

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP (M) No. 277 of 2026

Date of Decision: 25.03.2026

Atharv Kaushal ...Petitioner
Versus
State of Himachal Pradesh ...Respondent

Coram:

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner : Mr. Ajay Kochhar, Senior Advocate
with Mr. Anubhav Chopra,
Advocate.

For the respondent: Mr. Rajan Kahol & Mr. Vishal
Panwar, Additional Advocate
Generals with Mr. Ravi Chauhan &
Mr. Anish Banshtu, Deputy
Advocates General.

Sandeep Sharma, J. (Oral)

Bail petitioner, namely Atharv Kushal, who is behind the bars since 04.12.2025, has approached this Court in the instant proceedings filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, for grant of regular bail in case FIR No.30 of 2025, dated 03.12.2025, registered at Woman Police Station, BCS, Shimla, Himachal Pradesh under Section 69 of Bhartiya Nyaya Sanhita.

¹ Whether reporters of the local papers may be allowed to see the judgment?

2. Pursuant to order dated 03.03.2026, respondent-State has filed status report and LHC Suchitra has come present with the record. Record perused and returned.

3. Close scrutiny of the record/status report reveals that on 03.12.2025, In-charge, Police Station, Chhotta, Shimla, telephonically informed Woman Police Station, BCS, Shimla that one boy and girl had been found involved in NDPS case and during investigation, the girl i.e. victim/prosecutrix, disclosed that she had been sexually exploited by the person, namely Atharv Kaushal, i.e. bail petitioner herein, on the pretext of marriage. In afore background, FIR, as detailed hereinabove, came to be lodged against the petitioner and since then he is behind the bars. Since investigation in the case is complete and nothing remains to be recovered from the bail petitioner, he has approached this Court in the instant proceedings for grant of regular bail.

4. Mr. Ajay Kochhar, learned Senior counsel representing the petitioner, vehemently argued that petitioner has been falsely implicated in the present case. He stated that bare perusal of the statement of victim/prosecutrix recorded under Section 183 of Bhartiya Nyaya Sanhita before learned Judicial Magistrate itself suggests that she, of her own volition and without there being any external pressure, has developed physical relation with the petitioner. He further stated that since it is apparent from

the statement of the victim/prosecutrix that she is drug addict and was found in the company of Abhishek, with whom she was otherwise apprehended consuming chitta and as such, version put forth by her otherwise cannot be believed. He further stated that victim/prosecutrix is major and at no point of time, she ever lodged complaint, if any, against the petitioner qua her sexual exploitation, rather on the date of lodging FIR, she was found in the company of Abhishek, who is also drug addict. He stated that otherwise also, no fruitful purpose would be served by keeping the bail petitioner behind the bars, especially when challan stands filed in the competent court of law.

5. While fairly admitting factum of filing of the challan in the competent court of law, Mr. Rajan Kahol, learned Additional Advocate General, stated that though nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of offence alleged to have been committed by him, he does not deserve any leniency. Mr. Kahol, stated that though statement of the victim/prosecutrix recorded before learned Judicial Magistrate under Section 183 of Bhartiya Nyaya Sanhita, suggests that she, of her own volition, had been maintaining physical relationship with the petitioner, but such fact may not be of much relevance as far as registration of the case under Section 69 of Bhartiya Nyaya Sanhita, which clearly provides that any person who sexually

exploits a woman on the pretext of marriage is liable to be convicted and sentenced under the aforesaid provisions of law. While fairly admitting factum of registration of FIR under NDPS Act against the victim/ prosecutrix, learned Additional Advocate General stated that factum of victim/prosecutrix being a drug addict has no bearing on the present case, especially when victim/prosecutrix has categorically alleged that bail petitioner herein also used to consume chitta and he, on the pretext of marriage, sexually assaulted her.

6. Having heard learned counsel for the parties and perused material available on record, this Court finds that FIR against the petitioner came to be lodged on the basis of the statement made by the victim/prosecutrix in another FIR lodged against her under NDPS Act. Though, at the time of lodging of the FIR under NDPS Act, victim/prosecutrix was found in the company of Abhishek, who is a co-accused in the FIR registered against the victim/prosecutrix under NDPS Act, but since she alleged that she had been sexually assaulted against her wishes by the bail petitioner on the pretext of marriage, FIR, which is the subject matter of the present case, came to be lodged against the petitioner.

7. Admittedly, prior to registration of the FIR against the petitioner, which came to be lodged pursuant to information given

by the In-charge, Police Station, Chhotta, Shimla to the Woman Police Station, BCS, Shimla, no complaint whatsoever was lodged by the victim/prosecutrix with regard to sexual assault on the pretext of marriage, rather she, of her own volition and without there being any external pressure, had been joining the company of the petitioner as well as other person, namely Abhishek, as is evident from the FIR registered against her under NDPS Act.

8. Having carefully examined the facts of the case, especially with regard to involvement of the victim/prosecutrix in NDPS case, wherein she was found in the company of co-accused Abhishek, this Court is of the view that case at hand is to be decided by the Court below in totality of evidence collected on record by the prosecution, but taking note of aforesaid glaring aspect of the matter, there appears to be no justification to keep present bail petitioner behind the bars for indefinite period during the trial, especially when guilt, if any of him is yet to be established on record by leading cogent and convincing evidence. Moreover, offence, if any, committed under Section 69 of Bhartiya Nyaya Sanhita cannot be compared and equated with the offence committed under Section 376 of IPC, as is evident from Section 69 of Bhartiya Nyaya Sanhita itself. Whether petitioner had promised to marry, is a question to be decided by the Court below in totality of evidence collected on record by the prosecution, but till the time,

such fact is not established, it may not be in the interest of justice to let bail petitioner incarcerate in jail for indefinite period during trial.

9. Hon'ble Apex Court as well as this Court have held in catena of cases that one is deemed to be innocent till the time his /her guilt is not proved, in accordance with law and as such, this Court sees no reason to curtail the freedom of the bail petitioner for indefinite period during the trial, especially when his/her guilt is yet to be proved. It has further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty.

10. Hon'ble Apex Court in Criminal Appeal No. 227/2018, ***Dataram Singh vs. State of Uttar Pradesh & Anr.***, decided on 6.2.2018, has categorically held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. Hon'ble Apex Court further held that while considering prayer for grant of bail, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Hon'ble Apex Court further held that if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of

being victimized, it would be a factor that a judge would need to consider in an appropriate case. The relevant paras of the aforesaid judgment are reproduced as under:

2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused

of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to [Section 436](#) of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting [Section 436A](#) in [the Code](#) of Criminal Procedure, 1973.

*5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of [Article 21](#) of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in *In Re-Inhuman Conditions in 1382 Prisons**

11. Hon'ble Apex Court in **Sanjay Chandra** versus **Central Bureau of Investigation** (2012)¹ Supreme Court Cases 49 has held that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative.

12. In **Manoranjana Sinh alias Gupta** versus **CBI**, (2017) 5 SCC 218, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party

will appear to take his trial. Otherwise also, normal rule is of bail and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

13. The Apex Court in **Prasanta Kumar Sarkar** versus **Ashis Chatterjee and another** (2010) 14 SCC 496, has laid down various principles to be kept in mind, while deciding petition for bail viz. prima facie case, nature and gravity of accusation, punishment involved, apprehension of repetition of offence and witnesses being influenced.

14. In view of above, bail petitioner has carved out a case for himself. Consequently, present petition is allowed. Petitioner is ordered to be enlarged on bail, subject to furnishing bail bonds in the sum of Rs.2,00,000/- with two local sureties in the like amount each, to the satisfaction of the learned trial Court, besides the following conditions:

- (a) He shall make himself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;
- (b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- (c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade

him/her from disclosing such facts to the Court or the Police Officer; and

- (d) He shall not leave the territory of India without the prior permission of the Court.
- (e) He shall surrender passport, if any, held by him.

15. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

16. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of this petition alone. The petition stands accordingly disposed of.

17. The petitioner is permitted to produce copy of order downloaded from the High Court website and the trial Court shall not insist for certified copy of the order, however, it may verify the order from the High Court website or otherwise.

(Sandeep Sharma)
Judge

March 25,2026
(shankar)