



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

Cr. MP (M) No.354 & 362 of 2026

Date of Decision:08.04.2026

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1.Cr. MP (M) No.354 of 2026

Mursaleen

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

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2.Cr. MP (M) No.362 of 2026

Amantulla

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

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Coram:

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

***Whether approved for reporting?<sup>1</sup>***

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For the petitioner(s) : Mr. Vinod Chauhan, Advocate.

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

SI Jagat Ram, PS Paonta Sahib, District Sirmaur, Himachal Pradesh, present in person along with record.

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Sandeep Sharma, J. (Oral)

Bail petitioners, who are behind bars since 03.10.2025, have approached this Court in the instant proceedings filed under Section 483 of Bharatiya Nagrik Suraksha Sanhita (hereinafter '**BNSS**') for grant of regular bail in case FIR No.225 of

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



2025, dated 03.10.2025, under Sections 137(2), 140(3), 65(1) 3(5) of Bharatiya Nyaya Sanhita (hereinafter '**BNS**') and Section 4 of POCSO Act, registered at Police Station Poanta Sahib, District Sirmaur, H.P.

2. In terms of order dated 25.03.2026, complainant along with victim-prosecutrix has come present before this Court; respondent-State has filed status report and SI Jagat Ram has come present with record. Record perused and returned.

3. Close scrutiny of record/status report reveals that on 03.10.2025 complainant Mohammad Rashid lodged a complaint at Police Station Poanta Sahib, alleging therein that accused named in the FIR had been constantly harassing his minor daughter, aged 13 years, who is studying in Class-VI. He alleged that on 02.10.2025 at about 03:00 a.m., when his daughter went to the washroom, accused abducted her and after some time, dropped her in front of the gate of their house. Taking note of afore complaint lodged at the behest of the complainant named hereinabove, police recorded statement of victim-prosecutrix under Section 183 of Bharatiya Nagrik Suraksha Sanhita and thereafter sent her to Civil Hospital Poanta for medical examination, but victim-prosecutrix refused to undergo medical test, however, in her statement under Section 183 Bharatiya Nagrik Suraksha Sanhita,



victim-prosecutrix alleged that on 02.10.2025, accused named in the FIR forcibly took her along with them and thereafter, one of the accused namely Raja sexually assaulted her against her wishes. In the afore background, FIR, as detailed hereinabove, came to be lodged against the accused named therein as well as other accused persons including bail-petitioners. Since accused Raja and Amantulla were minors at the time of commission of the offence, proceedings were initiated against them under the Juvenile Justice Act, 2015, but at present, both stand enlarged on bail. Bail-petitioners, who had allegedly helped and connived with Raja, have approached this Court in the instant proceedings for grant of regular bail on the ground that they have been falsely implicated. Besides above, it has been further submitted at the behest of the bail-petitioners that since challan stands filed in the competent Court of law and nothing remains to be recovered from them, they deserve to be enlarged on bail.

**4.** While fairly acknowledging factum with regard to filing of challan in the competent Court of law, Mr. Rajan Kahol, learned Additional Advocate General, states that though nothing remains to be recovered from the bail-petitioners, but keeping in view the gravity of offence alleged to have been committed by them, they do not deserve any leniency. Mr. Kahol, states that there is



overwhelming evidence adduced on record by the prosecution suggestive of the fact that bail-petitioners helped co-accused Raja, who allegedly sexually assaulted the victim-prosecutrix against her wishes. He submitted that though bail-petitioners, who are major, ought to have protected victim-prosecutrix, but they in connivance with co-accused Raja took victim-prosecutrix to jungle, where she was sexually assaulted against her wishes by co-accused Raja, as such, no illegality can be said to have been committed by the learned Court below, while registering FIR against them. Mr. Kahol states that it may not be in the interest of justice to enlarge bail-petitioners on bail, who in the event of being enlarged on bail, may not only flee from justice, but may also cause harm to the complainant, whose statement is yet to be recorded in the competent Court of law, as such, his prayer for grant of bail may be rejected.

5. Complainant, who is present in Court, states that since his daughter i.e. victim-prosecutrix is school going and was being harassed constantly by the bail-petitioners in past, it may not be in the interest of justice to enlarge bail-petitioners on bail because in that situation, they may again trouble or terrorize his daughter.

6. Having heard learned counsel for the parties and perused material available on record, this Court finds that though



there is allegation against the bail-petitioners that they, in connivance with co-accused Raja and Aman-Tulla, kidnapped victim-prosecutrix and thereafter, co-accused Raja, who is minor, sexually assaulted victim against her wishes, but certainly there is no specific allegation with regard to maltreatment, harassment or sexual assault, if any, committed by the bail-petitioners, rather precise allegation against them is that co-accused Raja and Aman Tulla including bail-petitioners took the victim-prosecutrix to a nearby jungle. Whether bail-petitioners actively connived with co-accused Raja is a question to be decided by the learned Court below in totality of evidence led on record by the prosecution, but having taken note of the fact that main accused, who actually sexually assaulted victim-prosecutrix against her wishes, being juvenile is on bail, coupled with the fact that challan stands filed in the competent Court of law, this Court sees no reason to let the bail-petitioners incarcerate in jail for indefinite period during trial. Moreover, this Court finds that at first instance victim-prosecutrix refused to undergo medical test, but subsequently she was medically examined on 06.10.2025, however, nothing has emerged suggestive of the fact that victim-prosecutrix was sexually assaulted against her wishes. Though case at hand is to be decided by the learned trial Court in totality of evidence, but having



noticed aforesaid aspects of the matter, this Court sees no reason to let the bail-petitioner incarcerate in jail for indefinite period during trial, especially when they had already suffered for more than six months.

7. 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. Since guilt, if any, of the bail petitioner is yet to be established on record by the prosecution by leading cogent and convincing evidence, this court sees no reason to curtail the freedom of the bail petitioner for an indefinite period during trial. Apprehension expressed by learned Additional Advocate General, that in the event of being enlarged on bail, bail petitioner may flee from justice can be best met by putting the bail petitioner to stringent conditions.

8. 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**

9. Hon'ble Apex Court in **Sanjay Chandra** versus **Central Bureau of Investigation** (2012)<sup>1</sup> 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.

**10.** 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.

**11.** 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.

**12.** In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, petitioners have carved out a case for grant of bail. Accordingly, the petitions are allowed and



the petitioners are ordered to be enlarged on bail in aforesaid FIR, subject to their furnishing personal bond in the sum of Rs.1,00,000/- with two sureties each in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, with following conditions:

- (a) They shall make themselves 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) They shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;***
- (c) They shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer; and***
- (d) They shall not leave the territory of India without the prior permission of the Court.***
- (e) They shall surrender passport, if any, before the investigating agency.***

**13.** It is clarified that if the petitioners misuse the liberty or violate any of the conditions imposed upon them, the investigating agency shall be free to move this Court for cancellation of the bail.

**14.** 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 application alone. The petition stands accordingly disposed of.



**15.** The bail petitioners are permitted to produce the copy of the order downloaded from the High Court Website and the learned 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**

April 08, 2026  
(sunil)