

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.91404 of 2025

Arising Out of PS. Case No.-454 Year-2025 Thana- NAUBATPUR District- Patna

Pratap Kumar @ Prahlad @ Prahlad Kumar son of Late Suresh Yadav R/o -
Karai, P.S - Naubatpur, District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. X son of Late Rambabu Rai R/o - Karai, P.S - Naubatpur, District - Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Rabi Bhushan Prasad, Advocate.
For the Informant	:	Mr. Amarnath Kumar, Advocate.
For the State	:	Mr.Sunil Kumar Pandey, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 21-04-2026 Heard learned counsel appearing on behalf of the

petitioner; learned counsel for the informant and learned APP

for the State.

2. The petitioner seeks pre-arrest bail in connection
with Naubatpur P.S. Case No. 454 of 2025 registered for the
offence punishable under Sections 126(2), 115(2), 118(1), 109,
76, 352, 351(2) and 3(5) of BNS, 2023 and Section 8 of the
POCSO Act.

3. As per the allegation made in the F.I.R., the
petitioner is said to have misbehaved with the minor daughter of
the informant by catching her hand and tried to abduct her, but
she fled away. Thereafter, the petitioner along with other
accused persons assaulted the informant and his family



members causing them injury. Both the sons of the informant were badly injured in the occurrence.

4. Learned senior counsel appearing on behalf of the petitioner informs this Court that this is one case in which provision of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “POCSO Act”) has been misused. Petitioner is the co-villager and there is case and counter case between the parties. The implication of the petitioner is on the basis of false accusation. The informant’s side aggravated the petitioner which resulted into free fight and for that the petitioner had lodged a case prior to the present case being Naubatpur P.S. Case No. 453 of 2025. Learned counsel on merits submitted that even considering the ingredients of Section 7 of the POCSO Act, no case is made out for attracting the penal provision that there must be intention to commit sexual assault. In the statement recorded under Section 183 BNSS, the victim has merely stated that the petitioner had caught hold her hand and considering the attending circumstances that the petitioner is the co-villager and enmity between the parties exists which may have led to lodging a false criminal case against the petitioner. Petitioner has clean antecedent. On these grounds, learned counsel submitted that



the petitioner deserves to be released on pre-arrest bail.

5. Mr. Amarnath Kumar, learned counsel tendered his appearance on behalf of the informant and submitted that the petitioner with an intention to commit sexual assault had caught hand of the minor daughter of the informant. The element of sexual assault as defined under Section 7 of the POCSO Act is made out calling punishment under Section 8 of the POCSO Act. Learned counsel further submitted that present is not a case in which there is every likelihood that the petitioner will be acquitted in course of trial.

6. Mr. Sunil Kumar Pandey, learned APP submitted that the victim has supported the prosecution case in her statement recorded under Section 183 BNSS, hence, the petitioner don't deserve to be released on pre-arrest bail.

7. Heard the parties.

8. Having heard the rival submissions made on behalf of the parties, as well as, having perused the allegation made in the F.I.R., for better appreciation of the case, the provisions of Sections 7 and 8 of the POCSO Act are reproduced hereinafter:

*“7. **Sexual assault.**—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.*



8. Punishment for sexual assault.— *Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.*”

9. Section 9 of the POCSO Act defines aggravated sexual assault, which is reproduced hereinafter:

9. Aggravated sexual assault.—

(a)Whoever, being a police officer, commits sexual assault on a child—

(i)within the limits of the police station or premises where he is appointed; or

(ii)in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii)in the course of his duties or otherwise; or

(iv)where he is known as, or identified as a police officer; or

(b)whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

(i)within the limits of the area to which the person is deployed; or

(ii)in any areas under the command of the security or armed forces; or

(iii)in the course of his duties or otherwise; or

(iv)where he is known or identified as a member of the security or armed forces; or

(c)whoever being a public servant commits sexual assault on a child; or

(d)whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or



(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child.

Explanation.— when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

*(j) whoever commits sexual assault on a child, which—
(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or*

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the



child, commits sexual assault on such child; or

(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child and attempts to murder the child; or

(s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.

10. From the statement of the victim recorded under Section 183 of the BNSS, it appears that the petitioner had caught hold of the hand of the informant's minor daughter, without touching any other or vital part of her body, as she managed to free herself, which led to a scuffle. Similar act was again repeated while the victim was returning from school.

11. Upon a careful perusal of the aforesaid provisions, it is manifest that even a mere touching of the hand, when accompanied by the requisite sexual intent, would be sufficient to attract the rigours of Sections 8 and 9 of the POCSO Act.



12. However, I find that such incidence happens in villages without any intention to commit sexual assault. The parties may proceed to settle their dispute amicably by way of community mediation. In case, the parties fail to do so, then in that case, the parties may settle their dispute by way of mediation in accordance with Mediation Act, 2023 by approaching the learned District Court.

13. In case the petitioner approaches the learned District Court, then in that case, the learned District Court is directed to take necessary steps to refer the matter before the learned Mediator of the District Mediation Center by fixing a date for appearance of the parties to give effect to “Mediation for the Nation 2.0”.

14. Learned Mediator of the District Mediation Center concerned, upon appearance of the parties, shall make his/her best efforts to settle the dispute amicably and thereafter submit his/her report before the concerned learned District Court, well within a period of three months, till then, no coercive action shall be taken against the petitioner in connection with the aforesaid case.

15. In case, the parties resolve their dispute amicably or arrive at a mutual settlement, the petitioner is directed to be



released on pre-arrest bail on such terms and conditions as the learned District Court deems it fit and proper.

16. With aforesaid direction and observation, the present application stands disposed of.

17. Let a copy of this order be communicated to the Member Secretary, Bihar State Legal Services Authority and the Patna High Court Mediation Centre for the purpose of record.

(Purnendu Singh, J)

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