IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLREV NO.419 of 2026
CNR NO. ODHC010384942026

(In the matter of application under Section 401, read with Sec.397 of Criminal Procedure Code).

Sk. Kadir Hosen @ Sk. Quadir Hossain & Another … ***Petitioners***

-versus-

State of Odisha & Another … ***Opposite Parties***

For Petitioner : ***Mr. S.K. Zafarulla, Advocate***

For Opposite Party : ***Mr. S.N. Biswal, Addl. PP***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:28.10.2026(ORAL)

G. Satapathy, J.

1. The petitioner by way of this revision application seeks to challenge the impugned order dated 29.01.2026 passed by the learned Ad-Hoc Addl. District & Sessions Judge (FTSC), Bhadrak in Spl. Case No.75 of 2020 refusing to discharge the accused-petitioners from this case in an application U/S.227 of the CrPC.

2. The facts in nutshell is that the mother of the victim lodged an FIR against the petitioners and others

for kidnaping her daughter and accordingly, a police case was registered, the victim was rescued by the police and her statement was recorded, and on conclusion of investigation, a charge-sheet was submitted against the petitioners for commission of offence U/S.363/366/376(2)(n)/109 of IPC r/w Sec.4(1)/17 of POCSO Act. Further, cognizance was taken for the aforesaid offences, but the petitioners filed an application U/S.227 of CrPC praying to discharge them from this case for commission of offences U/S.363/366/376(2)(n)/109 of IPC r/w Sec.4(1)/17 of POCSO Act, however, the same was rejected by the impugned order which is under challenge in this revision.

3. Heard Mr. S.K. Zafarulla, learned counsel for the revision-petitioners and Mr. Siba Narayan Biswal, learned Addl. PP in the matter and perused the record.

4. The petitioners in fact seeks for discharge from this case for commission of offence U/S.366/376(2)(n) and POCSO Act by mainly harping

on the statement of the victim, but neither is it the stage to evaluate the statement of the victim recorded U/S.164 of CrPC, nor can the probative value of the statements of the victim U/S.161/164 of CrPC gone into, however, the provision of discharge is very clear that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submission of the accused and the prosecution in this behalf, the judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reason for doing so, but if, after such consideration and hearing as aforesaid, the judge is of the opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the said Court, he shall frame in writing a charge against the accused. In the present case, the Court in seisin over the matter after going through the record and documents submitted therewith has rejected the petition for discharge. It is not out of place to mention here that merely the victim has not stated against the

petitioners in her statement U/S.164 of CrPC, it may not be appropriate to discharge them from the case when the other materials on record, such as her statement recorded U/S.161 of CrPC and medical examination report otherwise justifies the ingredients of the offence.

5. On a cumulative consideration of the statements of the victim together with her medical examination report, prima facie the victim is found to be less than 17 years of age and there appears allegation against the petitioner no.1 for keeping physical relationship with the victim which, however, found the basis for rejecting the discharge petition of the petitioner-Sk. Kadir Hosen @ Sk. Quadir. Further the materials on record also disclose about rescue of the victim and the petitioner-Sk. Kadir Hosen @ Sk. Quadir by the police from Kolkata and there appears allegation against the petitioner Sk. Raja @ Sk. Jabir for providing assistance to petitioner Sk. Kadir Hosen @ Sk. Quadir for committing the offence.

6. Law is also fairly well settled that when the materials placed on record discloses grave suspicion as against mere suspicion against the accused that would justify the Court in framing the charge against such accused and to proceed against him in the trial, but the Court while considering the materials placed on record cannot resort to a roving enquiry to look into the probative value of the material or weigh the evidence as if the trial being conducted. Further, if there exists some material on record to presume that the accused has committed an offence, the Court would be perfectly justified to frame charge inasmuch as the language used in the provision of charge is for 'presuming commission of offence' by the accused. It is worthwhile to reiterate that Sec.29 of the POCSO Act provides for presumption as to certain offences and it is provided therein that where a person is prosecuted for committing or abetting or attempting to commit any offence U/S.3/5/7 and Sec.9 of the POCSO Act, the special Court shall presume that such person has committed the offence, unless contrary is proved. So,

there is a presumption of commission of offence against the accused which is inbuilt in the provision of law. The medical report of the victim, however, reveals that sexual intercourse alleged against the victim cannot be ruled out. In the aforesaid facts and scenario and taking into account the principle under which charge is framed together with the materials placed on record including the medical examination report of the victim, this Court does not find any infirmity or illegality in the impugned order necessitating interference by this Court.

7. In the result, the criminal revision stands dismissed, but no order as to costs and pending IA No.614 of 2026 stands disposed of.

(G. Satapathy)
Judge

Signature Not Verified
Digitally Signed
Signed by: JAYAKRUSHNA DASH
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 29-Oct-2026 17:03:02

Orissa High Court, Cuttack,
Dated the 28th day of October, 2026/Jayakrushna