIR, as well as the charge sheet state that the accused last issued threats in June 2023. This suggests that the offense should be viewed as a continuing one. In such cases, it is necessary to turn to Section 472 of the Cr.P.C., which defines and governs continuing offenses:

"472. Continuing offence.-In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues."

15. If the date of the first commission of the alleged offence in the year 2017 is to be taken into account, the accused would indeed fall within the ambit of being a minor. However, the FIR as well as the charge sheet unequivocally establish that the accused last committed the offence in the year 2023, at which point he had attained the age of majority. Accordingly, the determination of his legal status must be guided by the principle that in cases of continuing or repeated offences, the age of the



accused at the time of the last instance of commission assumes paramount significance.

16. At this juncture, it becomes necessary for this Court to refer to the authoritative judgment of the Supreme Court in the case of *Vikas Chaudhary v. State (NCT of Delhi)*¹, wherein a sound and lucid interpretation of Section 472 of the Criminal Procedure Code (Cr.P.C.) was rendered. The relevant excerpts of this judgment are produced below:

“23. There is little doubt that the main object of the offence committed by the accused was to extort money from the parents of the deceased victim by way of ransom even after the death of the victim, as will be evident from the subsequent phone calls made right up to 11-3-2003, asking for ransom. The offence under Section 364-A IPC did not come to an end only on account of the death of the victim since ransom calls had been made even though the victim had been killed.

24. It is no doubt true that if the initial date of abduction, namely, 18-1-2003, is taken to be the date on which the offence under Section 364-A IPC had been committed, as an isolated event, the petitioner would have been a minor within the meaning of the Juvenile Justice Act, 2000. However, if 11-3- 2003, being the date on which the last ransom call was made, is taken as the date on which the aforesaid offence was committed, then the petitioner would have ceased to be a minor and the abovementioned Act would not apply to him.

25. Section 472 CrPC supports the submissions made both by Mr Mohan Jain, learned Additional Solicitor General and Mr Sushil Kumar. We are unable to accept Mr Sinha's submission that the offence under Section 364-A IPC stood abrogated upon the death of the victim.

¹ AIR 2010 SUPREME COURT 3380.



On the other hand, the continuation of ransom calls being made, even after the death of the victim, converts the offence into a continuing offence within the meaning of Section 472 CrPC.”(Emphasis Supplied)

17. A meticulous examination of the aforesaid provision, read in conjunction with the aforementioned judicial precedent, unequivocally establishes that in the case of a continuing offence, the legal status of the accused cannot be determined solely with reference to his age at the inception of the alleged acts. Rather, if the offence continues over a period of time and by its culmination, the accused has attained the age of majority, he must be tried as an adult.
18. What is most disconcerting in the present case is the manner in which the Additional District and Sessions Judge-cum-Special Court (POCSO), despite the clear and unequivocal contents of the FIR, charge sheet and the victim's statement recorded under Section 164 of the Cr.P.C., has proceeded to refer the accused to the Juvenile Justice Board for further proceedings.
19. This situation leaves room for only two conclusions; either the learned judge has fundamentally misunderstood the law, failing to recognize the clear principle that an individual who has attained majority cannot be tried as a minor, or there are more troubling factors at play, suggesting possible interference with the proper course of justice.
20. The Juvenile Justice Act is a law of mercy and purpose. Its primary aim is not punishment, but the rehabilitation and reintegration of children in conflict with the law. It places their welfare and protection above



retribution, embodying the spirit of restorative justice over the harshness of penal sanctions. An individual who has reached the age of majority and faces serious allegations cannot seek shelter under the protective mantle of this benevolent legislation to evade the legal consequences of his actions. The Juvenile Justice Act is not a shield for those who, having attained adulthood, attempt to circumvent the due process of law to which they must rightfully be subjected.

21. In this regard, the Supreme Court, in *Om Prakash v. State of Rajasthan & Another*², has thoroughly examined the issue of age determination and rendered a well-reasoned finding, setting forth the guiding principles applicable to such cases. The relevant excerpt is produced herein:

“32. Drawing a parallel between the plea of minority and the plea of alibi, it may be worthwhile to state that it is not uncommon to come across criminal cases wherein an accused makes an effort to take shelter under the plea of alibi which has to be raised at the first instance but has to be subjected to strict proof of evidence by the court trying the offence and cannot be allowed lightly in spite of lack of evidence merely with the aid of salutary principle that an innocent man may not have to suffer injustice by recording an order of conviction in spite of his plea of alibi.

33. Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well-planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical

² AIR 2012 SUPREME COURT 1608.



evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law-breakers and not the accused of matured mind who use the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him.”(Emphasis Supplied)

22. The precedent in question leaves no room for ambiguity, it is a settled principle that an individual who has attained the age of majority and is alleged to have committed an offence while being a major cannot seek shelter under the protective mantle of the Juvenile Justice Act. That the Special Court, in disregard of material facts, could so blithely cast aside the weight of law and reason to refer the accused to the Juvenile Justice Board is not merely an error on judgment but a dereliction so grave that it shakes the very foundation of judicial responsibility. The notion that proceedings should commence under juvenile jurisdiction simply because the accused was a minor at the inception of a continuing offence is a proposition so untenable, so discordant with established legal doctrine, that it raises profound concerns, not merely about the fairness and reliability of the adjudication, but about the very competence of the judge who rendered it.

V. CONCLUSION:

23. In view of the foregoing analysis, the revision petition is **allowed**, and the order dated 03.07.2023, passed by the learned Additional Sessions



Judge-cum-, Special Court (under POCSO Act), Sambalpur, is hereby set aside. The matter is remanded for de novo proceedings, wherein the accused shall be tried strictly in accordance with law, as a major, without recourse to the protective provisions of the Juvenile Justice Act, 2015.

24. Let this judgment serve as a firm reminder, both to the presiding judge in the instant case and to all others entrusted with the solemn duty of adjudication, that the principles of law demand not only impartiality but also a rigorous and unwavering adherence to statutory mandates. Any deviation from such fundamental precepts not only compromises the integrity of judicial proceedings but also erodes public confidence in the justice system.
25. Accordingly, this CRLREV is disposed of.
26. Interim order, if any, passed earlier stands vacated.

(Dr. S.K. Panigrahi)

Judge

*Orissa High Court, Cuttack,
Dated the 14th February, 2025*