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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC Nos.3460, 3657, 3783 of 2023 and CRLMC No.78 of 2024 and CRLMC No. 5412/2023

(In the matters of applications under Section 482 of the Criminal Procedure Code, 1973)

CRLMC No.3460 OF 2023

Rojalin Rout and another .... ***Petitioners***

-versus-

State of Odisha and another .... ***Opposite Parties***

For Petitioners : ***Mr. S. Mohanty, Advocate***
Ms. G. Das, Advocate
Mr. N. Mohanty, Advocate
Mr. S. Jena, Advocate
Mr. S. Satapathy, Advocate

For Opposite Parties : ***Mr. B.K. Ragada, Additional Government Advocate (for O.P.1)***
Ms. G. Patra, Advocate (for O.P.2)

CRLMC No.3657 OF 2023

K. Maheswar Rao .... ***Petitioner***

-versus-

State of Odisha and others .... ***Opposite Parties***

For Petitioner : ***Mr. M. K. Chand, Advocate***
Mr. R. R. Mishra, Advocate
Mr. A. K. Sahoo, Advocate
Mr. P. S. Das, Advocate
Mr. S. K. Gouda, Advocate

For Opposite Parties	:	*Mr. B.K. Ragada, Additional Government Advocate (for O.P.1)* *Mr. K. Panda, Advocate (for O.P.3)*

CRLMC No.3783 OF 2023

Alok Ranjan Samal	....	*Petitioner*
-versus-		
State of Odisha and another	....	*Opposite Parties*

For Petitioner	:	*Mr. S.S. Pattnaik, Advocate* *Mr. N. Behuria, Advocate (Amicus Curiae)*
For Opposite Parties	:	*Mr. B.K. Ragada, Additional Government Advocate (for O.P.1)* *Mr. S. N. Biswal, Advocate (for O.P.2)*

CRLMC No.78 OF 2024

Bijay Kumar Bhal	....	*Petitioner*
-versus-		
State of Odisha and others	....	*Opposite Parties*

For Petitioner	:	*Mr. P. K. Das, Advocate* *Mr. D. Sahoo, Advocate* *Mr. D. K. Raj, Advocate*
For Opposite Parties		*Mr. B.K. Ragada, Additional Government Advocate (for O.P.1)* *Mr. M. K. Pati, Advocate (for O.Ps. 2 & 3)*

CRLMC No.5412 OF 2023

Raju @ Babaji Mahakud @ Babajee Mahakud	....	***Petitioner***

-versus-

State of Orissa and another	....	***Opposite Parties***

For Petitioner	:	***Mr. D. K. Sahoo, Advocate***
For Opposite Parties	:	***Mr. P. K. Maharaj, Additional Standing Counsel (for O.P.1)*** ***Mr. G. B. Singh, Advocate (for O.P.2)***

CORAM:
JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 09.02.2024 & 15.02.2024: Date of Judgment: 22.04.2024

S.S. Mishra, J.

1. A common question regarding quashing of criminal prosecution initiated against the petitioners for alleged sexual offences involving POCSO Act by invoking inherent jurisdiction of this Court under section 482 Cr.P.C has been post in the present proceedings,

therefore, all the matter are taken up for hearing analogously and being decided by this common judgment.

2. Brief necessary facts are enumerated hereunder:-

In CRLMC No.3460 of 2023

This petition has been filed by the Petitioners with a prayer to quash the criminal proceedings initiated in Special G.R. Case No.30 of 2019 arising out of Kujang P.S. Case No.134 of 2019 pending in the Court of the learned Adhoc Additional District Judge, FTSC (POCSO), Jagatsingpur for the offence under Sections 363, 366, 376(1) of the I.P.C. read with Section 4 of the POCSO Act.

The informant-Opposite Party No.2 lodged an F.I.R. on 16.06.2019 against the Petitioner No.2 alleging therein that her daughter has been kidnapped by the present Petitioner No.2. F.I.R., Kujang P.S. Case No.134 of 2019 has been registered under Sections 363 and 34 of I.P.C. and the Petitioner No.2 was taken into judicial custody on 28.06.2019. After completion of investigation, the charge-sheet under Sections 363, 366, 376(1) of the I.P.C. read with Section 4 of the POCSO Act was submitted by the police against the Petitioner No.2. Thereafter, the Petitioner No.2 moved an application bearing BLAPL No.8867 of 2022 for enlarging him on bail. When the bail application was pending, the victim-Petitioner No.1 filed an affidavit before this Court inter alia

stating that she is ready and willing to marry the Petitioner No.2 and the Petitioner No.2 is also ready and willing to marry her, and jointly do not wish to proceed with the prosecution proceedings against the accused/ Petitioner no.2. The coordinate Bench of this Court in I.A. No.2297 of 2022 taking into consideration the affidavit filed by the Petitioner No.1 released the Petitioner No.2 on interim bail for a period of three months with a condition that he will join with the victim in matrimony and further directed the Petitioner No.2 to surrender after expiry of the bail period. The coordinate Bench of this Court on 05.04.2023 granted bail taking into account the surrender certificate filed by the Petitioner No.2 along with the marriage certificate vide Certificate No. 230750500002/2023 that the Petitioner No.2 has already married the victim on 15.02.2023. Now both the Petitioners got married and leading happy conjugal life. They have filed this petition for quashing the criminal proceedings in Special G.R. Case No.30 of 2019 arising out of Kujang P.S. Case No.134 of 2019 pending in the Court of the learned Adhoc Additional District Judge, FTSC(POCSO), Jagatsingpur for the offences under Sections 363, 366, 376(1) of I.P.C. read with Section 4 of the POCSO Act.

In CRLMC No.3657 of 2023

Petitioner has filed this petition seeking quashing of the criminal proceedings initiated in Kodinga P.S. Case No.10 of 2023 corresponding to T.R. Case No.03 of 2023 pending in the Court of the learned Additional Sessions Judge-cum-Special POCSO Court, Nabarangpur.

Prosecution alleges that on 14.08.2023 at about 2.30 P.M., the informant-Opposite Party No.2 received a mobile call from one of his nephews informing that few hours ago her minor daughter namely Opposite Party No.3 had gone outside to attend the call of nature and by that time the Petitioner restrained her daughter and committed sexual over tact with her. Hearing hulla, some persons reached there and detained the Petitioner and on asking the victim-Opposite Party No.3, she disclosed that the Petitioner has sexually assaulted her without her consent. On the basis of such incident, the informant-Opposite Party No.2 lodged an F.I.R. on 15.01.2023 in the Kodinga P.S. Case No.10 of 2023, registered under Section 376(3) of I.P.C. read with Section 4 of the POCSO Act against the Petitioner.

After completion of investigation, the charge-sheet under Section 376(1) of the I.P.C. read with Section 4 of the POCSO Act has been submitted by the police against the Petitioner, keeping further investigation open under Section 173(8) of Cr.P.C. During the course of

investigation, the statements of the victim under Sections 161 & 164 Cr.P.C. have been recorded and the victim-Opposite Party No.3 inter alia stated that Petitioner forcibly subjected her to have physical relationship with him. Thereafter, the Opposite Party No.3 filed an affidavit before this Court *inter alia* stating that the matter has been settled amicably between them and she has been happily married and leading a happy conjugal life with the Petitioner and does not want to proceed with the case further. Now they have made a joint prayer before this Court to quash the said criminal proceedings.

In CRLMC No.3783 of 2023

This petition has been filed by the Petitioner with a prayer to quash the criminal proceedings in Dasarathpur P.S. Case No.111 of 2023 corresponding to C.T. Special Case No.73 of 2023 pending in the Court of the learned Additional District & Sessions Judge-cum-Special Court under POCSO Act, Jajpur.

The victim-Opposite Party No.2 has lodged an F.I.R. on 06.07.2023 inter alia alleging that the accused/Petitioner had promised her to marry and on 27.07.2020 made a proposal to marry and subsequently established physical relationship. It is further alleged that the complainant-victim had given a sum of Rs.90,000/- to the Petitioner for buying a car. The Petitioner had returned only Rs.40 000/-. On the basis

of the said complaint, the F.I.R. was registered on 06.07.2023 under Section 376(2)(n) and Section 6 of the POCSO Act. During the course of investigation, the statement of the victim-Opposite Party No.2 has been recorded under Section 161 Cr.P.C. While the matter stood thus, both the Petitioner and Opposite Party No.2 have filed a joint affidavit before this Court indicating therein that due to misunderstanding between them, the F.I.R. was lodged. On the intervention of the local gentries and well-wishers, the matter has been amicably settled between them and they do not want to proceed with the case further.

In CRLMC No.78 of 2024

This petition has been filed by the Petitioner with a prayer to quash the criminal proceedings in connection with Chandabali P.S. Case No.75 of 2017 corresponding to Special POCSO Case No.03 of 2018 pending in the Court of the learned Additional District Judge-cum-Special Judge under POCSO Act, Bhadrak.

Prosecution alleges that on 22.04.2017 at about 3.30 P.M., the Informant-Opposite Party No.3 lodged an F.I.R. before the Chandabali Out-Post under Sections 363, 366(A), 109 and 34 of I.P.C. stating therein that his daughter, the victim-Opposite Party No.2 has been missing since 17.04.2017. After searching for the whereabouts of his daughter on 20.03.2017 he came to know that, one Biju Nayak has

kidnapped and taken his daughter to Tamilnadu. On the basis of the said F.I.R., the investigating agency conducted investigation and on 25.08.2023 submitted charge-sheet under Sections 363, 366, 376(2)(n), 294, 323 and 34 of I.P.C., read with Section 6 of the POCSO Act showing the Petitioner as absconder. The learned Court below has taken cognizance under Sections 363, 366, 376(2)(n) of I.P.C. read with Section 6 of the POCSO Act against the Petitioner. While the matter stood thus, the Opposite Party No.2 being the victim has filed an affidavit stating therein that she has voluntarily left her house with the Petitioner and in the meantime, she has already married the Petitioner and leading a happy conjugal life with him. The Opposite Party No.3 being the father of the victim has also filed an affidavit before this Court stating the same fact and they do not want to proceed with the matter against the Petitioner as the case has already been settled between them.

In CRLMC No.5412 of 2023

This petition has been filed by the Petitioner with a prayer to quash the order dated 14.12.2021 passed by the learned Adhoc Additional Sessions Judge-cum-Special Judge, Keonjhar in Special Case No.294/34 of 2021-2022 in connection with Keonjhar Sadar P.S. Case No.107 of 2021 whereby the charges for the offences under Sections 417, 376(3),

323 and 506 of I.P.C. read with Section 6 of the POCSO Act has been framed against him.

The case of the prosecution in a nutshell is that the Petitioner by giving assurance of marriage to the victim-Opposite Party No.2, kept physical relationship with her and when the victim became pregnant, the Petitioner refused to accept her. Therefore, after the birth of a male child, the victim-informant lodged a written complaint against the Petitioner in Keonjhar Sadar P.S., on the basis of which F.I.R. No.107 dated 25.03.2021 was registered for the offences under Sections 417, 376(2)(n), 323 and 506 of IPC read with Section 6 of the POCSO Act. Accordingly, the Petitioner was arrested and thereafter applied for bail being BLAPL No.5216 of 2022. On 16.09.2022, the coordinate Bench of this Court granted interim bail accepting the submission of the Petitioner that the Petitioner is ready and willing to marry the victim girl and to take care of the child, as the victim by then had attained the age of majority. The Petitioner availed the concession of interim bail and married with the victim girl. Thereafter, the bail application was disposed of on 20.12.2022 by the coordinate Bench of this Court recording the fact that the Petitioner has already married to the victim girl. Now the victim girl and the Petitioner seek intervention of this

Court for quashing of the entire proceeding pending against the Petitioner.

3. The facts scenario in all the above cases where prayers have been made for quashing of the respective criminal cases under Section 482 Cr.P.C., on the ground that the parties have settled their disputes and they no longer desire to pursue the prosecution.

The aforesaid cases could be broadly categorized as follows:-

(a) After the offence being committed and the criminal law is set in motion, during the pendency of ongoing proceedings, the victim and the accused/offender agree to marry and intended to lead marital life.

(b) Where after elopement and consensual sex over a period of time, the victim and the accused/offender have ended in marriage.

(c) Where accused on the pretext/promise of marriage, had consensual sex with the victim over a period of time but when the victim got pregnant, accused did not agree to marry her. However, after lodging of F.I.R., during subsequent proceedings agreed for marriage and settlement.

(d) Where a minor girl has been subjected to sexual assault but after the incident and lodging of F.I.R., during subsequent

proceedings, the victim and the accused married, and they arrived at a settlement.

(e) Sexual abuse by a person who is major and subsequently agreed to marry the victim.

(f) Cases in which, sexual assault caused by the offender on false promises of marriage, but subsequently wriggle out from the promise of marriage.

(g) Minors in romantic relationship develop sexual intimacy with mutual consent, however, such relationships results in marriage in some cases.

Therefore, the common grievances raised by the parties regarding quashing of criminal proceedings where offence under the POCSO Act is involved on the ground of settlement are decided by this Court by a common judgment.

4. The POCSO Act, 2012 provides for stringent punishments depending upon the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods which extend to life imprisonment along with the provision of fines too. The abetment of an offence under the Act would also attract the same punishment as that of the offence committed. The Act defines and deals with many types of sexual offences against children such as Penetrative sexual assault

(Sections-3 & 4), Aggravated penetrative sexual assault (Section-5), Sexual assault (Sections-7 & 8), Aggravated sexual assault (Sections-9 &10), Sexual harassment (Sections-11&12), Using child for pornographic purposes (Sections-13&14), Abetment (Section-16). In cases of penetrative sexual assault on a girl below 16 years and in aggravated penetrative sexual assaults where the offences are committed by a person in a position of trust or authority of child such as a member of armed or security forces, police officer, public servant, by any staff, principal or the management or staff of the hospital or any institution and any place of custody or care or protection, minimum punishment of imprisonment of 20 years extendable to life and fine.

5. The growing instances where teenagers were involved in a romantic relationship with each other falls victim to the offences under the POCSO Act is a matter of concern. The teenage romance often turns into cohabiting consensually and the girl alleges rape due to pressure from the family, fear of the society or when the boy refuses to marry. Since sexual intercourse with a minor is considered “statutory rape”, the criminal case is registered. The question is, can such sexual offences against the minor be quashed by exercising inherent jurisdiction of this Court under Section 482 of Cr.P.C.?

6. The tribulation of a protracted trial is a painful experience for the parties, and it is often in the best interest of the parties that the victim and the accused in a criminal case reach a mutual agreement or settlement, resulting in the acquittal of accused. Section 320 of the Code of Criminal Procedure (Cr.P.C) mentions certain offences as compoundable, certain other offences as compoundable with the permission of the Court, and the other offences as non-compoundable vide Section 320(7) of the Cr.P.C. These offences can be settled by the parties involved, meaning they can be settled through a compromise between the victim and the accused. Section 320 of the Cr.P.C categorizes offences into two parts: Part I and Part II. Part-I specifies offences which can be settled without the Court's permission like Voluntarily causing hurt, Theft, Dishonest misappropriation of property, Cheating etc. While Part-II specifies offences which cannot be settled without the Court's permission and they do not fall under the category of heinous offences, like Causing miscarriage, Criminal breach of trust, Marrying again during the lifetime of a husband or wife etc. Provisions of Section 320 of the Cr.P.C., serves many laudable objectives like promoting justice and fairness to the satisfaction of both parties, saving time and resources, encouraging reconciliation, reducing the burden on courts. However, Section 320 of the Cr.P.C., brings about an important distinction between Compoundable

and Non-compoundable offences thereby limiting the scope of its operation guided by the principle that grave and heinous crimes are offences against the society deserving trial and punishment and a private settlement in case of heinous crimes like rape, murder, offence against children beset with extreme aberrational elements like cruelty, violence, depravity etc. should not shield the person accused of such crimes to escape due punishment. While Section 320 of the Cr.P.C., clearly bars compromise in non-compoundable offences, can the bar be raised under Section 482 of Cr. P.C.?

7. The interplay between Section 320 and 482 of Cr.P.C., no more res integra. In the case of ***Gian Singh v. State of Punjab*** reported in ***(2010) 15 SCC 118*** (**2J**), the two-Judge Bench of the Hon'ble Apex Court doubted the correctness of the three decisions in ***B.S. Joshi and others vs. State of Haryana and another*** reported in ***(2003) 4 SCC 675***, ***Nikhil Merchant v. Central Bureau of Investigation*** reported in ***AIR 2009 SC 428*** and ***Manoj Sharma v. State 2008*** reported in ***(4) KLT 417 (SC)*** and referred the question as regards the permissibility of indirectly permitting compounding of non-compoundable offences recoursing to Section 482 of Cr.P.C. to a larger Bench. Finally, the issue was settled by a three-Judge Bench in ***Gian Singh v. State of Punjab*** (**3J**) reported in ***(2012) 10 SCC 303*** which held that if for the purpose of securing the ends of justice,

quashing of F.I.R. becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is well settled that the powers under section 482 Cr.P.C. have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers.

8. Article 15 of the Constitution, inter aila, confers upon the State powers to make special provision for children. Further, Article 39, inter-alia, provides that the State shall in particular direct its policy towards securing that the tender age of children is not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

9. The United Nations Convention on Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate National, By-lateral and Multi-lateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

10. Benefit would be to refer to the judgment of the Hon'ble Supreme Court in the case of ***Gian Singh vs. State of Punjab and***

another reported in ***2012 (10) SCC 303***. The relevant part of the judgment reads as under: -

> *"52. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code.*
>
> *55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.*
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> *58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and*

threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be

exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre- dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, **High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim**. *In other words, the High Court must consider whether it would be unfair or contrary to the*

interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

11. In ***Parbatbhai Aahir @ Parbatbhai Bhimsinbhai Karmur & Ors v. State of Gujarat & Anr*** reported in ***(2017) 9 SCC 641,*** the Hon'ble Supreme Court has observed as under:

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High

Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

> *16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*
>
> *16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."*

12. In the light of the law laid down by the Hon'ble Supreme Court, the principle of application of inherent jurisdiction is the facts scenario in the individual case. Different High Courts have dealt with the similar matters. However, conflicting views have been taken by different High Courts. Precisely, I have taken into consideration the views taken by the High Court of Delhi and High Court of Kerala.

13. In the case of ***Kapil Gupta vs. State of NCT of Delhi and another*** reported in ***2022 SCC Online SC 1030,*** the relevant part of the judgment reads as follows:

> *"12. "It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there*

exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

13. "The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.

15. In both the cases, though the charge-sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. It is further to be noted that since Respondent 2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. If the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts.

16. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that

this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.

17. In that view of the matter, the appeal is allowed and proceedings in the criminal cases arising out of the following FIRs are quashed and set aside:"

14. In the case of ***Amar Kumar and another vs. The State (Govt. of NCT of Delhi) and another*** reported in ***2023 SCC Online Del 8452*** held as under:-

"It is reflecting that the petitioner no.1 and respondent no.2 after liking each other had developed intimacy. The respondent no.2 came to know about her pregnancy with petitioner no.1 and subsequently delivered a child. The respondent no.2 was stated to be a minor at the time of registration of FIR on 21.12.2020. The statements of the respondent no.2 were recorded under section 161 and section 164 Cr.P.C wherein the respondent no.2 primarily stated that she had a relationship with the petitioner no.1 out of her own free will and subsequently came to know about her pregnancy with the petitioner no.1 and thereafter they got married with each other".

The Hon'ble High Court of Delhi have relied on Gian Singh vs State of Punjab and another (Supra) and have quoted para-57 of the said Judgment.

Moreover have relied on Daxaben V. The State of Gujrat & Ors., SLP Criminal No.1132-1155 of 2022 decided on 29.07.2022 and have quoted para 38 of the said Judgment which state the power of the High Court u/s-482 Crpc for quashing of FIR or complaint.

The Hon'ble High Court of Delhi taking into note of the above decisions rendered by the Hon'ble Apex

court and taking into facts and circumstances of the case and have stated that "there is remote and bleak possibility of conviction and continuance of legal proceedings arising out of FIR bearing no. 0843/2020 shall cause great oppression and prejudice to the petitioner no.1 and respondent no.2 as they shall be subjected to extreme injustice and as such to put an end to legal proceedings arising out of FIR bearing no. 0843/2020 would be appropriate and be in the interest of society".

15. The Hon'ble High Court of Delhi in ***Arjun Kamti vs The State of GNCT of Delhi Through Sho & Ors,*** reported in ***2023 SCC Online Del 4735*** dealt with similar issue:-

"wherein the facts remains that FIR was got registered on the basis of complaint made by the respondent no. 2 wherein he suspected that some unknown person has kidnapped his daughter i.e. respondent no. 3 after taking out from his Guardianship. During the investigation the petitioner was arrested and Final Report as per section 173 Cr.P.C/charge sheet was filed for the offence under sections 363/376 IPC and under section ***6 of the Protection of Children from Sexual Offences, Act 2012(POCSO)*** *wherein the petitioner was implicated.*

In the said judgment Hon'ble High court of Delhi has relied on a decision rendered by the Hon'ble Supreme Court in Shiji alias Pappu and others V Radhika and Anr, (2011) 10 SCC 705 wherein it has been observed that simply because an offence is not compoundable under section 320 Code of Criminal Procedure is by itself no reason for the High Court to refuse exercise of its power under section 482 Code of Criminal Procedure.

In the said judgment Gian Singh vs State of Punjab and another (Supra) has also been relied and have quoted para-57 of the said judgment.

> *In the said case the decision rendered in State of Madhya Pradesh V Laxmi Narayan & Ors., 2 (2019) 5 SCC 688 which recapitulated principles laid down in Gian Singh was also taken into consideration and also decision rendered by the Hon'ble Apex court in Ramgopal & another V State of Madhya Pradesh, Criminal Appeal No. 1489 of 2012 decided 29th September, 2021 and in Daxaben V. The State of Gujrat & Ors., SLP Criminal No.1132-1155 of 2022 decided on 29.07.2022.*
>
> *Further taken note of the fact that Gian Singh in broad perspective prohibits quashing of FIR pertaining to rape, but have considered the facts and circumstances of the case and considering the fact that there is remote and bleak possibility of conviction and continuance of legal proceedings shall cause great oppression and prejudice to the petitioner and the respondent no. 3 as they shall be subjected to extreme injustice and as such to put an end to legal proceedings would be appropriate and be in the interest of society and quashed the criminal proceeding against the petitioner."*

16. The High Court of Kerala in the case of ***Vishnu v. State of Kerala & Anr. and other connected matters*** reported in ***2023 LiveLaw (Ker) 234*** dealt with the similar issue :-

> "wherein a bunch of cases filed U/s-482 of Crpc for quashing of the complaint of FIR wherein offences under the POCSO Act was alleged was taken altogether and the fact in all those cases remained that there has been settlement/compromise between the parties i.e. petitioner and victim. Herein the Hon'ble court was poised with the question whether court can quash any proceeding with regard to sexual offences against women and children wherein settlement between the parties have taken place.

Paragraphs-16, 18 and 19 of the said judgment read as under:-

16. "From the precedents and law on the subject enunciated above, it can be concluded that though the High Court should not normally interfere with the investigation/criminal proceedings involving sexual offences against women and children only on the ground of settlement, it is not completely foreclosed in exercising its extraordinary power under section 482 of Cr. P.C or Article 226 of the Constitution of India to quash such proceedings in 'extraordinary circumstances' to do complete justice to the parties. However, it is always a difficult task for the Court to identify the so-called 'extraordinary circumstance'. The interest of the victim and the societal interest often clash, making the job of Courts more complex. The issue must be considered from different perspectives, the pros and cons must be weighed, and a rational view must be taken. A holistic approach is called for in identifying the cases fit for compromise."

18. "There is a clear distinction between rape and consensual sex. There is also a distinction between a mere breach of a promise and not fulfilling a false promise. It is trite that in a prosecution for rape on the false promise of marriage, the crucial issue to be considered is whether the allegation indicates that the accused had given a promise to the victim to marry, which at the inception was false and based on which the victim was induced into a sexual relationship. Without such an allegation or proof, the offence of rape will not be attracted. If the accused has not made the promise to seduce the prosecutrix to indulge in sexual acts, such an act will not amount to rape. So also, in a case where the allegation is that the accused had sexual intercourse with the victim after obtaining her consent by giving a promise of marriage and when he subsequently marries her, it really means fulfilment of the promise made by the accused to the prosecutrix and the offence may not get attracted. In cases where the married woman had consensual sex with a man, or an unmarried woman had sex with a married man knowing that he was married induced by the promise of

marriage, the offence of rape will not get attracted since she knew well that marriage by or with a married person is illegal, and such a promise cannot be honoured. Recently, this Court in xxx v. State of Kerala and Another has held that the promise alleged to have been made by the accused to a married woman that he would marry her is a promise which is not enforceable in law as it is against public policy in view of the mandatory provisions contained in Section 23 of the Indian Contract Act and such an unenforceable and illegal promise cannot be the basis for the prosecution to contend that the consent of the woman, who had sexual relationship with the accused, was obtained on the basis of the misconception of fact as understood in Explanation 2 of Section 375 of the IPC and Section 90 of the IPC. Similarly, if the allegations and materials disclose that the victim agreed to have sexual intercourse on account of her love and passion for the accused or where the accused could not marry her on account of circumstances beyond his control, the offence will not be attracted. In these types of cases, there is no point in not exercising the jurisdiction under Section 482 of Cr.P.C. to quash the proceedings on the ground of compromise between the accused and the sexual assault victim."

19. "There is yet another category of cases where though the victim alleged that the sexual assault or rape was forceful or against her will, later, they settled the dispute, got married and led a peaceful life. In most of those cases, the victim admits that the allegation of rape was levelled only because the accused refused to marry her. Allowing prosecution to continue in those cases would only result in the disturbance of their happy family life. On the contrary, the closure of such a case would promote their family life. In such cases, the ends of justice demand that the parties be allowed to compromise. However, the Court must ensure that the marriage is not a camouflage to escape punishment and the consent given by the victim for compromise was voluntary. The Court must also be satisfied after considering all the facts and circumstances of the case

that quashing the proceedings would promote justice for the victim and the continuation of the proceedings would cause injustice to her".

17. The High Court of Punjab and Haryana in case of ***Rajveer Singh and Anr vs. State of Punjab & Anr*** reported in ***2023 0 Supreme (P&H) 1013*** observed in para-5 as under:

> *"5. From the perusal of the enclosed FIR, report of the Trial Court and compromise arrived between the parties, it transpires that contesting parties have amicably resolved their issue, thus, no useful purpose would be served by continuing the proceedings. The offence of rape is not simple brutality or cruelty upon person of a female whereas it amounts to quelling sole, heart and mind of a victim as well her entire family members which in Indian context drastically affects their social, moral and matrimonial life. The possibilities of getting suitable matrimonial match abysmally reduce. In the present case, the petitioner has not simply made an offer of marriage whereas he has already solemnized marriage with the victim and she is happily cohabiting with the petitioner, thus, denial of prayer of the petitioner not only would be against the interest of petitioner but also victim and her family members .Further, there appears to be no chance of conviction, thus, the continuance of the proceedings would just waste valuable judicial time and it is well-known fact that courts are already over burdened."*

18. The High Court of Madras in the case of ***Vijayalakshmi & Anr. Vs. State Rep. By The Inspector of Police, All Women Police Station & Anr.*** (Crl.O.P.231 of 2021, decided on 27.01.2024) had taken note of a passage from ***Vishnu*** (supra) and said:-

> *"22. The High Court of Madras while quashing a criminal proceeding initiated under the POCSO Act on the ground of settlement between the accused and the victim held that punishing an adolescent boy for entering a relationship with a girl below 18 years of age was never an objective of this act. "What came to be a law to protect and render justice to victims and survivors of child abuse can become a tool in the hands of certain sections of the society to abuse the process of law".*

19. In ***Nauman Suleman Khan v State of Maharashtra & Anr*** reported in ***2022 LiveLaw (Bom) 200***, The Bombay High Court quashed an FIR under Protection of Children from Sexual Offences Act (POCSO Act) for penetrative sexual assault, as the victim girl (now a major) said that she and the accused were allegedly in love and are now to be married. The court observed it was "inclined to accept the request for quashing the FIR, only by considering their future. If the prosecution still remains, it will come in their peaceful life."

20. In ***AK vs State Govt. of NCT of Delhi and Anr.*** reported in ***2022 LiveLaw (Del) 1077***, The Delhi High Court held that the intention of The POCSO Act was to protect the children from sexual abuse and not criminalize consensual romantic relations.

21. In Crl.M.C. No.2153 of 2021, titled as **Vijay Kumar v. The State Govt. of NCT of Delhi & Anr.**, wherein, in similar circumstances, Delhi High Court held as under:

> *"6. Even though the judicial principles state that High Court must show restraint in quashing the FIR under section 6 POCSO, in the instant case, respondent No. 2 is in love with petitioner and has married him out of her own free will and choice.*
> *7. The respondent No. 2 is a major now and wishes to stay with the petitioner as his wife along with their minor child. In this case, if the FIR is not quashed, three lives will be ruined. I am of the view that the minor child must get the due love and affection and upbringing from both the parents."*

22. In WP(CRL) No.1681 of 2023, ***Amit Kumar Vs State NCT of Delhi*** decided on 13.12.2023 whereby Delhi High Court allowed the petition and quashed the FIR and held that the FIR should be quashed in the interest of justice and the betterment of the future of the parties involved. The court considered the following factors:

> *(i) The petitioner and the prosecutrix were in a relationship for a long time and had gotten married;*
>
> *(ii) The prosecutrix had consented to the relationship and was not under any coercion or pressure.*
>
> *(iii) The parents of the prosecutrix had accepted the marriage and were supporting the couple and the continuation of the FIR would have a negative*

impact on the prosecutrix, the petitioner, and their child.

23. Recently the Madras High Court in Crl. O.P. No.3323 of 2024, ***Kamal S/o. Subramani vs. State represented by The Inspector of Police*** quashed the proceedings pending in a Special Sessions Case under the POCSO Act. The victim girl, who was present in court, stated that she had married the petitioner and had a child with him. She expressed her desire to not pursue the case further as both families had accepted the marriage and she was living happily with the petitioner. The court noted that the case was still in the trial stage and that the parties had decided to settle the dispute amicably. The court also observed that the victim girl was not interested in prosecuting the case further. The court held that in the interest of justice and considering the victim's wishes, it was appropriate to quash the proceedings under Section 482 Cr.P.C. relying on the guidelines laid down by the Supreme Court in ***Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrath, (2017) 9 SCC 641*** and ***The State of Madhya Pradesh v. Dhruv Gurjar and Another, (2019) 2 MLJ Crl 10.***

24. The Indian Human Rights law framework thus acknowledges adolescents sexuality and encourages States to strike a balance between protection and evolving autonomy by ensuring that consensual sexual activity among adolescents is not criminalized. Several High Courts have

recognised that adolescent relationships are normal, and criminalisation of such acts affects both parties and is not in keeping with the objectives of the POCSO Act. In ***Vijayalakshmi(supra)***, the Madras High Court quashed proceedings of kidnapping, penetrative sexual assault, and child marriage against a man in his early 20s, observing that the POCSO Act did not intend to punish "an adolescent boy who enters into a relationship with a minor girl by treating him as an offender". It cited evidence that "adolescent romance is an important developmental marker for adolescents' self-identity, functioning and capacity for intimacy" and concluded that criminalization would be counterproductive. It drew attention to the persecution that would result from incarceration and emphasized the need for support and guidance instead. Similarly, in the case of ***Agavai v. the State of Tamil Nadu***, the petitioner child in conflict with the law was 15 years old and the victim girl was 17 years old when they entered into a sexual relationship. The Madras High Court observed that the issue of consensual sex between minors is a legal grey area in India and concluded that, "punishing the minor boy who enters into a relationship with a minor girl who were in the grips of their hormones and biological changes which is otherwise normative development in the children, is against the principles of the best interest of the child." In ***Skhemborlang Suting and anr v. State of Meghalaya and anr*** reported in

2022 SCC Online Megh 66, the petitioners were a married couple, and a case was lodged after a medical check-up when the wife became pregnant. The High Court of Meghalaya quashed the proceedings on the reasoning that the act could not be termed an "assault", as no threat or attempt to inflict offensive physical or bodily harm on the minor wife had been made out.

While marriage between the parties appears to have influenced by several High Courts and resulted in the quashing of romantic cases under the POCSO Act, sexual behavior is normative during adolescence, and relationships may not always end in marriage.

25. In case of ***Sakshi and Another vrs. State of H.P. Through Secretary (Home to the Government of Himachal Pradesh) and others*** reported in ***2021 SCC OnLine HP 7834***, the Hon'ble Himachal Pradesh High Court has observed in paragraphs-9 and 10 as under: -

> ***"9.*** *It is quite apparent from the aforesaid exposition of law that High Court has inherent power to quash criminal proceedings even in those cases which are not compoundable, but such power is to be exercised sparingly and with great caution. In the judgments, referred hereinabove, Hon'ble Apex Court has categorically held that Court while exercising inherent power under Section 482 Cr.P.C., must have due regard to the nature and gravity of offence sought to be compounded.* ***Hon'ble Apex Court has though held that heinous and serious offences of mental depravity, murder, rape, dacoity etc. cannot appropriately be quashed though the victim or the***

family of the victim have settled the dispute, but it has also observed that while exercising its powers, High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases. *Hon'ble Apex Court has further held that Court while exercising power under Section 482 Cr.P.C. can also be swayed by the fact that settlement between the parties is going to result in harmony between them which may improve their future relationship. Hon'ble Apex Court in its judgment rendered in State of Tamil Nadu supra, has reiterated that Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice and has held that the power to quash under Section 482 is attracted even if the offence is non-compoundable. In the aforesaid judgment Hon'ble Apex Court has held that while forming an opinion whether a criminal proceedings or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.*

10. *Though offence alleged to have been committed by the petitioner falls in the category of heinous crime as has been held by the Hon'ble Apex Court in Judgment (supra) and as such, this court should be reluctant in exercising power under Section 482 Cr.PC, for quashing of FIR, but in the peculiar facts and circumstances, where petitioner-accused and victim-prosecutrix have solemnized marriage and out of their wedlock, one female child has born, this Court, in the interest of the victim prosecutrix as well as her minor child, deems it fit to exercise power under Section 482 Cr.PC, for accepting the prayer made by the petitioner for quashing of FIR. In case, prayer made on behalf of the petitioner accused is not*

> *accepted at this stage, great prejudice would be caused to petitioner No. 1-victim-prosecutrix, who has not only solemnized marriage with the petitioner-accused, but has also given birth to one female child. In case, petitioner-accused is made to face the trial in terms of FIR sought to be quashed and ultimately he is convicted, it is petitioner No. 1-victim-prosecutrix, who would be the ultimate sufferer. No doubt, while exercising power under Section 482 Cr.PC, for quashing of FIR, this court is also required to take into consideration interest of the society at large, but in the present case, interest of petitioner No. 1-victim-prosecutrix appears to be more important than of the society and as such, in the peculiar facts and circumstances of the case, this Court while exercising powers under Section 482 Cr.PC., deems it fit to quash the FIR lodged against the petitioner under Section 376 IPC. Moreover, chances of conviction of the petitioner are very remote and bleak in view of the statements made by petitioner No. 1-victim-prosecutrix and petitioner No. 3 Savita and as such, no fruitful purpose would be served in case FIR as well as consequent proceedings are allowed to sustain."*

26. On perusal of the aforementioned judgments would lead to inference that the extraordinary power of the High Court under Section 482 Cr.P.C. is not completely foreclosed to be exercising in the cases where the parties have settled their dispute though the allegations are regarding the serious sexual offences against women and children. If the Court arrived at a conclusion that due to the settlement between the parties, the prosecutrix is likely to depose in favour of the accused or against the prosecution, there is a remote and bleak possibility of conviction and continuation of the legal proceeding shall cause great

oppression and prejudice to the accused or the victim and they shall be subjected to extreme injustice, the Court can intervene and quash the proceedings.

27. It is also apt to analyze the object of the POCSO Act vis-à-vis the prevalent customs and the conflicting statutory provisions. The aim of the POCSO Act is to protect minors from rapacious sexual offences and sexual violence by predators and criminals but does not aim to criminalize consensual sex of teenagers who have not attained the age of majority. The object is certainly not to punish teenagers who have not attained the age of majority in romantic or consensual relationship and accused them as offenders under the POCSO Act. In change of the fabric of the society, there has been a rise of love relationship wherein one of the party is below the age of 18 years or both the parties are underage but due to some petty reasons or/and there is rift between them a case is filed invoking the POCSO Act offence.

28. As per the Act, a child below the age of 18 years is incapable of giving consent for sexual relations. Thus, any sexual relationship with a child below the age of 18 years would lead to an offence under the POCSO Act. However, this position stands to be challenged in the face of personal laws, wherein children are eligible to get married below the age of 18 years. As per the Muslim personal law,

minimum age of marriage of a girl is when the girl attains the age of puberty. The puberty is presumed in the absence of evidence on completion of the age of fifteen years. Therefore, it can be generally presumed that the minimum age of a girl, unless the age of puberty is different, is 15 years. Now a question arises if a valid marriage between a man and a girl below the age of 18 years is consummated, will the husband be liable under the POSCO Act? This doubt arises even in the face of Section 42A of the POCSO Act, which gives it an overriding effect.

> *"42A. Act not in derogation of any other law- The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency."*

29. In the Rural India as well, particularly in tribal hamlets, the provisions of the POCSO Act have caused widespread injustice, resulting in the uncalled for arrest and incarcerations. Adivasi and the tribal have their unique customs and traditions with girls and boys marrying and living together after reaching puberty. The marriage in these communities marked as a tradition from adolescence to adulthood and men are considered ready for marriage based on their physical fitness. Unfortunately, many grooms over the age of 21 years have been

arrested for marrying brides under the age of 18 years. The tribal population in India is mostly illiterate. Hence, they often fall into the grips of the POCSO Act.

30. The aforementioned statutory and customary conflict needs to be taken into consideration while exercising the jurisdiction, particularly, when the accused and the victim have settled their dispute and leading a happy marital life.

31. The POCSO Act was enacted with the ultimate objective of prohibiting non-consensual and forced sexual relationships with children, including child sexual abuse and sexual harassment. While the stringent provisions of the POCSO Act have contributed positively to reducing instances of sexual violence against children, they have also led to an increase in vindictive litigation, with false cases being filed against individuals under the act. However, it was never the legislature's intention to prosecute romantic relationships between young adults. The doctrine of balancing needs to be pressed to service, while evaluating the facts of each individual case and exercising the jurisdiction under Section 482 Cr.P.C. The High Court, under its inherent powers, can interpret and harmonize these provisions to ensure effective implementation of both statutes while safeguarding the rights of the accused and the victim.

32. While dealing with a Bail Application of the accused charged with offences under the POCSO Act and the adverse Presumption under Section 29 of the Act, the High Court of Delhi in the case of ***"DHARMANDER SINGH vs. THE STATE (GOVT. OF NCT, DELHI)"*** reported in ***2020 SCC Online DEL 1267*** had occasion to observe as under:

> *"77. Though the heinousness of the offence alleged will beget the length of sentence after trial, in order to give due weightage to the intent and purpose of the Legislature in engrafting section 29 in this special statute to protect children from sexual offences, while deciding a bail plea at the post-charge stage, in addition to the nature and quality of the evidence before it, the court would also factor in certain real life considerations, illustrated below, which would tilt the balance against or in favour of the accused :*
> *a. the age of the minor victim : the younger the victim, the more heinous the offence alleged;*
> *b. the age of the accused : the older the accused, the more heinous the offence alleged;*
> *c. the comparative age of the victim and the accused : the more their age difference, the more the element of perversion in the offence alleged;*
> *d. the familial relationship, if any, between the victim and the accused : the closer such relationship, the more odious the offence alleged;*
> *e. whether the offence alleged involved threat, intimidation, violence and/or brutality;*
> *f. the conduct of the accused after the offence, as alleged;*
> *g. whether the offence was repeated against the victim; or whether the accused is a repeat offender under the POCSO Act or otherwise;*

h. whether the victim and the accused are so placed that the accused would have easy access to the victim, if enlarged on bail : the more the access, greater the reservation in granting bail;
i. the comparative social standing of the victim and the accused : this would give insight into whether the accused is in a dominating position to subvert the trial;
j. whether the offence alleged was perpetrated when the victim and the accused were at an age of innocence : an innocent, though unholy, physical alliance may be looked at with less severity;
k. whether it appears there was tacit approval-in-fact, though not consent-in-law, for the offence alleged;
l. whether the offence alleged was committed alone or along with other persons, acting in a group or otherwise;
m. other similar real-life considerations.
78. The above factors are some cardinal considerations, though far from exhaustive, that would guide the court in assessing the egregiousness of the offence alleged; and in deciding which way the balance would tilt. At the end of the day however, considering the myriad facets and nuances of real-life situations, it is impossible to cast in stone all considerations for grant or refusal of bail in light of section 29. The grant or denial of bail will remain, as always, in the subjective satisfaction of a court; except that in view of section 29, when a bail plea is being considered after charges have been framed, the above additional factors should be considered.

33. It is thus seen that the important and relevant factors that weighed in the minds of different Constitutional Courts relating to sexual offences against the minor centered around the following factors:

i) Age of victim & accused and/or age difference between them.

ii) Nature of relationship between victim and the accused including Trustee or fiduciary relationship.

iii) The nature, magnitude, and consequences of the crime.

iv) Cases wherein the allegations reek of force, depravity, perversity, or cruelty.

v) Consensual relationships ending in marriage.

vi) Consensual relationships that start with assurance/expectation of marriage but do not materialize in marriage due to family disapproval, change in circumstances or other reasons.

vii) Parties are not interested to prosecute the cases further and jointly approached the court for quashing of proceedings.

viii) The possibility of conviction in the backdrop of parties having come to an agreed terms and not willing to prosecute the case further.

ix) The criminal prosecution will result in injustice to the victims and its closure would only promote their well-being.

x) The continuance of the criminal proceedings and the participation of the victim in that proceedings would adversely affect the mental, emotional, and educational well-being of the victim and protracted trial may possibly stigmatize the victim herself.

xi) The natural disposition and instinct of the victim who has settled in her life with the accused husband to protect her husband and her present and future progenies in the best interest of the family.

xii) In the cases where trial is at advance stage and evidence of the victim has already been recorded, High Court should be circumspect while exercising plenary jurisdiction under section 482 Cr.P.C

The conditions for exercising the jurisdiction under Section 482 Cr.P.C for quashing the criminal proceedings in such cases cannot be exhaustively postulated, therefore, every case has to be dealt with on its own facts in the light of parameters enumerated hereinabove.

34. Coming to the present cases at hand, except in CRLMC No.3657 of 2023, where the genesis of sexual relationship between the accused and the victim can be said to be forcible, unilateral act by the accused, in all other cases, the sexual act was consensual, voluntary though uncontrolled and impulsive indiscretions out of mutual love and affection. All the cases except in CRLMC No.3783 of 2023**,** ended in marriage between accused and the victim at different stages of proceedings after F.I.R. was registered and charge-sheet was filed. The parties are purportedly leading happily married conjugal lives and have approached jointly praying for quashing the respective proceedings. In

view of the fact that the victims are not desirous of pursuing the matter further, the possibility of securing a conviction is not only remote but it may adversely affect the mental, emotional, and educational well-being of the victim and the happy conjugal and family life they are leading with perhaps one or more children born out of such union. It can be said that the real life situation of the victims of the POCSO offences have turned out to be in the best interest of the victims and the offences which created impediments for the victims and their families in the societal perspective in the forms of loss of reputation, dignity, diminished chances of marriage for the victim and her kins have been substantially mitigated when the accused married her and started a family had the added effect of reforming the accused and restored the dignity and the chances of normalcy and a good life for the victim and her family. In this view of the matter, continuing the proceedings for prosecuting and punishing the accused will have the undesired and self-defeating effect of punishing the victim as well which will go against the avowed objective and purpose of the Act itself.

35. I am, therefore, of the opinion that the discretionary power under Section 482 of Cr.P.C. should be exercised in the facts and circumstances of each case. Therefore, all the five CRLMCs. are allowed.

36. Accordingly, in **CRLMC No.3460 of 2023,** the criminal proceeding in Special G.R. Case No.30 of 2019 arising out of Kujang P.S. Case No.134 of 2019 pending in the Court of the learned Adhoc Additional District Judge, FTSC (POCSO), Jagatsingpur; in **CRLMC No.3657 of 2023**, the criminal proceeding in Kodinga P.S. Case No.10 of 2023 corresponding to T.R. Case No.03 of 2023 pending in the Court of the learned Additional Sessions Judge-cum-Special POCSO Court, Nabarangpur; in **CRLMC No.78 of 2024**, the criminal proceeding in connection with Chandabali P.S. Case No.75 of 2017 corresponding to Special POCSO Case No.03 of 2018 pending in the Court of the learned Additional District Judge-cum-Special Judge under POCSO Act, Bhadrak; in **CRLMC No.3783 of 2023**, the criminal proceeding in Dasarathpur P.S. Case No.111 of 2023 corresponding to C.T. Special Case No.73 of 2023 pending in the Court of the learned Additional District & Sessions Judge-cum-Special Court under POCSO Act, Jajpur and in **CRLMC No.5412 of 2023**, the criminal proceeding in Special Case No.294/34 of 2021-2022 in connection with Keonjhar Sadar P.S. Case No.107 of 2021 pending in the Court of the learned Additional Sessions Judge-cum-Special Judge, Keonjhar and the consequential proceedings arising therefrom qua the Petitioners in the respective cases are quashed.

37. This Court records appreciation for the able assistance given by the learned counsel appearing for the Petitioners, Mr. B. K. Ragada, Mr. P. K. Maharaj, learned counsel appearing for the State and Mr. N. Behuria, learned Amicus Curiae.

……..……

(S.S. Mishra)
Judge

Orissa High Court, Cuttack,
Dated the 22nd April, 2024/Swarna