
(2026) 08 OHC CK 1536
In the Orissa High Court, Cuttack Bench
Case No : ABLAPL No.4828 of 2026

Satyabrata Ray

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:

Bharatiya Nyaya Sanhita, 2023 — Sections 69, 351(3), 64, 65, 66, 67, 68, 70, 71, 74, 75, 76, 77, 78, 79, 124, sub-section (2) of Section 70
BNSS — Section 180, 183, 482, 316
IPC — Section 376(2)(n), 376, 376(2)(b)
Information Technology Act, 2000
Cr.P.C. — Section 438

Citation : 2025 INSC 344

Hon'ble Judges : V. Narasingh, J

Bench : Single Bench

Advocate : Mr. P.K. Rath, Mr. B. Panda, Mr. S. Panigrahi, Mr. S.K. Das

Final Decision : Disposed Of

Judgement

V. Narasingh, J. Heard Mr. Rath, learned Senior Counsel for the Petitioner, Mr. Panigrahi, learned Additional Standing Counsel for the State and Mr. Das, learned Counsel for the Informant.

1. The Petitioner is seeking pre-arrest bail in connection with C.T. Case No.687 of 2026 pending on the file of learned J.M.F.C. Chandikhole, arising out of Badachana P.S. Case No.137 of 2026 for commission of offences punishable under Sections 691 and 351(3)2of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as 'BNS').

2. It is submitted by the learned Senior Counsel for the Petitioner that a consensual relationship between two consenting adults is being given the colour of criminality and the Petitioner is cited as an accused.

3. It is his further submission that on a bare reading of the FIR, it is evident that there was a proposal for marriage of the Petitioner with the informant. It is

alleged that since the same did not fructify, the Petitioner has been falsely implicated with the allegation of forceful physical exploitation of the informant. And, it is stated that delay in institution of FIR in the backdrop of nature of allegation assumes significance.

4. It is stated by the learned Senior Counsel for the Petitioner, that the version of the informant in the Section 1803BNS statement is completely at variance with the FIR in as much as exaggerated allegations have been made, which on the face of it is highly improbable in as much as it is the stand of the informant that forceful sexual act for the first time took place on 07.12.2025 and thereafter, it is alleged that the Petitioner had kept physical relationship at four more places. Referring to the sequence of events, it is submitted with vehemence by the learned Senior Counsel Mr. Rath assisted by Mr. Panda, learned counsel that such stand of the informant-victim militates against normal human conduct and any person of prudence cannot accept such contention.

4-A. To fortify his submission, learned senior counsel for the Petitioner, relied on the judgment of the Apex Court in **Pramod Kumar Navratna v. State of Chhattisgarh**⁴, **Manoj Kumar Moharana vs. State of Odisha and another**⁵, order of the Patna High Court dated 21.05.2025 in the case of **Ankit Kumar Barnwal @ Ajay Kumar vs. State of Bihar**⁶(and the order of the Apex Court affirming the order so passed by the Hon'ble Patna High Court) and order of the Apex Court in the case of **Praveen Manik Kadam vs. State of Maharashtra and another**⁷.

5. Per contra, learned counsel for the State as well as the informant oppose such prayer.

6. And, to fortify their submission, learned counsel for the Informant relied on the judgment of the Apex Court in the case of **Lok Mal @ Loku vs. the State of Uttar Pradesh**⁸, as well as that of **Pradeep Kumar @ Pradeep Kumar Verma vs. State of Bihar and another**⁹.

7. Learned counsel for the State relied on the judgment of the Apex Court in the case of **Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra**¹⁰.

8. The allegation against the Petitioner is inter alia under Section 691of BNS. The said section was introduced in the BNS, whereby sexual intercourse with a woman by making a promise to marry without any intention of fulfilling the same is one of the ingredients of the offence.

9. It is the case of the prosecution that in the backdrop of the marriage negotiations of the Petitioner with the informant, the Petitioner called her to meet him on 07.12.2025 and thereafter, she was forcibly taken in his car to a lodge, where he sexually abused her, on the assurance of marriage. In her statement under Section 1803of BNS, she has reiterated the incident and stated that on subsequent dates, she was also forced to have a physical relationship with him.

10. It is submitted that since all along she had the hope that she would join the Petitioner in matrimony and because the Petitioner threatened her that he had made videos of their intimate moments, she had to succumb to the sexual abuse of the Petitioner.

11. Such a stand has been reiterated in her statement under Section 18311of BNSS.

12. Learned Senior Counsel for the Petitioner submits that an improbable story is being webbed to malign the Petitioner and the only goal is to see that the Petitioner being put behind bars, would result lose his job since, he is working as a government doctor.

Per contra, it is submitted by the learned counsels for the State and the informant that such a stand can be taken by any government servant accused of the commission of an offence. Hence, the same ought not to weigh with this Court.

13. At this juncture, it would be apposite to refer to the judgments cited by the learned Senior Counsel for the Petitioner, Mr. Rath.

13-A. The decision in the case of **Pramod Kumar Navratna (Supra)**⁴ was passed while considering the dismissal of a writ petition by the High Court of Chhattisgarh, of the accused seeking quashing of a proceeding under Section 376(2)(n)¹² of IPC. On perusal of Paragraphs 19, 21 and 24 of the said judgment, it can be seen that the Apex Court took note of the fact that the victim therein was a married lady and it was also held that "*she was an advocate by profession and not a naive or gullible woman incapable of taking decisions for herself*". And, the Apex Court drew an adverse inference regarding the conduct of the complainant of being coerced into a relationship during the subsistence of her earlier marriage.

13-B. In **Manoj Kumar Moharana (Supra)**⁵, the proceeding under Section 691 of BNS was quashed by this High Court on the ground that, in the given facts of the said case, the complainant was a married woman and therefore, was fully aware of the subsisting marital bond and consequential legal impediment to a lawful marriage with the Petitioner therein.

13-C. In the order of the Patna High Court dated 21.05.2025 in **Ankit Kumar Barnwal (Supra)**⁶, relied upon by the learned counsel for the Petitioner, as affirmed by the Apex Court, it is seen that there was no allegation of establishing a physical relationship as per the FIR, after the dissolution of the informant's marriage on 06.03.2025 and taking note of the same, pre-arrest bail was granted, which was affirmed by the Apex Court.

13-D. Learned Senior Counsel for the Petitioner has relied on the order of the Apex Court in the case of **Praveen Manik Kadam (Supra)**⁷. Since the facts on which the said order was passed are not detailed, this Court is handicapped in considering its applicability in the case at hand.

14. On a bare perusal of the aforementioned judgments, it is seen that the said judgments are clearly distinguishable on facts, qua the present case. As such, it can be of no assistance to the Petitioner.

15. Learned counsel for the Informant relied on the judgment of the Apex court in the case of **Lok Mal @ Loku (Supra)**⁸, wherein, dealing with the criminal appeal arising out of conviction, the Apex Court quoted with approval its earlier decision in the case of **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**¹³.

15-A. Learned counsel for the Informant relied on the judgment of the Apex Court in the case of **Pradeep Kumar @ Pradeep Kumar Verma (Supra)**⁹ to buttress his submission that the consent as alleged in the case at hand has to be construed in the backdrop of deception that the accused intended to marry the victim.

16. Learned counsel for the State relied on paragraphs 23 and 24 of the judgment in **Dr. Dhruvaram Murlidhar Sonar (supra)**¹⁰, which is extracted hereunder for convenience of reference;

"23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by the accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.

24. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas sometimes at his home". Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had

taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since the complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained."

17. On the anvil of the decisions referred to hereinabove, the rival stand is required to be examined.

18. It is alleged by the learned counsel for the informant that the very first physical act with the informant on 07.12.2025 was a forced one. Thereafter, under the threat perception arising from the intimate videos having been recorded during the first occurrence and on the assurance of marriage, informant was compelled to continue the physical relationship.

Per contra, it is the consistent stand of the Petitioner that the relationship between the parties was consensual and that, on account of the marriage proposal having failed to materialise, the present prosecution has been initiated, belatedly.

It is apposite to note that the FIR does not reflect any offence under the Information Technology Act, 2000.

19. At this stage, it is neither expected nor desirable take into account the rival versions to render any finding with regard to the truthfulness of the allegations. Whether the consent, if any, was voluntary or was vitiated by misconception of factum of assurance of marriage, threat or deception, and whether the ingredients of the offence alleged are ultimately made out, are matters which would necessarily require appreciation of materials coming to the fore during investigation and, if occasion so arises, during trial.

20. While dealing with the power under Section 482 of the Cr.P.C. (Section 438 of the Cr.P.C.), the Apex Court, in its order dated 21.03.2023 in **Satender Kumar Antil v. Central Bureau of Investigation**¹⁵, has clarified that anticipatory bail is but another facet of post-arrest bail and held that "*Anticipatory bail after all is one of the species of a bail*".

So, the conditions which impel the grant of post-arrest bail also apply in equal measure to pre-arrest bail.

21. On a bare perusal of the materials on record, this Court finds that the relationship between the parties admittedly stemmed from negotiations of marriage. The sequence of events, the conduct attributed to the parties and the improvements alleged by the Petitioner in the subsequent statements of the informant are all matters which are in the realm of the ongoing investigation.

At this stage, without expressing any opinion on the merits of the prosecution

case in the light of the order of the Apex Court in the case of **Satender Kumar Antil (supra)**¹⁵, this Court is of the considered view that prima facie the prosecution has not been able to establish that custodial interrogation of the Petitioner for the purpose of effective investigation is imperative.

22. Keeping in view the nature of the accusation, the materials available on record, the fact that the Petitioner is a Government Medical Officer having permanent roots in society, there being no material placed before this Court to indicate that he is likely to abscond/ evade/ interfere with the process of law, this Court directs that on surrendering within three weeks hence and moving for bail, the Petitioner shall be released on bail by the learned Court in seisin on such terms as deemed just and proper subject to the additional condition that he shall cooperate with the investigation and shall appear before the Investigating Officer as and when called upon to do so.

23. It is needless to state that the observations made hereinabove are only for the purpose of consideration of the Petitioner's prayer for pre-arrest bail and the same ought not to be considered as this Court expressing any opinion regarding the rival contentions qua the complicity of the Petitioner, which has to be probed independently.

24. Accordingly, the ABLAPL stands disposed of.

FOOTNOTES

1. **69. Sexual intercourse by employing deceitful means, etc.**—Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Explanation.—“deceitful means” shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.

2. **351. Criminal intimidation.**—(3) Whoever commits the offence of criminal intimidation by threatening to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

3. **3180. Examination of witnesses by police.**—(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case. (2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. (3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records: Provided that statement made under this sub-section may also be recorded by audio-video electronic means: Provided further that the statement of a woman against whom an offence under Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79 or Section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, shall be recorded, by a woman police officer or any woman officer.

4. *Pramod Kumar Navratna v. State of Chhattisgarh*, 2026 SCC OnLine SC 154.

5. *Manoj Kumar Moharana v. State of Odisha*, 2026 Supreme (Ori) 732.
6. *Ankit Kumar Barnwal @ Ajay Kumar vs. State of Bihar*, Criminal Miscellaneous No.33330 of 2025. (Patna HC)
7. *Praveen Manik Kadam vs. State of Maharashtra*, SLP (Crl.) No.18345 of 2025. (SC)
8. *Lok Mal @ Loku vs. the State of Uttar Pradesh*, 2025 INSC 344.
9. *Pradeep Kumar @ Pradeep Kumar Verma vs. State of Bihar*, (2007) 7 SCC 413.
10. *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra*, (2019) 18 SCC 191.
11. **183. Recording of confessions and statements.**—(1) Any Magistrate of the District in which the information about commission of any offence has been registered, may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards but before the commencement of the inquiry or trial: Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence: Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force. (2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily. (3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody. (4) Any such confession shall be recorded in the manner provided in Section 316 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:— “I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him. (Signed) A. B. Magistrate.” (5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded. (6) (a) In cases punishable under Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79 or Section 124 of the Bharatiya Nyaya Sanhita, 2023, the Magistrate shall record the statement of the person against whom such offence has been committed in the manner specified in sub-section (5), as soon as the commission of the offence is brought to the notice of the police: Provided that such statement shall, as far as practicable, be recorded by a woman Magistrate and in her absence by a male Magistrate in the presence of a woman: Provided further that in cases relating to the offences punishable with imprisonment for ten years or more or with imprisonment for life or with death, the Magistrate shall record the statement of the witness brought before him by the police officer: Provided also that if the person making the statement is temporarily or permanently, mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement: Provided also that if the person making the statement is temporarily or permanently, mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be recorded through audio-video electronic means preferably by mobile phone; (b) a statement recorded under clause (a) of a person, who is temporarily or permanently, mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in Section 142 of the Bharatiya Sakshya Adhiniyam, 2023 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial. (7) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.
12. **376. Punishment for rape.**—(2)Whoever,—(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's

natural life, and shall also be liable to fine. Explanation.—For the purposes of this sub-section,— (a) “armed forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government; (b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation; (c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861 (5 of 1861); (d) “women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

13. *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217.

14. **482. Direction for grant of bail to person apprehending arrest.**— (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail. (2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including— (i) a condition that the person shall make himself available for interrogation by a police officer as and when required; (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; (iii) a condition that the person shall not leave India without the previous permission of the Court; (iv) such other condition as may be imposed under sub-section (3) of Section 480, as if the bail were granted under that section. (3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1). (4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under Section 65 and sub-section (2) of Section 70 of the Bharatiya Nyaya Sanhita, 2023. **Corresponding Law:** S. 438 of Cr.P.C.

15. *Satender Kumar Antil v. Central Bureau of Investigation*, 2023 SCC OnLine SC 452