

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 2302 of 2025

Reserved on: 09.10.2025

Date of Decision: 16.10.2025.

Sandeep Kumar

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioner : Mr Prikshit Rathour, Advocate.

For the Respondent : Mr Prashant Sen, Deputy Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No.83/2025, dated 05.05.2025, registered at Police Station Dharampur, District Solan, H.P., for the commission of offences punishable under Sections 137 (2), 61(2), and 64 of Bharatiya Nyaya Sanhita, 2023 (BNS) and Section 6 and 17 of Protection of Women from Sexual Offences Act (hereinafter referred to as POCSO Act).

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

2. It has been asserted that, as per the prosecution, the informant made a complaint that her minor niece had been missing since 04.05.2025. The informant enquired from the petitioner and Poonam about her niece, who showed their ignorance. Subsequently, the petitioner and Poonam informed the informant that they had handed over the victim to a boy named Aakash at Ludhiana. The police registered the FIR. The police arrested the petitioner and his wife, and added Section 61(2) of BNS and Section 17 of the POCSO Act to the FIR. The victim was subsequently recovered on 25.06.2025 from a rented accommodation at Ludhiana. The police filed the chargesheet before learned Fast Track Special Court POCSO Solan, District Solan, after the completion of the investigation. The investigation is complete, and no recovery is to be effected from the petitioner. The petitioner had not committed any offence, and he was falsely implicated. The co-accused, Poonam, has already been released by the Court in Cr.MP No. 2077 of 2025, which was decided on 12.09.2025. The petitioner is entitled to bail on the principle of parity. Hence, the present petition.

3. The petition is opposed by filing a status report asserting that the informant and victim were residing together.

The petitioner and the co-accused were her neighbours. The informant left for her job on 04.05.2025 at 7:00 A.M. She returned on 4:30 P.M., and the victim was found missing. The informant searched for the victim but could not trace her. She called the petitioner and the co-accused, who disclosed that the victim had accompanied them, and she was dropped off at Ludhiana Bus Stand. The police arrested the petitioner and the co-accused. The police searched for the victim and recovered her on 25.06.2025. She revealed in her statement that the petitioner and the co-accused had taken her with them to Ludhiana, from where she had accompanied Arvind Kumar. The victim's medical examination was conducted. Her samples were preserved. Arvind Kumar was arrested, and the Medical Officer reported that he was capable of performing sexual intercourse. Samples were sent to SFSL, and as per the report, the DNA profile obtained from the pubic hair of Arvind matched the DNA profile of the victim. A charge sheet was filed before the Court. The petitioner would abscond in case of his release on bail. Hence, the status report.

4. I have heard Mr Prikshit Rathour, learned counsel for the petitioner and Mr Prashant Sen, learned Deputy Advocate General for the respondent/State.

5. Mr Prikshit Rathour, learned counsel for the petitioner, submitted that the petitioner is innocent and that he was falsely implicated. The petitioner was not named by the victim in her statement recorded by the learned Magistrate. The charge sheet has been filed, and the petitioner's further detention is not justified. The co-accused has been released on bail, and the petitioner is entitled to bail on the principle of parity. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Prashant Sen, learned Deputy Advocate General for the respondent/State, submitted that the petitioner had kidnapped the victim from the custody of the informant and handed her over to the co-accused. He had abetted the commission of a heinous crime and would influence the witnesses in case of his release on bail. Therefore, he 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:

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(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

placement of the accused in the society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, and 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 so as 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. The present petition has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

10. A photocopy of the statement of the victim recorded by the learned Magistrate shows that the victim had left home voluntarily because she was being beaten in her home. She specifically stated that the petitioner and co-accused had not assisted her in going to Ludhiana, and she had accompanied the accused Arvind to Ludhiana. Therefore, the victim’s statement does not show the petitioner’s involvement in the commission of the crime at this stage. Hence, the pre-trial detention of the petitioner is not justified.

11. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail in the sum of ₹1,00,000/- with one surety of the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following terms and conditions: -

- (I) The petitioner will not intimidate the witnesses, nor will he influence any evidence in any manner whatsoever;
- (II) The petitioner shall attend the trial on each and every hearing and will not seek unnecessary adjournments;

- (III) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the SHO concerned, the Police Station concerned and the Trial Court;
- (IV) The petitioner will surrender his passport, if any, to the Court; and
- (V) The petitioner will furnish his mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

13. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

14. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, District Jail, Solan, H.P. and the learned Trial Court by FASTER.

15. The observations made hereinabove are regarding the disposal of this petition and will have no bearing, whatsoever, on the case's merits.

(Rakesh Kainthla)
Judge

16th October, 2025.
(Nikita)

CHANDER SHEKHAR
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Date: 2025.10.16
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