



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr.MP No. 4422 of 2025 in
Cr. Appeal No. 183 of 2024
Reserved on: 26.11.2025
Date of Decision: 03.12.2025**

Aakash Kumar ...Appellant/Applicant.

Versus

State of H.P. ...Respondent/Non-Applicant.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

**For the appellant/
applicant:**

Mr. Sanjeev Kumar Suri, Advocate.

For the respondent:

Ms. Sharmila Patial, Additional
Advocate General.

Romesh Verma, Judge

This order shall dispose of an application filed by the appellant/applicant under Section 430 of Bhartiya Nagrik Suraksha Sanhita for suspension of execution of the judgment of conviction and order of sentence dated 14.03.2024 as passed by the learned Judge, Special Court, Una, District Una, H.P. in case Registration No. 57 of 2022.

2. The appellant/applicant has filed the instant application on the averments that he has got arguable case

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



in his favour, which upon final adjudication, may result in upsetting the judgment under appeal and the appellant/applicant may be acquitted ultimately. It has been averred in the application that learned Court below vide order dated 14.03.2024 sentenced the appellant/applicant to undergo 10 years' rigorous imprisonment and to pay fine of Rs. 20,000/- for the offence punishable under Section 4 (1) of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). It has been further averred in the application that the appellant/applicant is in custody since 11.05.2022 and has spent a total period of more than 3 years and 6 months in the custody, therefore, he has been in custody for a substantial period. Certificate of imprisonment is also appended with the application. It has been also averred in the application that statement of PW-1 alongwith other witnesses is full of contradictions.

3. It is contended by Mr. Sanjeev Kumar Suri, Advocate, appearing for the applicant that the applicant has been falsely roped and implicated in the present case as either directly or indirectly he is not involved in any manner in the present case. He urged that the factual matrix of the



case demonstrates that his client has been falsely implicated in the present case and he has got no role to play in the same. He has further argued that the learned court below has wrongly convicted the applicant in the absence of any evidence, therefore, the present application deserves to be allowed and the judgment of conviction and order of sentence is liable to be suspended/stayed during the pendency of the main appeal.

4. On the other hand, Ms. Sharmila Patial, learned Additional Advocate General has vehemently opposed the present application and contended that the learned court below has rightly convicted the applicant as he has committed heinous crime punishable under Sections 376 of Indian Penal Code and 4 of POCSO Act. She has prayed for dismissal of the application.

5. We have heard Mr. Sanjeev Kumar Suri, Advocate, appearing for the applicant and Ms. Sharmila Patial, learned Additional Advocate General, appearing for the respondent/State and have also scanned the record for the purpose of adjudicating the present application.



6. The record reveals that case of the prosecution is that on 11.05.2022, an application Ext.PW-1/A was moved by the victim in Women Police Station, Una, H.P. in which it has been stated that she is from Uttar Pradesh and she alongwith her mother and Buaa is residing at Galua in a hut (Jhuggi). On 10.05.2022 at about 8:00, P.M. she went to bring water from the water tank near her hut. When she reached near the hut of Manju, then accused Aakash dragged her inside the hut of Manju. She called her mother, but she did not hear and accused gagged her mouth with his hands and committed wrong act with her as a result she became unconscious. The mother of Manju came to the hut and noticed her in that condition and thereafter she took her to hut and disclosed the incident to her mother that accused has forcibly committed wrong act with her.

7. In order to substantiate the guilt of the accused, the prosecution has examined, victim (PW-1). She stated that her date of birth is 01.01.2008 and she has studied up to 8th class. About one year back, they had come to Village Galua (District Una) and used to reside in a Jhuggi (hut). On 10.05.2022, at about 8:00 P.M., she went to bring water



from a water tank near her hut. When she reached near the Jhuggi of Manju, then accused gagged her mouth with his hands and committed wrong act with her. She further stated that she became unconscious. Then, mother of Manju came there to give food to her son-in-law. She noticed them and accused pushed her and fled away from there. The mother of Manju thereafter took her to her mother and disclosed the incident to her mother. She further stated that her mother came to Police Station and lodged the complaint.

8. The mother of victim was examined as PW-2. She has stated that she is illiterate and having seven children. She resides with victim and younger son at Galua. She has stated that during the month of May at about 8/8:30 PM, she had gone to the hut of Meera for returning her money, there, her nephew came and asked her to come and see what has happened with her daughter (victim). When, she went to her hut, then Smt. Sarojani (PW-3) came there alongwith the victim. She disclosed her that Aakash has committed wrong act with her daughter (victim). Then, she went to police station along with the victim and they moved an application Ext. PW-1/A.



9. Dr. Swati Chabba, Medical Officer, was examined as PW-8. She has stated that she was posted as Medical officer in RH, Una since 2020. On 11.05.2022, she conducted the medical examination of the victim, who was brought by the police vide application Ext. PW-8/A alongwith her mother. She stated that according to the victim she was forcibly taken to some unknown place by the accused. She further stated that as per her final opinion possibility of the penetrative sexual intercourse cannot be ruled out.

10. Dr. Kapil Bharwal, was examined as PW-10. He has stated that he was posted as Medical Officer Dental at RH, Una since the year 2022. On 18.05.2022, police moved an application Ext. PW-10/A to CMO, Una for conducting the ossification test of the victim to determine her age. On the basis of X-ray report and examination of the victim he filled the relevant columns of the medical examination form Ext. PW-10/C and as per his opinion the victim was of 12 to 15 years. Other medical Officers after examining the victim also gave the age of victim as 12 to 15 years in their respective columns.



11. Dr. Pooja Mohan Kale was examined as PW-12. She stated that she was Consultant Radiologist and on 20.06.2022 she conducted the ossification test of the victim and on the basis of X-rays Ext. PW-10/B1 to Ext. PW-10/B4 and other relevant record, the age of the victim was found to be 12 to 15 years and her detailed report is Ext. PW-12/B, which bears her signature.

12. Learned counsel for the appellant/applicant has relied upon the judgment of the Hon'ble Apex Court in ***Criminal Appeal No. 3409 of 2025***, titled ***Aasif @ Pasha vs. State of U.P. & others***. He states that in the present case a fixed term sentence has been imposed by the learned Special Judge on the appellant/applicant for a fixed term of 10 years and out of the same he has already undergone more than 3 years and 6 months. He states that since in the present case the order of sentence has been passed for a fixed term, therefore, the sentence as imposed by the learned Judge, Special Court, Una, H.P., is required to be suspended during the pendency of the appeal. He further states that since the disposal of the appeal will take some considerable time, therefore, no useful purpose will



be served by keeping the appellant/applicant behind the bars for an indefinite period.

13. The Hon'ble Apex Court in case, titled **Aasif @ Pasha (Supra)** has held as under:

"15. But if for any reason the sentence of a limited duration cannot be suspended, every endeavour should be made to dispose of the appeal on merits, more so when a motion for expeditious hearing of the appeal is made in such cases."

14. This Court heard the appellant/applicant on the application for suspension of sentence and has already fixed the present appeal, which pertains to the year 2024, for its final hearing on 18.03.2026. The Hon'ble Apex Court in the said judgment has held that if for any reason the sentence of a limited duration cannot be suspended, every endeavour should be made to dispose of the appeal on merits, more so when a motion for expeditious hearing of the appeal is made in such cases otherwise the very valuable right of the appellant would be an exercise in futility by efflux of time. Since this court has fixed the matter for final arguments on 18.03.2026, therefore, the grievance of the appellant/



applicant that disposal of the appeal shall take considerable time has been taken care of.

15. As far as, the factual matrix of the case for the adjudication of the application for suspension of sentence are concerned, the statements of PW-1 and PW-2, are corroborated by PW-8 Dr. Swati Chabba, PW-10 Dr. Kapil Bharwal and PW-12 Dr. Pooja Mohan Kale and the ossification report raises a doubt in the submission of the learned counsel for the appellant/applicant. We are dealing with the application for suspension of sentence and the applicant has not been able to make out a case that there are fair chances of acquittal in the present appeal.

16. We are aware of the fact that we are dealing with the case of a child victim. While deciding the application and before granting any relief to the appellant/applicant balance has to be maintained between the rights of the appellant/applicant and the victim.

17. From the intending facts and circumstances as well as the oral and documentary evidence placed on record for the determination of the application, no case is made out for the suspension of the sentence.



18. The Hon'ble Supreme Court in **Preet Pal Singh** vs. **State of Uttar Pradesh (2020) 8 SCC 645** has held as follows:-

“35. There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and suspension of sentence under Section 389 CrPC and innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. (2018) 3 SCC 22 However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) CrPC.”



19. The Hon'ble Supreme Court in **State (NCT of Delhi) Narcotics Control Bureau vs. Lokesh Chadda (2021) 5 SCC 725** has held as follows:-

"10. At this stage, we will refer to the decision of a two-Judge Bench of this Court in Preet Pal Singh v State of Uttar Pradesh where Justice Indira Banerjee, speaking for the Court, observed as follows:

35. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C."

20. Taking into consideration the entire factual matrix, we do not deem fit to suspend the sentence during the pendency of the appeal. The appeal shall be heard, on merits of the appeal, on 18.03.2026. Therefore, the present



application being devoid of any merit deserves to be dismissed. Ordered accordingly.

21. Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case and the same shall be adjudicated upon uninfluenced by any observation made here-in-above, which are only for the purpose of the instant application.

**(Vivek Singh Thakur)
Judge**

**(Romesh Verma)
Judge**

December 03, 2025(Nisha)