

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. MMO No.67 of 2026**

**Reserved on: 16.01.2026**

**Date of Decision 23.01.2026.**

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Atul Sen Jadaik

...Petitioner

Versus

State of Himachal Pradesh and another

...Respondents

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*Coram*

***Hon'ble Mr Justice Rakesh Kainthla, Vacation Judge.***

***Whether approved for reporting?<sup>1</sup> No***

For the Petitioner : Mr. Ganesh Barowalia, Advocate

For the Respondent : Mr. Lokender Kutlehria, Additional  
Advocate General for Respondent  
No.1-State.

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**Rakesh Kainthla, Judge: -**

The petitioner has filed the present petition for quashing and setting aside the order dated 08.12.2025, passed by the learned Chief Judicial Magistrate, Shimla.

2. It has been asserted that the respondent/complainant filed a complaint against the petitioner for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act). The petitioner is an Orchardist, his parents are old, and there is no one to look after them. The

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment?

learned Trial Court made repeated endeavours to secure the presence of the petitioner; however, the petitioner could not appear before the Court. Learned Trial Court ordered the issuance of non-bailable warrants of arrest returnable for 28.01.2026. The petitioner was taking care of his parents. His father had suffered paralysis. His mother is suffering from various ailments. The petitioner's wife is posted as a Lecturer in the Government Senior Secondary School, Portmore, and his children are studying at Shimla. The petitioner was unable to put appearance before the learned Trial Court due to compelling circumstances; therefore, it was prayed that the order passed by the learned Chief Judicial Magistrate Shimla, be quashed.

3. I have heard Mr. Ganesh Barowalia, learned Counsel for the petitioner and Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent No. 1/State.

4. Mr. Ganesh Barowalia, learned counsel for the petitioner, submitted that the petitioner could not appear before the Court due to circumstances beyond his control. He is ready and willing to appear before the learned Trial Court. Learned Trial Court erred in issuing non-bailable warrants of

arrest; hence, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

5. Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent No.1/State submitted that the petitioner had failed to appear before the Court despite the repeated issuance of summons. The Court had rightly issued the non-bailable warrants of arrest to secure his presence. The petitioner has a remedy of surrendering before the learned Trial Court and securing bail. This Court should not exercise inherent jurisdiction when an alternative remedy is available. Therefore, he prayed that the present petition be dismissed.

6. I have given considerable thought to the submissions made at the Bar and have gone through the records carefully.

7. At the outset, it is necessary to notice that the petitioner has not filed the certified copy of the order sought to be quashed by filing the present petition, and it would be improper to quash an order whose authenticity is not known.

8. The photocopy of the order shows that the petitioner had earlier filed a Cr.MMO No.893/2025, which was withdrawn by him. Therefore, it is apparent that the petitioner

had unsuccessfully availed his remedy of challenging the issuance of non-bailable warrants of arrest, it is not permissible for him to file a second petition for setting aside the order of issuance of non-bailable warrants.

9. The petitioner has specifically asserted in the petition that he had failed to appear before the Court. He has given various reasons for non-appearance before the Court. He claimed that his mother is ill and he is required to be present to take care of her; however, the present petition has been filed by his mother, which falsifies the plea taken by him that his mother is ill. Further, the petitioner has not filed the petition himself and has filed the petition through his mother. It was held in *Simranjit Singh Mann v. Union of India*, (1992) 4 SCC 653, that ordinarily an aggrieved party, who is affected by an order has a right to seek redress by questioning the legality, validity or correctness of the order unless such party is a minor, insane or suffering from any other disability. A third party cannot file any petition to question the legality, validity or correctness of the order. Therefore, the petitioner's mother has no *locus standi* to file the petition challenging the issuance of non-bailable warrants of arrest to her son.

10. Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent/State, has rightly submitted that the petitioner has a remedy of surrendering before the learned Trial Court and seeking bail. The jurisdiction under Section 528 of The Bhartiya Nagrik Surksha Sanhita (BNS) is extraordinary and cannot be exercised when the person has an alternative remedy. (Please see *Jitender Chaudhary versus State of HP 2026:HHC:2985*)

11. Therefore, this Court should not exercise the extraordinary jurisdiction vested in it under Section 528 of BNS when an alternative remedy of approaching the learned Trial Court is available to the petitioner.

12. In view of the above, the present petition fails, and it is dismissed, so also the pending miscellaneous application(s), if any.

13. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)  
Vacation Judge

January 23, 2026  
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