



2025:UHC:9688-DB

Judgment reserved on: 30.08.2025
Judgment delivered on: 03.11.2025

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
THE HON'BLE CHIEF JUSTICE MR. G. NARENDAR
AND
THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY
Criminal Appeal No. 360 of 2022

Krishna @ Basu

-----Appellant

Versus

State of Uttarakhand

----Respondents

Presence:-

Mr. Arvind Vashisth, learned Senior Counsel assisted by Dr. Neha Gupta and Ajay Joshi, learned counsel for the appellant.

Mr. J.S.Virk, learned Deputy Advocate General assisted by Mr. Rakesh Joshi Brief Holder for the State.

JUDGMENT: (per Sri Subhash Upadhyay, J.)

The appellant, Krishna @ Basu has filed the present Criminal Appeal against the Judgment and Order dated 20.7.2022, passed by Special Judge (POCSO)/ District and Sessions Judge, Tehri Garhwal in Special Sessions Trial No. 33 of 2020, State vs. Krishna alias Basu & others, whereby he has been convicted under Sections 376 (3), 506 of IPC and Section 5 (l) and 6 of the POCSO Act.

2. The prosecution case, in brief, is that on 05.06.2020, a complaint was filed by the complainant Smt. Pinki (PW1) before the Inspector-in-charge, Police Station Muni Ki Reti, District Tehri Garhwal to the effect



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that her daughter (victim) is aged 15 years and 9 months old; that on 7th/8th May, 2020, when the complainant was busy in her brother's wedding preparation and her other children were at home alone then taking benefit of absence of the complainant, the appellant Krishna alias Basu S/o Ramesh Singh, R/o Shishamjhadi, Kailash Gate, Gali No. 33, Police Station-Muni Ki Reti, District Tehri Garhwal, who was living opposite to her house, under the pretext of giving tuition to her daughter showed her pornographic film and by luring the victim raped her. When the victim told him that she will report about this incident then the appellant Krishna @ Basu threatened to kill her entire family and again committed rape upon her and asked her to keep mum. Today, when the daughter of the complainant felt severe stomach pain then she told her the entire incident. The complainant took her daughter to the Doctor and the Doctor diagnosed rape and internal swelling; that when the complainant went to house of the appellant then the appellant, his mother Rajni and father Ramesh misbehaved with her and drove the appellant free from their home. The complainant submitted that the appellant and his family members are threatening them and are making false allegations against her daughter.

3. On the basis of the complaint (Ext. Ka-1) of the complainant; case was registered against the accused Krishna @ Basu (*appellant herein*) on 05.06.2020 at 16:10 P.M., as Case Crime No. 75 of 2020, at Police Station Muni Ki Reti, District Tehri Garhwal, under Sections 376 (2) (i), 376 (2)(n), 504, 506 and 509 IPC and Sections 5 (l)6, 11 and 12 of the POCSO Act and the written First Information Report (Ext.Ka-2) was made, which was, registered in Indrajai GD (Exhibit Ka-3). The



investigation of the case was handed over to (PW9) Sub Inspector Shahida Parveen. The Investigating Officer inspected scene of the incident and a map was prepared. Statement of the witnesses were recorded and on the basis of the evidence collected in the investigation, a charge-sheet was prepared against the accused/appellant Krishna @ Basu , under Sections 376(2) (i), 376 (2) (n), 504, 506 and 509 IPC and Sections 5 (l),6,11,12,16 and 17 of the POCSO Act.

4. Trial Court took the cognizance of the case and provided copies to the accused and charges were framed against the appellant Krishna @ Basu , under Sections 376 (3), 376 (2) (n), 504, 506 and 509 IPC and Sections 5 (l), read with Section 6, 11 and 12 of the POCSO Act. The accused-appellant Krishna @ Basu denied the version of the prosecution and claimed trial.

5. The following witnesses were examined by the prosecution in oral evidence:-

Prosecution Witnesses	Name of the Witnesses	Relation to Evidence
PW -1	Smt. Pinky Singh	Mother of the victim (complainant)
PW-2	Constable Pallav Chauhan	Chick FIR writer
PW-3	Manoj Kumar	Victim's Father
PW-4	Dr. Niharika Sachdeva	Medical witness
PW-5	Victim	Victim
PW-6	Dr. Bhupendra Singh Tolia	Medical witness
PW-7	Dr. Ankita Uniyal	Medical witness
PW-8	Sub Inspector Vikendra Kumar	Witness of arrest of co-accused Sanjay Kashyap
PW-9	Sub Inspector Shaida Parveen	Preliminary Investigator
PW-10	Sub Inspector Deepika Tiwari	Investigator
PW-11	Smt. Suman Dobriyal (Principal)	Witness to the date of birth of the victim
PW-12	Shashank Gupta	Witness to the date of birth of the victim

6. The following documents were presented by the prosecution as documentary evidence:-



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S.No.	Types of Documents	Documents Exhibit	Paper Number
1	Tahrir	Exhibit Ka-1	Ka-3
2	Chick FIR	Exhibit Ka-2	4 Ka/1-3
3	G.D. of filing case	Exhibit Ka-3	6 Ka
4	Medical Examination report of the Victim	Exhibit Ka-4	16Ka/1-14
5	Statement of the victim recorded under Section 164 Cr.P.C.	Exhibit Ka-5	30Ka/3-4
6	Birth certificate of the victim	Exhibit Ka-6	10Ka
7	Police Information Form, Police Station Rishikesh	Exhibit Ka-7	11Ka
8.	Medical Examination Report of the victim	Exhibit Ka-8	84Ka
9.	Letter written by the Chief Medical Superintendant to the Chief Medical Officer regarding taking blood sample for DNA testing.	Exhibit Ka-9	37Ka
10.	Victim's blood sample authentication form	Exhibit Ka-10	32 Ka
11.	Blood Sample Authentication Form of accused Krishna alias Basu	Exhibit Ka-11	33Ka
12.	Letter written by the Chief Medical Superintendant to the court regarding taking blood sample from DNA	Exhibit Ka-12	34Ka
13.	Arrest/Information Memo of accused Sanjay Kashyap	Exhibit Ka-13	64Ka/1-2
14.	GD No. 76 of Police Station Muni Ki Reti dated 04.07.2020, time 21:46	Exhibit Ka-14	63Ka
15.	Map view	Exhibit Ka-15	14Ka
16.	Arrest Memo of accused Krishna alias Basu	Exhibit Ka-16	22Ka
17.	Information memo of accused Krishna alias Basu	Exhibit Ka-17	21Ka
18.	Application for permission to record the statement of the victim under Section 164 Cr.P.C.	Exhibit Ka-18	29Ka
19.	Application for permission to record statement of the victim under Section 164 Cr.P.C.	Exhibit Ka-19	30Ka/2
20.	Affidavit of Investigating Officer Shahida Parveen regarding not disclosing the statement of the victim under Section 164 Cr.P.C. to the accused or any other person	Exhibit Ka-20	30Ka/5
21.	Application for taking blood sample of victim and accused Krishna alias Basu for DNA test	Exhibit Ka-21	27Ka
22.	Forwarding letter for chemical test	Exhibit Ka-22	31Ka/1-2
23.	Permission application for sending goods for forensic science laboratory testing	Exhibit Ka-23	36Ka
24.	Forwarding letter for chemical test	Exhibit Ka-24	62Ka/1-2
25.	Charge-sheet	Exhibit Ka-25	5Ka/1-8



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26.	Victim's exit certificate issued by the school	Exhibit Ka-26	132 Ka/2
27.	Victim's Secondary School Examination, 2021 Mark-sheet cum certificate.	Exhibit Ka-27	135Ka/2
28.	Transfer certificate issued by the school	Exhibit Ka-28	135Ka/3
29.	Forensic Science Laboratory Report No. FSL-904 (Bio/DNA)/2020, dated 27.07.2020 (order passed on Application Form 137A, Paper No. 138A, dated 21.05.2022, marked as Exhibit under Section 293 Cr.P.C.	Exhibit Ka-29	135Ka/4

7. After the prosecution evidence, the statement of the accused was recorded under section 313 Cr.P.C., in which, all the prosecution evidence was placed before the accused in the form of question and answer and the appellant denied the allegations made against him and also denied the fact of giving tuition to the victim and visiting her house; the accused stated that he was beaten up in the Police Station and was threatened that in case he denied confession of the guilt then his family members would be put in jail and appellant stated that he was falsely implicated and he is innocent, he used to live in Noida and came at Rishikesh during the lockdown.

8. In defence evidence, the accused presented Dr. Vandana Rajput DW-1 and Dr. Rajendra Garg (DW-2) as defence witness and following documents were presented as the documentary evidence.

S.No.	Types of Documents	Documents Exhibit	Paper Number
1	Register of Shivalik Diagnostic & Imaging Centre, PNDDT, 50/3, Dehradun Road, Rishikesh.	Exhibit Ka-1	147A/1-2
2	Victim's U.S.G. of Adbomen & Pelvis Report.	Exhibit D-2	13A/1-2

9. As per the prosecution witness Smt. Pinki (PW-1), who is mother of the victim, her brother's marriage



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was scheduled on 18.05.2020 and she was busy in shopping, as such, had gone to market on 04.05.2020. The accused used to come to her house to teach victim since 30.04.2020 till 4-5th May, 2020. On 06.05.2020, she asked the accused to stop coming to her house as she was busy in the marriage. After about a month her daughter fell ill, she had pain in her stomach and she went to Government Hospital, where the Doctor asked to get the pregnancy test of the victim; when she conducted the pregnancy test of her daughter at home, she found her to be pregnant. As per PW-1, she went to a Doctor and ultrasound of the victim was done at Shivalik Ultrasound, Rishikesh; due to fear of defamation, she took the victim to a small clinic called Mateshwari and after visiting the Doctor when she inquired the victim, then she told that on 3,4 & 5th May, 2020 the appellant Krishna had shown pornographic films and had made physical relations with her. When the victim told the appellant that she would report about the incident to her mother, then appellant threatened her that if she tells this incident to anyone, she will beat her to death and she would be defamed.

10. She (PW1) further states that she went with a written complaint to Kailashgate Police Station on 04.06.2020, when the Police Station in-charge called the appellant's family to the Police Station then appellant's family members made the appellant run away. On the same evening the appellant was arrested; that as it was very late on 04.06.2020, her report was not registered. On 05.06.2020, the family members of Krishna called her to their house and pressurised her for compromise and when she refused then they beaten her. Krishna's Uncle



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Sanjay Kashyap abused the victim and said that we will buy a girl like her for Five to Ten Lakh Rupees. The victim had consumed poison after hearing this and she was admitted in a Government Hospital at Rishikesh.

11. In the cross-examination, PW1 Smt. Pinki Singh stated that she cannot tell at what time the victim consumed poison on 05.06.2020 and the victim was taken to the Hospital by her father and the people from neighbourhood and she does not remember their names. As she had not went to the Hospital, as such she do not know at what time the victim was admitted to the hospital. She further stated that the victim did not vomit in front of her at home, however she said that the victim was unwell and she had pain in her stomach. She also said that she does not know what efforts were made to remove the poison from the victim in the hospital as she was not present there at that time. She went to hospital in the evening. When she reached the hospital, Chowki In-charge Vikendra Kumar and Shahida Mam were with the victim. PW1 further stated that she had gone to the police station that day and from there she went to the hospital with the Police. Ext. Ka-1 was written by her before going to the hospital. She further states that it is correct to say that in this report it is not mentioned that the victim consumed poison nor it is written that she is admitted in the hospital because she had written this report on 04.06.2020 itself and this fact is correct that on the report the date of 05.06.2020 is mentioned separately. PW1 also stated that she did not get the victims' abortion anywhere. She had conducted the pregnancy test of the victim on her own and thereafter she took the victim to Mateshwari Trust Hospital.



12. In the cross-examination PW1 Smt. Pinki further stated that her two tenants had left her home in March itself when the lockdown started. She further stated that it is true that Krishna came to the house to give tuitions on 30th April, 2020 is neither mentioned in the complaint nor in her statements under Section 161 Cr.P.C. She also stated that it is wrong to say that no one ever beat her or abused her and she has made all the allegations falsely.

13. PW2 Constable Pallav Chauhan is the writer of the Chick FIR. He stated that on 05.06.2020, the complainant had come with her complaint, in which, she recorded the Chick FIR of the matter. In the cross-examination, PW2 stated that no information about the victim being admitted to the hospital was received by him.

14. We have also perused the statement of PW 3 (Manoj Kumar, father of the victim) and PW 5 (victim) and the cross-examination and after going through the statements of PW1 Pinki (mother of the victim), PW3 Manoj Kumar (*father of the victim*) and PW 5 (victim) various contradictions about the date of alleged incident emerges, which are as follows:

- (1) As per PW1 statement, the appellant from 30.04.2020 onwards started coming to her house to give tuition to the victim. On 04.05.2020, she had gone to market then in her absence the appellant came to her house for imparting tuition.



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After 6th May, 2020 she stopped the appellant from coming to her home as she was busy in her brother's marriage.

- (2) As per the statement of PW3 Manoj Kumar he was on duty at Bhagwanpur and use to come home once in a week or once in fifteen days and when he came to Rishikesh on 12.05.2020 then his wife (PW1) told him that the appellant wants to come to their home to impart tuition to the victim and he allowed him to come to their house for giving tuition to the victim. Further, he states that the appellant used to come to their house to teach tuition from, 3rd/4th May,2020 to 11th May, 2020.
- (3) PW5 the victim in her statement under Section 164 Cr.P.C. stated that since 4th/5th May, 2020, the appellant started giving tuition to her and on 7th-8th May and 9th May, the appellant had sexual intercourse with her. Thus the statement of PW1, PW3 and PW5 about the date of incident when the appellant had raped the victim is contradictory.
- (4) As per PW1 from 6th May, 2020 she had forbidden the appellant from coming to their home.
- (5) As per PW3, the permission was sought by PW1 on 12.05.2020 for permitting the appellant to give tuition to the victim, whereas as per the victim the date of incident is 7th/8th and 9th May, 2020. Moreover, as per the statements of PW3 & 5, they were aware of the fact that lockdown (due to CORONA pandemic) was imposed since March, 2020, as such, the very fact that the PW1 was busy in shopping for marriage of her brother to be scheduled on 18.05.2020 was doubtful.



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15. The statements of PW1, PW3, PW4 and PW5 to PW10 about the incidence of consumption of poisonous substance by the victim on 5th June, 2020 reveals the various contradictions, which are as follows:

- (i) As per PW 1, the uncle of the appellant Sanjay Kashyap abused the victim, as such, she consumed poison and she was admitted to Government Hospital at Rishikesh. PW1 in her cross-examination stated that the fact of consumption of poison by the victim and her admission in Government Hospital was not mentioned in the First Information Report registered on 05.06.2020 as the complaint was prepared by her on 04.06.2020.
- (ii) PW3 (father of the victim) in his cross-examination stated that he did not saw the victim consuming poison (Phenyl) with his own eyes as the victim had locked the bathroom door from inside and the door was made of aluminium, its latch was broken by pushing and the victim was taken out, however the broken latch was not shown to the Investigator. As per PW3, the victim was taken to the hospital on scooter and the victim had vomited once between home and the hospital and the vomit had fallen on the victim's cloth; the said cloths were shown to the Police and the victim wore the said clothes in the hospital. As per PW3 the victim was made to vomit several times in hospital and she regained consciousness in 3-4 hours.
- (iii) As per PW4 (Dr. Niharika Sachdeva) on 5th June, 2020, she was posted at SPS Hospital, Rishikesh, the victim was brought to her for



medico legal at 7:15 P.M. In cross-examination, the PW 4 stated that there was no trace of vomit on the clothes of the victim at the time of examination.

- (iv) As per the victim (PW5) on 5th June, 2020 the appellant's father called them to their house and the appellant's aunt and brother abused and beaten her and in the fight they punched her in the stomach. She felt sick and started vomiting and when Sanjay Kashyap abused her by saying her characterless and said you should consume poison and die then she consumed poison and when she regained consciousness she saw her in hospital.
- (v) The statements of PW6 to PW10 reveal that no efforts were made by them to ascertain as to whether the victim had consumed any poisonous substance or not.
- (vi) Moreover, PW9 (the Investigating Officer) in the cross-examination, admits that there was no broken latch of bathroom and mother of the victim had told him that the victim had consumed poison in bathroom, however, the latch or bolt of the bathroom was not found broken. There is no medical report to indicate that the victim had consumed poison and there is no evidence of the victim being hospitalised for 3-4 days. Thus, the theory of consumption of poisonous substance by the victim in absence of any medical report was belied.

16. The statements of PW1, PW3, PW4, PW5, PW9 and DW2 and the medical report of the victim depicts that the story of pregnancy of the victim and abortion has not been proved by the evidence and the medical report.



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- (i) PW1's statement is to the effect that she conducted the pregnancy test of the victim at home and she was found to be pregnant and ultrasound was conducted at Shivalik Ultrasound Center at Rishikesh. In her cross-examination, PW1 stated that I had not done any act of abortion of the victim and had conducted the pregnancy test at home on 04.06.2020 by a kit and getting a positive report would mean that the victim was pregnant.
- (ii) As per the statement of PW3, father of the victim he was informed by his wife PW1 on 04.06.2020 about the incident of illicit physical relationship of the appellant with her daughter and PW1 informed her that Dr. Vandana Rajput (D1) asked for the ultrasound test and after conducting the Ultrasound test, PW1 informed him that the victim is pregnant. PW3 further stated that as the victim had consumed poison, as such, the pregnancy was spoiled during the treatment at hospital. PW3 in the cross-examination submits that he did not went to meet the Doctor DW1 Dr. Vandana Rajpoot, who has told that the victim was pregnant. In the cross-examination, PW 3 further submits that the fact that the pregnancy of the victim was terminated was told to him by his wife and he is not aware as to whether the 2nd ultrasound was done or not. The aforesaid facts were not told by him to the Investigating Officer.
- (iii) Dr. Niharika Sachdeva (PW4), who conducted the medico legal test on 05.06.2020 of the victim at SPS Hospital, Rishikesh, District Dehradun in her statement submitted that the victim in her



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history/statement has told that she was known to the appellant since long. After pregnancy was detected, there was a quarrel in the family and the appellant had not done any violence with her and the sexual intercourse was not forceful. No para vaginal examination was conducted as the victim refused for it. Blood was oozing from vagina and at the time of test the victim was not found to be pregnant.

- (iv) As per the statement of the victim (PW5), the pregnancy test was conducted at home on 04.06.2020, which was positive and ultrasound was conducted at Shivalik Diagnostic Center at Rishikesh, in which, it was found that there is swelling in the tube. She further admits the facts stated by her in the medico legal examination. PW5 further submits that in her statement to the Police authorities, she had told that pregnancy test was conducted at home which came positive and admits that the said statement is not written in Section 161 and 164 Cr.P.C.
- (v) PW9 SI Shahida Parveen, the Investigator in her statement submits that she was asked to investigate the matter on 05.06.2020 and there is no record available demonstrating that the victim was discharged from the hospital on 08.06.2020. She further states in her cross-examination that PW1 Pinki Singh (mother of the victim) had not told her about the abortion of the victim and he also not told her that the pregnancy test was conducted by her at home.
- (vi) DW2 Dr. Rajendra Garg, in his statement submits that on 04.06.2020, the victim, whose age is 23 years was referred by DW1 Dr. Vandana



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Rajpoot for ultrasound examination and as per his diagnosis and the report of the ultrasound, the victim was not pregnant. The said report was exhibited as D-2.

The above fact and its analysis lead to the conclusion that the story of pregnancy of the victim was not corroborated by evidence and medical report and the fact of the pregnancy and the abortion was not conclusive.

17. Apart from the above referred facts, discrepancy exists in the actual date of birth of the victim. As per the case of the victim her date of birth is 21st August, 2004 and at the time of incident she was 16 years old. In her cross-examination, she admits that at the time of the ultrasound examination, her age was written as 23 years and earlier it was written as 16 years but as the Doctor conducting the test told that that her age is to be enhanced, as such it was written 23 years. As per the school leaving certificate of the victim (Ext. Ka-27), her date of birth is 21st August, 2004, whereas as per the mark-sheet of the Secondary school examination, 2021 issued on 30th August, 2021 (after the date of incident) and the transfer certificate issued on 10.12.2020, the date of birth of the victim is 19th October, 2005, while in the patient register of Shivalik Diagnostic & Imaging Centre, Rishikesh, the age is written as 23 years. The statement of PW11 (Smt. Suman Dobariyal, Principal, Mother Miracle School), who had issued the school leaving certificate of the victim, the date of birth is recorded as 21st August, 2004. PW12 Shashank Gupta, Chief Administrative Officer, Doon International Public



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School, Shyampur, Rishikesh, who issued the T.C. of the victim on 10.12.2020 submitted that as per their record, the date of birth of the victim is 19th October, 2005 and in the cross-examination he admits that there is no signature of the victim or her mother in the admission form. The Investigating Officers admits that no effort was made by them to inspect the school form from where the certificate was issued to check the genuineness of the certificate. Thus, there was discrepancy in the actual date of birth and age proof of the victim was to be ascertained which had a bearing on the case.

18. The statement and evidence led by the Investigating Officer depicts that the investigation was faulty on account of the following reasons:

- (i) The statement of PW9 (SI Shaida Parveen) reveals that the statement of the victim was recorded by her on 05.06.2020 and the site map of the place of incidence was prepared by her. However, in the cross-examination, she stated that at the time of preparation of the map, the victim was not present, she was in hospital and the map was prepared on her direction. She further admits that the victim was not taken to the place of incident. With regard to date of birth, certificate it has been stated that the birth certificate was handed over to her by mother of the victim on 11th June, 2020 which was issued by the Nagar Palika Parishad, Rishikesh and she never inquired from the victim or her parents about the place of birth of the victim. PW9 stated that she



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has not taken the birth certificate from the school from where the victim had completed her high school. PW9 further submits that the victim was in the hospital from 5th June to 8th June, 2020 however, there is no record available which could demonstrate that the victim was discharged from hospital on 8th June, 2020 and the discharge paper was not collected from the Hospital. She also admits in cross-examination that the clothes of the victim were not taken by her on 05.06.2020 when the victim was admitted in the Hospital for consumption of poisonous substance. In cross-examination, she further submits that she was aware that it was a case of poisoning but she is not aware as to whether the clothes were to be taken in possession.

- (ii) In similar manner the statement of PW10 (Deepika Tiwari) and her cross examination depicts that no efforts were made to take out the call details of the appellant. The entire foundation of the prosecution story is based on the fact that rape was committed by the appellant when the victim's mother was gone for shopping. Admittedly, the incidence occurred during the lockdown period and there is no evidence led by the prosecution to demonstrate as to whether marriage were been solemnized or markets were opened during the



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lockdown.

19. In view of the above discussions we are of the considered view that the prosecution was not able to prove its case beyond reasonable doubt and the conviction cannot be upheld based on preponderance of probabilities. Accordingly, the appeal is allowed. The Judgment and Order dated 20.07.2022, passed by the Special Judge (POCSO)/District & Sessions Judge, Tehri Gahrwal, in Special Sessions Trial No. 33 of 2020, State vs. Krishna @ Basu and another, convicting the accused/appellant under Sections 376(3), 376 (2)(n), 506 of IPC and Section 5 (I)/6 of the POCSO Act, 2012 is hereby set aside. The appellant Krishna @ Basu is in jail. He be set at liberty forthwith, if not required to be detained in any other case. Information to this effect be sent to the Superintendant of Jail where the appellant is currently serving out the sentence.

(G. NARENDAR, C.J.)

(SUBHASH UPADHYAY, J.)

Dated :03.11.2025

Kaushal