

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32648 of 2026

Arising Out of PS. Case No.-2 Year-2026 Thana- Balwahat District- Saharsa

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Santosh Jayswal @ Santosh Kumar S/O Maheshwari Chaudhari, Resident of
Village- Saroja, P.S. Balwahat, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar
2. XXXX D/O Shyam Bhagat, R/O Village- Magurjaan, Ward No. 9, P.S.-
Kothi, Distt.- Purnia.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kamal Kishore Singh, Advocate
For the Opposite Party/s : Mr. Nagendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

3 23-07-2026 Heard learned Counsel for the petitioner, learned
counsel for the Informant and learned APP for the State.

2. The present criminal miscellaneous application has been filed under Sections 483 and 484 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as ‘the BNSS, 2023’) for grant of regular bail to the petitioner who is in custody in connection with Balwahat P.S. Case No. 2 of 2026, lodged on 02/01/2026, under Sections 64, 69 and 3(5) of the Bhartiya Nyaya Sanhita, 2023, under Sections 4 and 6 of the POCSO Act and under Sections 9/10/11 of the Child Marriage Prohibition Act, pending in the Court of the learned Special Judge (POCSO) Saharsa.



3. As per the prosecution, the FIR has been lodged by the victim, who has categorically stated before the police, that her father was forcefully interested to marry her with an old aged person, due to this reason she went with her sister at her house. Subsequently, at the instance of her sister the marriage was solemnized with the petitioner. She has narrated that for this marriage, her sister has talked with the father also. This case was registered primarily under the violation of Child Marriage Act for violation of Sections 9,10 and 11, but in the FIR Sections 4 and 6 of the POCSO Act has also been added.

4. Learned Counsel for the petitioner submits that the petitioner is innocent and has committed no offence. Counsel submits that it is true that the alleged victim/informant is minor, but he submits that in this marriage the consent of the entire family members of the victim was involved. Counsel submits that in the entire case diary there is nothing against him and ingredients of POCSO Act is not there. Counsel submits that for the sake of argument even it is accepted that offence is made out under prohibition of Child Marriage Act, 2006, then also the punishment is of two years with fine which may be extended up to rupees one lakh or both. Counsel submits that the ingredients of POCSO is not there. Counsel submits that on the previous



occasion, this Hon'ble Court has been pleased to call for the case diary as well as statement of the said victim girl, under Section 183 of the BNSS, by which everything shall be clear. Counsel submits that the criminal antecedent of the petitioner is clean. Counsel further submits that petitioner is ready to fulfill all the conditions whatsoever shall be imposed upon him.

5. Learned Counsel appearing on behalf of the informant vehemently opposes the prayer for bail and submits that the petitioner is at fault, there was no consent of the father for this marriage. Admittedly, the petitioner was minor and, therefore, the question of consent or no consent of the petitioner shall not arise and the petitioner be continue in custody.

6. Learned APP for the State, on the other hand, opposes the prayer for bail of the petitioner but fairly submits that it is a unique case in which the allegation of marriage with minor has been alleged in the FIR and primarily case has been lodged under the prohibition of Child Marriage Act, 2006. Counsel further submits that for the addition of Sections 4 and 6 of the POCSO Act, statement of the victim under Section 183 is necessary that what she had adduced before the Magistrate. Statement of victim under Section 183 has been called for and is attached. In her statement under Section 183, the victim has



narrated and alleged against her mother but not alleged against the petitioner; rather categorically stated that there was no physical relation developed between the petitioner and the informant.

7. The SDJM had recorded the statement under Section 183 of the BNSS and categorically observed that the victim has narrated the statement before the Court without any fear or coercion.

8. In this view of the matter, this Court finds that prima facie, the allegation of POCSO is not there and protection of Child Marriage is only attracted in which two years punishment is there and the petitioner is in custody since 06/04/2026, let the petitioner, above named, be released on bail on furnishing bail bond of Rs.30,000/- (Rupees Thirty Thousand) as mentioned in Section 2(1)(d) of the BNSS, 2023 to the satisfaction of learned Special Judge (POCSO), Saharsa, in connection with Balwahat P.S. Case No. 2 of 2026 subject to the conditions as laid down U/s 480(3) of the BNSS, 2023.

(Dr. Anshuman, J)

Mkr./Anshuman/

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