

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**Cr.MP(M) No.1129 of 2026****Decided on: 07.07.2026**

David Thakur		Petitioner
	Versus	
State of Himachal Pradesh		Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.Whether approved for reporting? ¹

For the Petitioner	:	Mr. Ajay Kochhar, Senior Advocate with Mr. Anubhav Chopra and Ms. Preetika Thakur, Advocates.
For the Respondent	:	Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, Judge (oral):

Bail petitioner namely David Thakur, who is behind bars since 01.03.2026, has approached this Court by way of present petition filed under Section 483 of Bharatiya Nagrik Suraksha Sanhita, for grant of regular bail in case FIR No.56 of 2026, dated 01.03.2026, registered at Police Station Baddi, District Solan, Himachal Pradesh, under Sections 109, 3(5), 61 (2) of Bharatiya Nyaya Sanhita and Sections 25-54-59 of Arms Act.

2. Pursuant to order dated 02.06.2026, respondent-State has filed status report. Record perused and returned.

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

3. Close scrutiny of record/status report reveals that on 28.02.2026, complainant Gurbachan Singh lodged a complaint at Police Station detailed hereinabove, alleging therein that at about 06:00 p.m. on the same day, while he along with Balbir Singh had reached near his quarter, a Creta car came from Baddi University side and stopped in front of Balbir Singh, who at relevant time was parking his motorcycle. He alleged that five persons, who at relevant time were carrying pistols, alighted from the afore car and started firing gunshots at Balbir Singh. He alleged that he along with Kamal and Pawan attempted to rescue Balbir Singh and in the meantime, three of the assailants, whose names subsequently transpired to be Shiv Pandit, Rajan and Rohit, succeeded in fleeing from the spot. Since complainant named hereinabove alleged that he has suspicion that person namely Lalit and David i.e. petitioner herein who are the residents of Village Makhnumajra, had hatched conspiracy with person named hereinabove to kill Balbir Singh and in that regard, for the last few days, they had been conducting reconnaissance of the area and monitoring the movements of Balbir Singh. In view of aforesaid statement of the complainant, petitioner herein, who admittedly was not present at the spot at the time of alleged firing on Balbir Singh, came to be named in the FIR along with another person namely Lalit. As per the status report, the bail petitioner

had talk with Rajan through Instagram on the same date. Since 01.03.2026, bail petitioner is behind bars. Since challan stands filed in the competent Court of law and nothing remains to be recovered from the bail-petitioner, petitioner has approached this Court in the instant proceedings for grant of regular bail.

4. Mr. Ajay Kochhar, learned Senior Counsel for the petitioner, states that petitioner has been falsely implicated. He states that there is no evidence worth credence collected on record by the prosecution suggestive of the fact that bail-petitioner had prior knowledge, if any, of the alleged incident or conspiracy hatched by five persons, who had allegedly come in a Creta Car and fired gunshots at Balbir Singh. Mr. Kochhar states that as per own case of the prosecution, petitioner and co-accused namely Lalit are the residents of Village Makhnumajra, to which the Balbir Singh also belongs. He states that since petitioner as well as co-accused Lalit are residents of Village Makhnumajra, mere walking of theirs in the streets of village cannot be construed as conducting recce, if any, of the area or Balbir Singh. He states that merely on the basis of suspicion, petitioner has been arrested, and as such, he deserves to be enlarged on bail. He states that till the time, guilt of the petitioner is not proved in accordance with law, coupled with the fact that there is no cogent and convincing evidence suggestive of the fact that

petitioner had hatched conspiracy along with person, who had actually fired gunshots at Balbir Singh, prayer made on behalf of the petitioner for grant of bail deserves to be allowed.

5. Mr. Rajan Kahol, learned Additional Advocate General, while fairly admitting factum with regard to filing of the challan in the competent court of law, states 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, states that there is overwhelming evidence adduced on record suggestive of the fact that petitioner as well as co-accused Lalit are the close friends of the persons, who fired gunshots at Balbir Singh and they had definite knowledge of plan made by persons namely Shiv Pandit, Rajan and Rohit to kill Balbir Singh. He states that since persons, who had actually fired gunshots at Balbir Singh, are absconding, it may not be in the interest of justice to enlarge the petitioner on bail because in that event, he may not only flee from justice, but may also tamper with the prosecution evidence.

6. Having heard learned counsel for the parties and perused material available on record, this Court finds that petitioner herein was not a member of the group, which actually fired gunshots at victim on the date of alleged incident, rather as per own case of the prosecution, five persons, namely Shiv

Pandit, Rajan, Rohit and two other unidentified individuals, fired gunshots at Balbir Singh. If the statement of the complainant recorded under Section 154 Cr.P.C. is perused in its entirety, it reveals that complainant had suspicion that petitioner and another co-accused Lalit had prior intimation and knowledge with regard to conspiracy allegedly hatched by five persons to kill the victim, but by now it is well settled that mere suspicion cannot take place of legal proof.

7. Though Mr. Rajan Kahol, learned Additional Advocate General, vehemently argued that local persons residing in the village of victim have stated that petitioner and Lalit could be seen by them doing recce of the village as well as of Balbir Singh, but such fact may not be of much relevance for the reason that petitioner as well as person namely Lalit are the residents of the same village and their presence and movement in the area cannot be considered unusual. Mere fact that petitioner as well as co-accused Lalit are friends of persons responsible for firing gunshots at Balbir Singh, may not be sufficient to conclude complicity of the petitioner in the offence alleged to have been committed by the five persons named hereinabove. Similarly, factum of absconding, if any, by the persons responsible for firing gunshots may not be reason to deny bail to the petitioner, especially when there is nothing on record to establish the

connection, if any, *inter se* persons responsible for firing gunshots as well as petitioner. No doubt, in the alleged incident, victim Balbir Singh suffered grievous injuries, but once it is own case of the prosecution that injuries were received by the Balbir Singh on account of gunshots fired by person namely Shiv Pandit, Rajan and Rohit and two other unidentified individuals, there appears to be no justification to let the bail-petitioner incarcerate in jail for indefinite period during trial, especially when his guilt, if any, is yet to be established on record.

8. 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.

9. Recently, the 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**

10. 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.

11. 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.

12. 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.

13. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, bail-petitioner has carved out a

case for grant of bail, accordingly, the petition is allowed and the bail-petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to his furnishing personal bond in the sum of Rs.2,00,000/- with two local sureties in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, with 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 his passport, if any, before the investigating agency.***

14. 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.

15. 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.

16. A downloaded copy of this order shall be accepted by the learned trial Court, while accepting the bail bonds from the petitioner and in case, said court intends to ascertain the veracity of the downloaded copy of order presented to it, same may be ascertained from the official website of this Court.

(Sandeep Sharma)
Judge

July 07, 2026
(shankar)