

GAHC010266832025



2026:GAU-AS:753

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1514/2025

SAMIRAN MONDAL
S/O. KHAGEN MONDAL,R/O. TAKAPURA, P.S. NANDIGRA,DISTRICT EAST
MEDINIPUR,STATE WEST BENGAL.

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP, ASSAM

2:SANTU BAIDYA
S/O LAE SUSIL BAIDYA
R/O AMERICAN COLONY
PANDU
GUWAHATI 781012
DIST. KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR. N J DUTTA, MR. T HUSSAIN

Advocate for the Respondent : PP, ASSAM, MR. M ISLAM (R-2),MR. S K CHHETRY (R-2)

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

22.01.2026

Heard Mr. N.J. Dutta, the learned counsel appearing for the petitioner as well as
Ms. S.H. Bora, the learned Addl. Public Prosecutor, Assam representing Respondent

No.1. Also heard Mr. S.K. Chetri, the learned counsel representing Respondent No.2.

2. This is an application under Section 528 of the BNSS, 2023 praying for quashing the FIR and the subsequent criminal proceedings of Sessions (Special) Case No.265 of 2024 pending in the court of Addl. Sessions Judge-cum-Special Judge (POCSO), Kamrup (Metro), Guwahati.

3. The informant father has alleged in the FIR that on 14.04.2024, his 17 years old daughter had eloped with the petitioner Samiran Mandal. At that time, the wife of the informant was indisposed. Therefore, no FIR was lodged. Subsequently, on 16.05.2024, the FIR was lodged accordingly.

4. In her evidence, the victim has stated that she was in love with the petitioner for more than one year and pursuant to that she eloped with him on 14.04.2024. She has stated that on 15.04.2024, she married the petitioner according to Hindu rituals.

5. In her cross-examination, she has claimed that she had told the petitioner that if he did not marry her, she would cut off her hand and then only the petitioner took her to his house.

6. It may be mentioned that on 31.12.2024, she became a mother of a girl child.

7. Today, Mr. Chetri appearing for the informant father has submitted that the informant has no objection if the criminal proceeding against the present petitioner is quashed.

8. I have considered the submissions made by the learned counsel of both sides.

9. The Section 528 of the BNSS, 2023, is the old Section 482 of the Code of Criminal Procedure. The guidelines for consideration of a petition under Section 482 of the CrPC has been laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. Paragraph 102 of the judgment reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226

or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. Reverting to the case in hand, the offence under the POCSO Act begins with the phrase "sexual intention". The petitioner had married the 17 year old girl and she has given birth to his child. They are still living happily. Under the aforesaid circumstances, it cannot be said that the petitioner had a criminal sexual intention prior to the occurrence. This Court is of the opinion that allowing the instant criminal proceeding to continue before the trial court would be nothing but an abuse of the process of the court. I am of the considered opinion that the ration laid down in *Bhajan Lal* (supra) is

applicable in the present case.

11. For the aforesaid reasons, the criminal petition is allowed. The criminal proceedings relating to the FIR and the subsequent criminal proceedings of Sessions (Special) Case No.265 of 2024 pending in the court of Addl. Sessions Judge-cum-Special Judge (POCSO), Kamrup (Metro), Guwahati, are set aside and quashed.

The Criminal Petition is disposed of.

JUDGE

Comparing Assistant