

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MP(M) No. 395 of 2026****Reserved on: 25.3.2026****Date of Decision: 31.3.2026.**

Pankaj Sharma**.... Petitioner****Versus****State of HP****.... Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.***

For the Petitioner : Mr Peeyush Verma, Senior Advocate, with Mr Ajay Sharma, Advocate.

For the Respondents : Mr Lokender Kutlehria, Additional Advocate General, assisted by ASI Dola Ram, IO, PS Ani, District Kullu, HP.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No. 16 of 2026, dated 21.2.2026, registered at Police Station Ani, District Kullu, H.P., for the commission of offences punishable under Sections 326(g), 351(2) and 62 of Bharatiya Nyaya Sanhita, 2023 (BNS).

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. It has been asserted that the petitioner was arrested on 21.2.2026. He is innocent and has not committed any offence. The informant's daughter was residing at Shimla and was in a relationship with the petitioner for about three years. The informant did not approve the relationship between his daughter and the petitioner. He lodged a false FIR to get rid of the petitioner. The petitioner is in judicial custody. No recovery is to be effected from the petitioner. The petitioner is a permanent resident of Tehsil Shillai, District Sirmour, H.P., and there is no chance of his absconding. He would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

3. The petition is opposed by filing a status report mentioning that the informant, his wife and daughter were sleeping in their rooms on 20.2.2026 at about 10.00 PM. Guddi Devi shouted at around 10.30 pm that the informant's house had caught fire. The petitioner, Dharam Pal, Pramod Kumar and other villagers tried to extinguish the fire. The informant saw the petitioner driving his vehicle towards Nithar. The timber, hail net and plastic kiltas kept in the room were burnt. The electricity

meter and wire were also burnt in the fire. A cloth and a towel were found on the spot, which were smelling of petrol. The petitioner had threatened the informant that he would burn the informant and his family members in case the marriage between the informant's daughter and the petitioner was not solemnised. The police registered the FIR and investigated the matter. The police intercepted the vehicle bearing registration No. HP-34-1103 at Luhri Chowk. He made a disclosure statement leading to the recovery of one plastic bottle and a lighter. Bhim Singh identified the petitioner as the person who was going to the informant's house and had consumed liquor with him. FIR No.7/2026 dated 1.2.2026 was registered against the petitioner. The petitioner would indulge in the commission of a similar offence in case of his release on bail. Hence, the status report.

4. I have heard Mr Peeyush Verma, learned Senior Counsel, assisted by Mr Ajay Sharma, learned counsel for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

5. Mr Peeyush Verma, learned Senior Counsel for the petitioner, submitted that the petitioner is innocent and he was

falsely implicated. The allegations in the FIR, even if taken to be correct, do not show the commission of an offence punishable under Section 326(g) of the BNS. The prosecution's story is inherently improbable, and the petitioner was falsely implicated. The investigation is complete, and no fruitful purpose would be served by detaining the petitioner in custody. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the petitioner was seen at the scene of the crime and was apprehended at some distance from the place of the incident. He was also found travelling towards the informant's house on the date of the incident. He got the bottle and the lighter recovered. All these circumstances *prima facie* show the involvement of the petitioner in the commission of the crime. An FIR was registered against the petitioner, and the petitioner would indulge in the commission of a similar crime in case of his release on bail. Hence, it was prayed that the present petition be dismissed.

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

8. The parameters for granting bail were considered by the Hon'ble Supreme Court in *Pinki v. State of U.P.*, (2025) 7 SCC 314: 2025 SCC OnLine SC 781, wherein it was observed at page 380:

(i) Broad principles for the grant of bail

56. In *Gudikanti Narasimhulu v. High Court of A.P.*, (1978) 1 SCC 240: 1978 SCC (Cri) 115, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of personal liberty of a person under trial, has laid down the key factors that should be considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)

“7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence is also pertinent. The punishment to which the party may be liable, if convicted or a conviction is confirmed, also bears upon the issue.

8. *Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. [Patrick Devlin, “The Criminal Prosecution in England” (Oxford University Press, London 1960) p. 75 — Modern Law Review, Vol. 81, Jan. 1968, p. 54.]*

9. *Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a*

thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.” (emphasis supplied)

57. In **Prahlad Singh Bhati v. State (NCT of Delhi)**, (2001) 4 SCC 280: 2001 SCC (Cri) 674, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284-85, para 8)

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles, having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge.” (emphasis supplied)

58. This Court in **Ram Govind Upadhyay v. Sudarshan Singh**, (2002) 3 SCC 598: 2002 SCC (Cri) 688, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

“3. Grant of bail, though being a discretionary order, but, however, calls for the exercise of such a discretion in a judicious manner and not as a matter of course. An order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts do always vary from case to case. While the placement of the accused in society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, the same should always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — the more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.” (emphasis supplied)

59. In *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

60. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765, this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under: (SCC p. 499, para 9)

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this

Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.” (emphasis supplied)

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62. One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is *Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (*Pappu Kumar v. State of Bihar*, 2021 SCC OnLine Pat 2856 and *Pappu Singh v. State of Bihar*, 2021 SCC OnLine Pat 2857) of the High Court granting bail to the accused, observed as follows: (*Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170]), SCC p. 511, para 35)

“35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record to enable a court to arrive at a *prima*

facie conclusion. While considering an application for the grant of bail, a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.” (emphasis supplied)

9. Hon’ble Supreme Court held in *State of Rajasthan v. Balchand*, (1977) 4 SCC 308: 1977 SCC (Cri) 594: 1977 SCC OnLine SC 261 that the normal rule is bail and not jail, except where the gravity of the crime or the heinousness of the offence suggests otherwise. It was observed at page 308:

2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also, the heinousness of the crime....”

10. The present petition has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

11. The status report mentions that Bhim Singh had seen the petitioner travelling towards the informant’s house on

20.2.2026 in the vehicle bearing registration No. HP-34-1103. The petitioner had consumed liquor with Bhim Singh. Prima facie, this statement is to be accepted as correct. Further, the informant had seen the petitioner on the scene of the crime. He got recovered a lighter and a plastic bottle. The informant had found a towel and a piece of cloth smelling of petrol. All these circumstances *prima facie* connect the petitioner to the commission of the crime.

12. It was submitted that the allegations in the FIR, even if taken to be correct, do not constitute the commission of the offence punishable under Section 326 (g) of BNS. This submission cannot be accepted. The FIR specifically mentions that the wood, hail net, and plastic kulta were kept in the room which had caught the fire. Section 326(g) provides for committing mischief by fire, causing the destruction of a place used for the custody of the property. The room was used for the custody of the property, and setting it on fire would *prima facie* be covered under Section 326(g) of BNS.

13. The offence punishable under Section 326(g) is punishable with life imprisonment; thus, the penalty is severe. It

was laid down by the Hon'ble Supreme Court in *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.*, (1978) 1 SCC 240: 1978 SCC (Cri) 115: 1977 SCC OnLine SC 327 that when the punishment is severe, the person is not entitled to bail. It was observed at page 244:

“6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage, and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve a sentence in the event of the Court punishing him with imprisonment. In this perspective, the relevance of considerations is regulated by their nexus with the likely absence of the applicant for fear of a severe sentence, if such be plausible in the case. As Erle. J. indicated that when the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment for it assigned by law is of extreme severity, the Court may reasonably presume, some evidence warranting, that no amount of bail would secure the presence of the convict at the stage of judgment, should he be enlarged. [*Mod. Law Rev.* p. 50 *ibid.*, 1852 I E & B 1] Lord Campbell, C.J., concurred in this approach in that case, and Coleridge J. set down the order of priorities as follows: [*Mod. Law Rev. ibid.*, pp. 50–51]

“I do not think that an accused party is detained in custody because of his guilt, but because there are sufficient probable grounds for the charge against him as to make it proper that he should be tried, and because the detention is necessary to ensure his appearance at trial It is a very important element in considering whether the party, if admitted to bail,

would appear to take his trial; and I think that in coming to a determination on that point three elements will generally be found the most important: the charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted. In the present case, the charge is that of wilful murder; the evidence contains an admission by the prisoners of the truth of the charge, and the punishment of the offence is, by law, death.”

7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

14. The petitioner had earlier threatened the informant’s daughter. He set the room on fire because he wanted to marry the informant’s daughter. There is substance in the apprehension of the prosecution that the petitioner would indulge in the commission of the crime in case of his release on bail. The investigation is continuing, and the petitioner can interfere with the investigation in his release on bail. Hence, the petitioner is not entitled to bail.

15. No other point was urged.

16. In view of the above, the present petition fails, and the same is dismissed.

17. The observations made here-in-above are regarding the disposal of this petition and will have no bearing whatsoever on the case's merits.

(Rakesh Kainthla)
Judge

31st March, 2026
(Chander)