

FORM-A

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE-CUM-
SPECIAL COURT UNDER POCSO ACT, BERHAMPUR,
DISTRICT-GANJAM**

Present: Smt. Pranati Pattanaik, O.S.J.S.,
Addl. District Judge-cum-
Special Court under POCSO Act,
Berhampur.
(JO Code: OD00303)

Date of Judgment: 13th day of July, 2026

GR Case No.28 of 2026 (TR NO. 74/2026)
(CIS No.GR-28/2026)

(Details of FIR: Chamakhandi P.S. Case No.73, Dt.17.02.2026, offence u/s.
137(2)/64(2)(m) of BNS/u/s.6 POCSO Act)

Complainant	STATE OF ORISSA
REPRESENTED BY	NAME OF THE ADVOCATE: Sri Narayan Panda, Special Public Prosecutor, Berhampur.
ACCUSED	A.Shiba , aged 22 years, S/o- Lt. A.Naladu, of village- Sai Baba Street, PS- Gopalpur, District-Ganjam.(Accused is on bail)
REPRESENTED BY	NAME OF THE ADVOCATE: Sri A.Lachhaya and his associate, Advocates, Berhampur.

FORM-B

Date of offence	14.02.2026
Date of FIR	17.02.2026
Date of Charge Sheet	08.04.2026
Date of framing of charges	15.05.2026
Date of commencement of evidence	13.07.2026
Date on which judgment is reserved	13.07.2026
Date of the judgment	13.07.2026

Date of the sentencing order, if any				NA			
Accused person Details:							
Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for the purpose of section 468 BNSS
Sl. No.1	A. Shiba	20.02.26	20.03.26	u/s. 137(2)/ 64(2)(m) of BNS / Sec.6 of the POCSO Act.	Acquitted	NA	NA

J U D G M E N T

The above-named accused stands charged for the offences U/s. 137(2)/64(2)(m) of Bharatiya Nyaya Sanhita (hereinafter referred to as BNS.) read with u/s. 6 of the Protection of Children from Sexual Offences Act. (hereinafter referred to as POCSO Act.)

(In view of the Sec.72(1) of the BNS and Sec.33(7) of the POCSO Act. the name of the victim and her parents are not disclosed to protect their identity).

2. The case of the prosecution, in nut shell is that:-

The informant/mother of the victim lodged a written report alleging that on 14.02.2026 victim left

the house and thereafter was found missing. The informant searched for daughter and subsequently ascertained that accused A.Shiba had kidnapped the victim.

Basing upon the written report which was treated as First Information Report, this case was registered as Chamakhandi P.S. Case No.73 of 2026 and its investigation was taken up. After completing investigation, I.O. submitted charge sheet U/s. 137(2)/64(2)(m) of BNS/Sec.6 of the POCSO Act against the accused for facing trial in this case. Subsequently, the cognizance of the above noted offences was taken. Thereafter, the charge was framed against the accused U/s. 137(2)/64(2)(m) of the BNS read with u/s. 6 of the POCSO Act.

3. The plea of defence is one of complete denial and false implication. Accused in his statement recorded U/s.351 of BNSS denied to the allegations made from the side of prosecution.

4. The points for determination in this case are:

Whether the accused on 14.02.2026 at about 04:00 P.M at village Reukaturu under Chamakhandi P.S:-

(i) Kidnapped the victim from her lawful

guardianship without their knowledge?

- (ii) Whether the accused committed rape upon the victim on repeated occasions?
- (iii) Whether the accused committed aggravated penetrative sexual assault upon the victim who by then was under 18 years of age?

5. To prove this case the prosecution has examined as many as two witnesses, among whom P.W.1 is the informant/ mother of the victim, P.W.2 is victim. The rest charge-sheeted witnesses have been declined by the prosecution. The prosecution exhibited certain documents marked as Ext.P-1 to Ext.P-6.

On the other hand, defence neither preferred to adduce any witness nor filed any documentary evidence in its report.

Determination regarding the age of the victim:-

6. While proceeding to determine this case against the accused and to disclose relating to the relevant facts and facts in issue, it is the first and foremost duty of this Court to take a view relating to the age of the victim and to determine that on the date of occurrence, the victim to be a child within the meaning of U/s.2 (d) of the POCSO Act, 2012 or not? The seizure list vide Ext.P-5 reveals the seizure of Admission Register of Govt. High School, Haripur it is ascertained that the date of birth of the victim is

12.08.2009. The occurrence took place on 14.02.2026 and on the date of occurrence the victim was 16 years 06 months 02 days and she was below 18 years of age. Hence, it is proved that victim is a child as per the provision of section.2 (d) of the POCSO Act, 2012.

Discussion

7. P.W.2/victim being the most vital witness of this case, her statement is required to be discussed on preliminary basis. She deposed that since four to five months back being aggrieved upon her mother she left the house without informing anybody. After two to three months she returned home. In cross-examination, she deposed that accused A.Siba is innocent.

P.W.1/informant and mother of the victim deposed that she scolded and slapped her daughter to which being aggrieved upon her she left the house without informing anybody. In cross-examination, she cannot say the name of the scribe of the FIR and does not remember the contents of the FIR.

8. In this case, allegation has been made against the accused U/s. 64(2)(m) BNS for committing rape upon the minor victim on repeated occasions, which co-relates to the ingredients of offence u/s. 6 of the POCSO Act. In this context this Court being Special Court to deal with POCSO cases, felt it proper to discuss relating to the proof of Sec.6 of the POCSO

Act. To prove the offence under sec.6 of the POCSO Act the ingredients of Sec.5(l) of the POCSO Act is required for its discussion and proof.

Section 5(l) of the POCSO Act says:-

“5. Aggravated penetrative sexual assault-

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(l) Whoever commits penetrative sexual assault on the child more than once or repeatedly.

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In this case, there is absence of materials to prove the fact of rape committed by the accused. Here the victim has not alleged against the accused regarding the fact of committing penetrative sexual assault upon her on repeated occasions is not proved. Thus, the ingredients U/s.5(l) of POCSO Act is not made out and accused is not liable for punishment U/s.6 of POCSO Act. To prove the act of penetrative sexual assault punishable U/s. 6 of POCSO Act it is required to be presumed against the accused in regard to section 29 of the POCSO Act.

9. It is settled principle of law as envisaged under Section 29 of the POCSO Act which says that:-
“where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed

the offence, unless the contrary is proved.”

In the instant case there is found rebuttable evidence against the accused which goes against the prosecution. Here accused clearly proves his innocence. There is no other cogent and credible evidence available against the accused to prove the allegations. Similarly, it is presumed as per Section 30 of the POCSO Act, that accused has got no culpable mental state. The intention, motive, knowledge of a fact and the belief in or reason to believe a fact is not proved against him.

10. Further to prove u/s. 137(2) of BNS for kidnapping the victim, the ingredients therein U/s 137(1) BNS needs to be discussed. The essential ingredients of the offence u/s. 137(1) of BNS are as follows: -

- (1) The accused took or enticed any minor or a person of unsound mind;*
- (2) Such minor, if male, must be under 10 years of age and, if female, under 18 years of age;*
- (3) The act must be one of taking or enticing out of the keeping of the lawful guardian of such minor or person of unsound mind;*
- (4) The act of taking or enticing away must be done without consent of the lawful*

guardian.

The victim stated before this Court that accused is innocent. In her previous statement u/s. 183 BNSS P.W.2 has not alleged against the accused. There is no allegation in the statement of the victim before this court and in her previous statement. In absence of a single allegation against the accused and in presence of major contradictions, it is definitely proved that accused is innocent and not involved in the alleged crime.

11. Altogether looking to the entire facts and circumstances as well as basing upon the materials available it is clear that the case against the accused is not made out for which he is entitled for an order of acquittal.

13. In the result, the accused namely **A.Shiba** is found not guilty of the offences punishable U/s. 137(2)/64(2)(m) of BNS and Sec.6 of the POCSO Act and he is acquitted beyond all reasonable doubts U/s.258(1) of the BNSS. He is discharged from his bail bond.

The seized articles be destroyed after four months of the expiry of the appeal period, if no appeal is preferred and if preferred the same shall be dealt as per the order of Hon'ble Appellate Court.

No award for compensation is passed in favour of the victim under Victim Compensation Act basing on the evidence available on record.

Sd/- Smt. P.Pattanaik

**Addl. District Judge-cum-Special Court
under POCSO Act, Berhampur.**

The judgment is dictated and corrected by me and the same is delivered under my signature & seal of the Court and is pronounced in the open court on this the **13th day of July, 2026.**

Sd/- Smt. P.Pattanaik

**Addl. District Judge-cum-Special Court
under POCSO Act, Berhampur.**

FORM-C

CHART FOR WITNESSES EXAMINED		
A. Prosecution Witness		
PROSECUTION WITNESS NO.	NAME OF WITNESS	DESCRIPTION
P.W.1	Informant	Mother of the victim
P.W.2	Victim	Daughter of informant
B. Defence Witness		
DEFENCE WITNESS NO.	NAME OF WITNESS	DESCRIPTION
	NIL	
C. Court		

Witnesses		
COURT WITNESS NO.	NAME OF WITNESS	DESCRIPTION
	NIL	
CHART FOR EXHIBITED DOCUMENTS		
A. Prosecution Exhibits		
Exhibit No.	Description of the Exhibit	Proved by/Attested by
Ext.P-1	F.I.R	P.W.1
Ext.P-1/a	Signature of P.W.1	P.W.1
Ext.P-2	Signature of P.W.2 on medical consent memo	P.W.2
Ext.P-3	Statement u/s. 183 BNSS of P.W.2	P.W.2
Ext.P-4	Signature of P.W.2 on statement u/s. 183 BNSS	P.W.2
Ext.P-5	Seizure list (Admission Register)	Prosecution
Ext.P-6	Seizure list (Wearing apparels)	Prosecution
B. Defence Exhibits		
Defence Exhibit No.	Description of the exhibit	Proved by/Attested by
	NIL	
C. Court Exhibits		
Court Exhibit No.	Description of the exhibit	Proved by/Attested by
	NIL	
D. Material Objects		
Material Exhibit No.	Description of the exhibit	Proved by/Attested by

	NIL	
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Sd/- Smt. P.Pattanaik
**Addl. District Judge-cum-Special Court
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