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FORM-A

**IN THE FAST TRACK SPECIAL COURT OF
PROTECTION OF CHILDREN FROM SEXUAL
OFFENCES ACT CASE & IN COURT OF THE 2nd
ADDITIONAL SESSIONS JUDGE SURAT**

Date of Judgment:- 13/03/2026

Special (POCSO) Case No. 270 / 2025

[Dindoli Police Station Part-'I' C.R. No.11210056250291/2025]

Complainant	The State of Gujarat
Represented Through Ld. Public Prosecutor	Mr. U. A. Patil
Accused	Prakash @ Paku @ Babu Niranjan Behera, Aged: 24 years, Resi.at: Building A-41, Room No.4, In the house of Jitendra Goswami, SMC Bestan Awas, Dindoli, Surat. Original : Khorda, Thana: Banupur, Dist.Bhuvneshwar, Orissa

Ld. Advocate for the Accused	Mr. M.G. Kolsawala
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FORM-B

Date of Offence	06/02/2024
Date of FIR	07/02/2024
Date of Charge-sheet	01/09/2025
Date of Framing of Charges	10/12/2025
Date of commencement of trial	18/12/2025
Date on which judgment is reserved	05/03/2026
Date of the Judgment	13/03/2026
Date of the sentencing order, if any	-----

Accused Details

Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offence charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of section 428, Cr.PC
1	Prakash @ Paku @ Babu Niranjan Behera	24/07/ 2025	30/09/ 2025	U/s.137(2), 64(2)(i), 64(2)(m), 87 of BNS and 4,6,8,12 of POCSO Act, 2012	Acquitted	No	-----

FORM-C

(A) Prosecution witness :-

Sr. No.	Rank	Exh No.	Name	Nature of Evidence
1	PW1	8	Dr.Jignesh Dhirubhai Padamani	Medical Witness
2	PW2	14	Dr.Rajesh Hiralal Khatri	Medical Witness
3	PW3	17	Dr.Shreya Girdhari Agrawal	Medical Witness
4	PW4	26	Victim	Witness
5	PW5	28	Father of the victim	Witness
6	PW6	34	Khushali Anial Chauhan PI	Police Witness
7	PW7	48	Kamleshbhai Dhanjibhai Chaudhary HC	Police Witness

B. Defence witness, if any: NIL

Sr.No.	Rank	Name of witness	Nature of evidence
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C. Court Witnesses, if any: NIL

Sr.No.	Rank	Name of witness	Nature of evidence
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List of Prosecution /Defence/Court Exhibits.

(A) Prosecution Documentary Evidences;

Sr. No.	Exh. No.	Description
1	10	Medical examination report of accused
2	11	Letter to FSL
3	12	DNA profile Form of accused
4	13	Yadi to SMIMER hospital of the accused
5	15	Medical case paper of victim
6	16	Yadi to SMIMER hospital
7	18	Medical examination report of victim

8	19	Yadi to SMIMER for medical examination of victim
9	20	Medical case papers
10	21	DNA profile Form of victim
11	27	Victim statement U/s.183 of BNSS
12	29	Complaint
13	30	Copy of School Leaving Certificate
14	31	Panchnama for place of incident
15	32	Arrest panchnama
16	33	Panchnama for recovery of clothes of the victim
17	35	Referral slip of SMIMER Hospital
18	36	Medical case papers of victim - psychiatry
19	37	FSL receipt
20	38	Ravangi Nondh
21	39to42	Yadi to Nodal Officer
22	41	Station diary entry
23	43to47	Muddamal slips
24	9	Medical Case papers of the accused

B. Defence documentary list, if any : NIL

Sr. No.	Name of witness	Nature of evidence
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C. Court witness documentary list, if any, : NIL

Sr.No.	Name of witness	Nature of evidence
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D. Material Objects:

No.	Muddamal	
1	Top	Mark-A
2	Leggings	Mark-A1
3	Dupatta	Mark-A2

4	Mobile phone	Mark-B
5	Tshirt	Mark B1
6	Night pent	Mark B2

Offence: U/s. 137(2), 64(2)(i), 64(2)(m), 87 of BNS and 4, 6, 8 & 12 of POCSO Act, 2012...

:: J U D G M E N T ::

Name of the victim/prosecutrix is withheld and not disclosed as per the directions of the Hon'ble Supreme Court in the case of State of Karnataka Vs. Puttu Arsh, 2004 Cri.L.J. 12 and as per section 33(7) of the POCSO Act, hereinafter referred as "Victim/ prosecutrix"

1. The accused herein is prosecuted for the offences U/s. U/s. 137(2), 64(2)(i), 64(2)(m), 87 of BNS and 4, 6, 8 & 12 of POCSO Act, 2012, registered vide Part-'A C.R. No.11210056250291/2025 before Dindoli Police Station.
2. The complaint in the instant case was lodged by the father of the victim girl (name withheld), aged: 17 years, 8 months and 24 days at the time of incident, and the same is on record vide **Exh.29**.
3. The facts leading to the prosecution of the accused lie within a very narrow compass as under:-
 - 3.1 The complainant - father of the victim has stated in the complaint that;

He has stated that 'he is residing at Dindoli Awas, Dindoli, Surat alongwith 5 children, in which the victim is aged: 17 years 8 months 24 days, and his wife died prior to 3 years. He has stated that her elder daughter came to home for delivery and room No.1, adjoining to his house hired on rent, and on 06.12.2025, he went towards Shalimar market at 8.00 hrs. and both sons and the victim daughter were at the house and at about 2.00 hrs. at noon, his elder daughter informed him that the victim was cooking before sometime and now, she was not in the house and therefore he returned to his house and both sons were also come to the house and they searched the victim, but did not find, and they also searched at the relatives, even she did not find. Therefore, the complaint was filed against unknown person who kidnapped/abducted the victim. Thus, the complainant lodged the complaint with the above stated allegations.

Investigation & Filing of charge-sheet

4. Accordingly, the P.S.O. of Police Station, Dindoli Police Station, recorded the complaint, vide F.I.R. being C.R. No. I- 11210056250291/2025 for the offences punishable U/s. 137(2) of BNS and later, report submitted to add the offences punishable U/s. 64(2)(i), 64(2)(m), 87 of BNS and 4, 6, 8 & 12 of POCSO Act, 2012. The IO has investigated the matter. The accused was arrested and then the accused and the victim sent for medical

examination. The statement of the victim girl was recorded. During medical examination of the victim girl and accused person, treating doctors took necessary samples of accused and victim, and handed over the same to Investigating Officer, who sent it to F.S.L. and obtained FSL Receipt. During the course of investigation, the I.O. recorded the statement of the witnesses and also proceeded for the statement U/s.183 of BNSS before the Magistrate. The I.O. also drawn the panchnama of the place of incident and the I.O. submitted the charge-sheet on 09.03.2025 vide charge-sheet No.163/2025 and the same was registered as POCSO Case No.270/2025.

5. After receiving the charge-sheet in the Court, as the accused was released on regular bail, summons issued to the accused and accordingly, he appeared through his learned advocate. Thereafter, copy of charge-sheet along with papers were supplied to the accused person in compliance to the Section-230 of BNSS free of costs.

Charge

6. On 10.12.2025 the charges U/s. 137(2), 64(2)(i), 64(2)(m), 87 of BNS and 4, 6, 8 & 12 of POCSO Act, 2012 were framed against the accused vide **Exh.6** under Section 251 of BNSS. The accused denied the charges and pleaded not guilty vide Exh.7 under section 251(2) of BNSS and claimed trial therefore, the prosecution was

directed to produce oral evidence as well as documentary evidence, if any, against the accused to prove his guilt.

Trial

7. In order to bring home the guilt of accused, prosecution has examined as many as 7 witnesses and has produced the number of documents i.e. documentary evidence as stated above in **Form C**.

Further statement

8. After leading the oral and documentary evidences, the prosecution filed the closing and dropping pursis vide **Exh.50**. On culmination of prosecution evidence, accused was examined under Section-351 of BNSS by putting all the questions. He has denied all the questions which were put to him and has pleaded innocence as regards in the offence.

Rival contentions

9. Heard, learned Additional Public Prosecutor Mr.U.A. Patil for the State and learned advocate Mr.M.G. Kolsawala for the accused side in detail. The detailed arguments are hereinafter discussed while giving reasons.
10. In view of the rival contentions of Ld. A.P.P. and Ld. Adv. for the defence, the following points of determination arise for the Court to decide, as regards the guilt of the accused.

POINTS OF DETERMINATION

1. Whether the prosecution proves that the victim girl was minor at the time of commission of offence as alleged ?
 2. Whether the prosecution proves beyond reasonable doubt that on 06.02.2025, the accused has abducted/kidnapped the victim by giving lure and entice to marry her and kept physical relation with the victim against her will, or in order that she may be forced/seduced to illicit intercourse, and accused had committed repeated sexual penetrative assault and thereby the accused committed the offence of rape punishable under section U/s. 137(2), 64(2)(i), 64(2)(m), 87 of BNS on the date and time as alleged ?
 3. Whether the prosecution proves beyond reasonable doubt that the accused committed the offence punishable under section and 4,6, 8 & 12 of POCSO Act, 2012 ?
 4. What order?
11. My findings on the aforesaid points of determination are as under.
- 1) In the affirmative
 - 2) In the negative
 - 3) In the negative
 - 4) As per final order

DISCUSSION, DECISION & REASONS THEREOF:

POINT NO.1

- 12.** It is alleged by the prosecution that on the day of incident i.e. 06.02.2025, the victim-girl was minor about 17 years 8 months and 24 days old. Therefore, it is the prime duty of the prosecution to prove that the victim was minor at the time of incident through cogent and satisfactory evidence.
- 12.1** It is contended by learned A.P.P. Mr. Patil that the victim was minor on the date of incident. He specifically submitted that as per school leaving Certificate of the victim, her birth date is mentioned as 14.05.2007. Hence, the age of the victim on the date of incident is minor. Considering the same, the prosecution proved that the victim was minor at the time of incident.
- 13.** While the learned advocate for the accused has submitted that the victim was not minor at the time of incident. The prosecution has not produced any cogent and reliable evidence to prove the age of the victim. The complainant has stated in her deposition that he did not remember the date of the victim and the victim has also stated in her deposition that her birth date is 15.05.2007.
- 14.** Let me consider the ocular as well as documentary evidence adduced by the prosecution. The **PW-5 father** of victim has deposed at **Exh.28**, wherein, he has stated that he did not remember the birth date of the victim. The

victim has deposed at Exh.26, wherein she has stated that her birth date is 15.05.2007. The prosecution has produced School Leaving Certificate at **Exh.30**, wherein date of birth of the victim is mentioned as **14.05.2007**. The defence side has admitted the said document. No objections raised by the other side. No cross examination was conducted on this point. The positive and affirmative evidence produced by the prosecution in the nature of documentary evidence, which is not disputed by the defence side. Further, at this stage, I would like to refer and consider the relevant provisions and judgment of Hon'ble Supreme Court in the case of *Madhya Pradesh Vs. Anop Singh, Criminal Appeal No,442/2010*. In this regard, when the School Leaving Certificate is admitted by the accused side, which is produced vide Exh.30. On perusal of the said documents produced vide Exh.30, date of birth of the victim is mentioned as 14.05.2007 with the other details. Further, when the defence side has admitted this document, the same is admissible in evidence. Thus, there is no reasonable or proper ground to disbelieve this Exh.30. Further, at this stage, I would like to refer section 35 of the Indian Evidence Act. Hence, such entry is also admissible in evidence. Further the defence has not raised any doubt about the correctness of this document. Defence has also not able to bring on record that the date of birth is not 14.05.2007 and any other. Hence, it is proved beyond reasonable doubt that the birth date of

victim-girl is 14.05.2007 and thus, the incident occurred on 06.03.2024 and therefore, on the date of incident, the victim-girl was **minor aged 17 years 08 months and 23 days old**. Thus, the prosecution has successfully proved that the victim was minor "child" at the time of incident as per Section 2(d) of the POCSO Act, and thus, I answer the issue No. 1 in affirmative.

Issues No. 2 and 3

15. Both these issues are interconnected and intermingled, hence to avoid of repetition of discussion, both these issues are discussed together.

PROSECUTION ARGUMENT

16. Heard, Ld. A.P.P. Mr. Patil, appearing for the State who has fairly conceded that though important witnesses have not supported the prosecution case, police witnesses and medical evidence are important. By drawing the attention towards the evidence of police officials and medical officers and FSL report, it is submitted that the said evidence is sufficient to prove the alleged charges. He further submitted that the evidence of medical officer and the police witnesses have supported the prosecution and therefore, on the basis of these evidence, the prosecution has successfully proved the alleged offence. He further submitted that panchnamas are also proved and hence, considering the evidence of police officials, medical officers, etc., the prosecution

successfully proved its case. He further submitted that nowadays such type of incidents are increasing day by day and hence, the accused should be punished on the basis of evidence that has come on record.

DEFENCE ARGUMENT

17. While refuting, Ld. Adv. Mr.Kolsawala appearing for the accused has contended that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt, and the evidence on record is too flimsy to convict the accused. He vehemently submitted that evidence of victim is totally contradictory to the police statement and hence, her evidence is not supported the prosecution. He further submitted that no injury internal or outside the body of victim found by the medical officer and this fact assumes great importance. He further submitted that no injury found on the victim's body which corroborates the evidence of victim that nothing untoward happened to her. Prosecution has to prove its case beyond reasonable doubt and when the victim-girl herself has not supported the prosecution version, prosecution failed to prove the accusation.

17.1 By drawing the attention towards the medical evidence, it is submitted that when the victim has turned hostile, the corroborative evidence cannot be made the basis of proving the case of prosecution. In absence of evidence of victim, the history narrated by the medical officer cannot

be considered. Lastly, learned counsel has forcefully submitted that the prosecution is miserably failed to prove its case beyond reasonable doubt and thus, he prayed to acquit the accused accordingly.

- 18.** It is settled position that conviction can be based on the sole testimony of the prosecutrix, if it inspires confidence and that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration. That, there can be a conviction on the sole testimony of the victim/ prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. It is also fundamental principle of Criminal Jurisprudence that an accused is presumed to be innocent and therefore, burden lies on the prosecution to prove the guilt of accused beyond reasonable doubt. It is to note that primary burden is for the prosecution to prove the foundational fact of the case by adducing cogent, trustworthy and reliable standard of evidence. Section 29 has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case. Thus, without proof of foundational evidence in case under the POCSO Act, the onus to prove the reverse burden of proof does not come into operation. The statutory presumption cannot be taken to be absolute. In the case of *Sitaram Das vs. State of W.B., reported in*

2020 SCC -522, the Hon'ble Court has held in para-33 to 35 that;

.....para 33:- It is only on proof of foundational evidence being led, the onus gets shifted to accused to prove the contrary in order to discharge the reverse burden proof, as contemplated in section 29 of the POCSO Act.. It has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case. The statutory presumption thus cannot be taken to be absolute.".. mere proof of medical evidence, which is nothing more than a corroborative piece of evidence, would not by itself pave the way for application of presumption available under section 29 of the POCSO Act.

Thus, the prosecution is under obligation to lay down the foundational facts before presumption can be drawn against the accused under section 29 and 30 of the POCSO Act, 2012. Now, let me consider the evidence adduced by the prosecution. Whether, the prosecution is able to prove the necessary ingredients of alleged offence? I have threadbare considered the ocular and documentary evidence adduced by the prosecution. Having regard to the charges levelled, the fulcrum of the prosecution case logically is the testimony of the prosecutrix victim. Undeniably therefore, the credibility and trustworthiness of the victims' version is the decisive factor to adjudge the culpability of the accused. Indisputably, in the present case, the key prosecution witnesses have resiled from their previous statements given to the police, even the prosecutrix also did not support the prosecution. It is pertinent to note that important witness viz. **PW-4 victim herself**, who was

examined vide **Exh.26**, **PW-5 the complainant father of the victim** who was examined vide **Exh.28** have resiled from their previous versions narrated before the I.O.

- 19.** The **star witness** of prosecution, who is victim, who has been examined on oath. **The victim-PW-4** who was examined on oath at **Exh.26**. But she has not supported the prosecution case. She is in fact the '**star witness**', however, for reasons best known to her has made a 'U' turn-summersault and has stated that nothing untoward had happened with her and has not supported the contents of police statement. She deposed that no incident occurred with her. It is not occurred that someone abducted/kidnapped her by giving lure and entice to marry her and had kept physical relation. She has deposed that the police inquired her at the police station and took her for medical examination at medical college, then brought her before Magistrate. The Police demanded her clothes which was given to them and she identified before the Court. She has identified her signature in statement U/s.183 of BNSS. which is produced at **Exh.27**. She knows the accused as he resides adjoining to the house.

- 19.1** As the victim has not supported the case of prosecution, the victim after having being declared hostile and having been cross-examined by Ld. A.P.P. at length, has not affirmed the facts of her statement before the police. She denied the facts of her statement. In fact, she is the star

witness and the very important witness of prosecution, eventhough she has not supported the version of prosecution. She has totally denied the factum of kidnapping, or abducting or any physical assault committed upon her. She has totally denied the factum of her statement.

- 20.** The victim was cross-examined by the defence side, wherein, it is admitted that the accused had not forcibly committed the act of overwhelming. She has admitted that pursuant to say by the police to make her signature, she signed without read over it. She has admitted that she has stated before the Magistrate as per the say by the police.
- 21.** Scrutiny of the evidence of victim, who is the important witnesses like prosecutrix infect floored the prosecution case in one go. She has straightway denied that when the compliant is filed, the accused has not committed any physical intercourse. She has totally denied the prosecution case. Thus, she has deposed contradictory to her statement under section 183 of BNSS. It is indeed shocking that the victim has totally not supported the version of prosecution. There is no evidence against the accused. The prosecution failed to bring on record the contents of statement recorded under section 183 of BNSS. Further, it is a settled law position that the statement made under section 164 of CrPC/ 183 of BNSS

cannot be used as a substantive piece of evidence. But it can be used for the purpose of corroboration. It can be used to cross-examine the persons who made it to show that the evidence of the witness is false but that does not establish that what he stated out of Court under this section is true. A statement made by a witness under section 164 of the Code/ 183 of BNSS can be used for the purpose of cross-examining him and discrediting his evidence. As held in the judgment of *Bisipati Padhan v/s. State in A.I.R. 1969 Orissa 289 : Ram Kishan –vs- Harmit A.I.R. 1972 SC 468, State v/s. Shriram Lohiya A.I.R. 1960 SC 490*, A statement of a witness U/s.164 of the Code/ 183 of BNSS is not substantive evidence, but it is a former statement made before an authority legally competent to investigate the fact. Such a statement can be used either for corroboration of the testimony of a witness u/s 157 of the Act or for contradiction thereof u/s 145 of the Act. Hence, the statement recorded under section 164 of CrPC/183 of BNSS cannot be made the basis for convicting the accused in absence of direct evidence of victim. Further, when the victim deposed that he has given the statement as per say of police, under such circumstances, the statement under section 164 of CrPC/ 183 of BNSS is not a voluntary statement. Hence, also such statement cannot be relied. Thus, the essentials of the penetrative sexual assault etc. are not proved by the prosecution through cogent and reliable evidence. In the

instant case, I find testimony of the victim untruthful and same is not reliable as she totally denied the contents of statement. The prosecutrix has given different version at different stage. Under such circumstances, her evidence is not found trustworthy. Hence, the evidence of prosecutrix remained under the clouds of doubt. She has not uttered a single word against the accused. Hence, the evidence of prosecutrix totally excluded the involvement of the accused. There is *no iota* of evidence to connect the accused with the alleged crime. Hence, the prosecution is failed to bring on record the necessary essentials of alleged offence through the deposition of victim. The evidence of prosecutrix victim is not helpful to the prosecution to prove the alleged charges of rape.

22. **PW-5** is the complainant - father of victim, who has lodged the compliant, has been examined at **Exh.28**, who has deposed that on the day of incident, he went for labour work at 10.00 a.m. and at noon about 12.30 hrs. his daughter informed him that the victim did not see, thus find surrounding place, but she did not find, therefore he has given missing complaint before Dindoli police station. He has stated that the wife of the accused had also come in the police station, and after lapse of 7 months, Dindoli police took his daughter from Pune. Thereafter he was called at Dindoli police station and recorded his further statement. He has stated that the accused kidnapped his daughter victim and thereafter, the

police had given the custody of the victim and took her at house. He identified his signature in the complaint which is produced at Exh.29.

- 22.1** The father of the victim was cross-examined by the Ld. Advocate, wherein he has admitted that he had not seen that the accused took the victim. He has admitted that he had not provided birth certificate annexed with the complaint. He has admitted that he had never gone to register birth date of the victim. He has denied that he did not know the accused Prakash Bahera. He has denied that the accused kidnapped the victim daughter and had committed any act, even though he has given false deposition.

Hence, considering the entire evidence, the contents of complaint **Exh.29** are not proved by the prosecution through the testimony of the complainant.

- 23.** Thus, the important witness like victim and her father have not supported the case of prosecution. It is settled position that “In a case of rape, the victim prosecutrix is always a **star witness** of the occurrence. She is the only witness to say what happened with her. If her statement itself is found to be worthy of credence and is not shaken in cross examination, otherwise and her statement is found to be truthful and inspire confidence based on such evidence of the prosecutrix, punishment for rape, is

permissible. Now, keeping in mind this position, in the instant case the victim herself denied the allegations of prosecution and has completely gave different version and thus, her evidence is not found worthy of credence and therefore, the evidence of such witness is found lack of trust. Such evidence is not helpful to the prosecution to prove the charges. Thus, the evidence of important witnesses is not helpful to the prosecution to prove the alleged charges of rape and kidnapping etc. Now, let me consider the medical evidence adduced by the prosecution.

Medical Evidence

24. PW-1 Dr.Jigensh Dhirubhai Padmani is examined vide **Exh.8**. He has deposed on oath that while he was on duty as MO in SMIMER Hospital on 24.07.2025, the accused was brought before him for medical examination by HC Mahendrabhai B.N.293 and for taking necessary samples and certificate along with the police yadi of PI K.A. Chauhan, vide **Exh.13**. He has deposed that before examination, he has obtained the consent of the accused. The accused was asked about the history, which was written as narrated by him. During medical examination, his vital parameter was found normal and there exist no injury mark and Samples of blood, saliva, nail, pubic heir, sperm, DNA were taken. The carbon copy of medical case papers is produced vide **Exh.9**. The Medical

Examination report is produced at Exh.10. He sent sealed pack samples to FSL for analysis vide yadi Exh.11. He has also sent DNA samples to FSL after filling up the form for DNA profile of the Accused vide **Exh.12**, wherein he identified his signature.

24.1 In his cross-examination, he has admitted that the accused was produced before him with police yadi, he studied police yadi. He has admitted that no injury mark has been seen during the examination and. He has denied that pursuant to police yadi, he wrote the history. He has denied that he has prepared medical case papers in pursuance of the police papers.

25. **PW-2 Dr.Rajesh Hiralal Khatri** was examined at **Exh.14**. He has deposed on oath that while he was on duty in SMIMER Hospital on 24.07.2025, the victim was brought before him for medical examination by WLR Mitalben B.N.4021 alongwith police yadi of PI K A Chauhan at Exh.16. During her medical examination, she obtained consent of the victim and then, she has noted the history as per her version. She has deposed that her vital parameters was normal and no injury mark noted on her body. She took the samples blood, saliva, nails, hair from the scalp and urethral swab and vaginal swab, DNA and handed over to WLR and referred Gynec Department. he identified his signature in MLC papers which is produced vide Exh.15.

- 25.1 In cross-examination of the witness, he has admitted that the victim brought before him alongwith police yadi, wherein narrated short facts of the case and he studied the police yadi. He has admitted that no signs / mark noted at external part of the victim. He has denied that he wrote history according to police yadi and prepared medical case papers.
26. **PW-3 Dr.Shreya Girdhari Agrawal was examined at Exh.17.** She has deposed that while she was on duty in Gynec department in SMIMER Hospital on 24.07.2025, the victim was brought before her for medical examination by WLR Mitalben B.N.4021 alongwith police yadi of PI K A Chauhan at Exh.19. During her medical examination, she obtained consent of the victim as well as sister-in-law and made their signatures. She noted the history as per the version of the victim. She has deposed that her vital parameters was normal and no injury mark noted on her body. During her medical examination, her hymen was torn, no other injury or mark noted. She took samples of urethral and vaginal swab and handed over to WLR. She has identified medical examination report at Exh.18. The collected samples were given to WLR with forwarding letter addressed to FSL for analysis vide **Exh.20**. She had taken samples for DNA in prescribed form and also obtained her consent, which given to WLR and she identified her signature in papers produced vide **Exh.21**.

- 26.1 In cross-examination of the witness, she has admitted that the victim brought before him alongwith police yadi, wherein narrated short facts of the case and she studied the police yadi. She had denied that the samples were taken by the staff, however the procedure of sealed was done by the staff. She has denied that she has given false deposition in support of police case. She has denied that she has not conducted any procedure and prepared certificate pursuant to the police yadi.
27. Further, on perusal of record, the prosecution has not produced FSL biological and Serology report as regards the necessary samples collected by the MO which have been sent to FSL through the police. Therefore, the medical evidence cannot be evaluated in eyes of law.
- 27.1 Evaluating the medical evidence, as a whole, it can be believed that the victim and the accused were brought to the hospital for medical examination and necessary samples were taken from their body. It also believed that the accused was capable for performing sexual activity. Not only that, the victim denied for the medical examination. It also believed that the history recorded by the medical officer as narrated by the victim as per the say of the police and even Magistrate also. When the victim herself has denied such fact before the court on oath, in absence of direct evidence, the medical evidence, which is in the nature of corroborative evidence, such

evidence are also not helpful to the prosecution to prove the charges.

Evidence of Police Officers

28. PW-7 Kamleshbhai Dhanjibhai Chaudhary, HC was examined on oath vide **Exh.48**. He has deposed that he is serving as PSO in Dindoli Police Station on 07.02.2025, the complainant came before him and given the complaint which was written as per her version and registered the offence being C.R. No.A-0291/2025, U/s.137(2) of BNS and deputed the investigation to PSI Mr.R.K. Maliwad. He identified the signature of the complainant produced vide Exh.29. He has produced Station diary entry vide Exh.49.

28.1 In his cross-examination, he has admitted that he has not conducted any procedure except registering the offence.

29. PW-6 Khushali Anil Chauhan, PSI was examined at **Exh.34**. She has deposed that PSI Desai received the investigation of the said offence after registration of the offence and on 23.07.2025, he went in the Hon'ble High Court, she received the investigation of the said offence. During his investigation, she has drawn the panchnama for place of incident in presence of panch witnesses. She recorded the statements of the witnesses concerned. The victim was found and then, her statement was recorded through Child Welfare Officer. She has submitted the

report for adding other offences U/s.87, 64(2)i, 64(2)m of BNS and U/s.4,6,8,12 of POCSO Act, 2012. The accused and the victim sent for medical examination. The collected muddamal were sent to FSL for analysis. The statement of the victim U/s.183 of BNSS has been recorded. She has filed the chargesheet against the accused. She identified the accused present before the Court. She identified her signature as well as panch witnesses' signature in the panchnama of arrest the accused and recovery of clothes of the accused vide Exh.32; panchnama for recovery of the clothes of the accused; panchnama for place of incident vide Exh.31. She obtained medical case papers of the victim vide Exh.35; case papers of the psychiatric department vide Exh.36. She received FSL receipt vide Exh.37 with regards to Ravangi Nondh Exh.38. She also identified the signature of PSI in the documents addressed to Nodal Officer which are produced vide Ex.39 to 41. She also identified her signature as well as panch witnesses' signature in muddamal slips vide Exh.43 to 47.

- 29.1 In cross examination, he has admitted that the complaint was not lodged before him. He has denied that he has not recorded the statements of relatives of complainant. He has denied that he has recorded the statements of witnesses consistent with the complaint. He has denied that he has prepared panchnamas in police station and obtained the signatures of the panch witnesses. She has

denied that he has filed false chargesheet inspite of having no evidence against the accused. He has denied that he has given false deposition.

- 31.** It is pertinent to note here that whatever the investigating agency has proceeded for completion of procedure is only a matter of procedure and evidence in which cannot be treated on the evidence of fact. Through the evidence of police officials, for a sake of arguments it is believed that the necessary panchanma of seizure of clothes of victim and the accused are drawn as the said clothes were sent to FSL investigation by preparing Ravangi Nondh. The oral evidence of IO and other witnesses, though corroborative, but cannot be supported to the case of the prosecution in premises that victim in her cross-examination has clearly stated that nothing had happened with her and the accused has not committed any offence. Even the entire testimony of police officers are believed as it is, but their evidence is not the evidence of fact and hence, it is a corroborative in nature. Further, the prosecution has not produced FSL Report in the case. Hence, the evidence of police officials not sufficient to connect the accused with the alleged crime. Thus, the evidence of police officers is not enough to prove the alleged charges.
- 32.** On evaluation of entire prosecution evidence, the prosecution failed to bring on record the trustworthy, credit-worthy and reliable evidence of important

witnesses like victim. The star witness of prosecution has for the best reasons known to her resiled from her statement and gave contradictory evidence before the court and therefore, such evidence does not support the prosecution to prove the guilt of accused. In view of the evidence which has come on record, the prosecution has failed to prove the case against the accused beyond reasonable doubt by leading cogent, reliable and trustworthy evidence.

- 33.** POCSO Act is a special statute and having certain presumptions against the accused. But the prosecution has to first established the foundational facts to draw the presumptions against the accused. Meaning thereby, it has been established that the primary burden is for the prosecution to prove the foundational fact of the case by adducing cogent, trustworthy and reliable standard of evidence. Section 29 has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case. Thus, without proof of foundational evidence in case under POCSO Act, the onus to prove the reverse burden of proof does not come into operation. In the instant case on hand, when the victim has not supported the case of prosecution. There is no medical evidence against the accused. Under such circumstances, the presumptions under section 29 and 30 of the Act is also not helpful to the prosecution to prove the charges.

34. At this stage, I would like to refer the recent judgment of Hon'ble Gujarat High Court in the case of *State Of Gujarat vs Kishanbhai Hakabhai Vaghodiya, CRIMINAL APPEAL NO. 29 of 2022, decided on 11.1.2022. In para-8 of the said judgment, it was observed that.....*

....." No doubt, the victim was minor at relevant time of incident i.e. on 23/12/2018; but on close scrutiny of the evidence of victim, she has clearly stated in her examination in chief that no any act of intercourse is committed by the respondent-accused. Whatsoever the evidence of physical relation disclosed by victim was prior to the lodgment of the FIR. The deposition of complainant also does not lead to infer that any of the ingredients of the offences are established / proved. Though the learned APP tried to prove the case on the basis of other corroborative evidence viz., medical history; but when from the deposition of the material evidence and more particularly star witness viz., victim-girl is examined, the act of committing sexual intercourse with the victim by respondent- accused is not proved. We are of the considered view that the prosecution is required to prove the ingredients of the offence through the evidence of victim first and if the evidence of victim does not disclose the occurrence of the offence as alleged against the respondent-accused, in that event, the Court cannot consider the appeal on the basis of other corroborative evidence viz., medical history given before the Doctor/s who were examined as PW 3 and 4. It is also relevant to note that complainant has specifically disclosed before the Court that victim-girl has not disclosed anything before the complainant with regard to incident in question. Under the circumstances, the learned trial Judge has rightly acquitted the respondent- accused for the elaborate reasons stated in the impugned judgment and we also endorse the view/finding of the learned trial Judge leading to the acquittal....."

34. At the costs of repetition, it is pertinent to note that when the victim herself has not supported the case of

prosecution, the entire case fails on that count as no medical supportive evidence is produced by the prosecution. In view of the aforesaid entire evidence, inspite of the fact that the prosecution has examined as many as 8 witnesses and has produced a list of documents, it has miserably and grossly failed to prove the guilt of the accused. The prosecution being required to prove its case beyond reasonable doubt and has to stand on its own feet, is the basic canon of criminal jurisprudence. The prosecution cannot take refuge in any of the infirmities or lacuna on part of the accused. The victim is the important source of evidence in rape cases. The evidence of victim must be credit-worthy and trustworthy and reliable to convict the accused. Gravity of offence cannot overweight legal proof. As discussed above, the star witness has not supported the case of prosecution and has gave total different version, her evidence is not found credit-worthy, trustworthy and reliable and therefore, her evidence is not helpful to the prosecution to prove the **Exh.6** charges.

35. As the victim has not supported the prosecution case, it seems that nothing happened with her and thus, there was no mental trauma or physical or mental injury caused to the victim and therefore, this is not a fit case to award compensation to the victim. Accordingly, no compensation is awarded to the victim In the event, the prosecution being unable to succeed in proving the guilt

of the accused, accordingly, I answer the point Nos.2 and 3 in the 'negative'.

POINT NO.4

36. Having regard to the appreciation of material and evidence and totality of the facts and circumstances, I hold that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt. In view of the above discussion, when the prosecution has totally failed to prove the allegations leveled against the accused, the accused is entitled to get the benefit of doubt and thus, this Court would like to extend benefit of doubt in favour of the accused and pass the following final order in the interest of justice.

FINAL ORDER

- Under Section 235(1) of the Criminal Procedure Code, the accused **Prakash @ Paku @ Babu Niranjana Behera** is ordered to be acquitted from all the charges leveled against him viz. U/s. 137(2), 87, 64(2)(i), 64(2)(m) of BNS and 4, 6, 8 & 12 of POCSO Act, 2012 [Dindoli Police Station Part-'I' C.R. No.11210056250291/2025] by extending the benefit of doubt.
- As per the provision of Section 437(A) of the Code of Criminal Procedure, 1973/481(A) of BNSS, the

accused is hereby ordered to execute bail bond of Rs.10,000/- (Rupees Ten Thousand only) with a surety of like amount, for a period of six months, for their appearance in case of appeal or revision being filed against this judgment before the higher Court.

- Muddamal articles, if any, be disposed of after the appeal period is over as per the Criminal Manual and if appeal is filed then as per the direction of the Appeal Court.
- As per para-349 of the Criminal Manual, all unexhibited documents are ordered to be returned to the Investigating Officer.

Seal, signed and pronounced in open Court today i.e. on 13th **March, 2026.**

Date: 13.03.2026
Place: Surat

//rsp//

[Rakesh Rajnikant Bhatt]
Special Judge (POCSO) &
2nd Additional Sessions Judge
Surat Code No. GJ00608