

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 2630 of 2025

Reserved on: 20.11.2025

Date of Decision: 24.11.2025.

Tilak Raj

...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 Pankaj Chaudhary, Advocate.

For the Respondent : Mr Lokender Kutlehria, Additional
Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No. 141 of 2025, dated 28.08.2025, registered at Police Station Haroli, District Una, H.P., for the commission of offences punishable under Sections 64, 74 and 75 of Bhartiya Nyaya Sanhita, 2023 (in short 'BNS').

2. It has been asserted that the petitioner was arrested on 29.08.2025 based on false and frivolous allegations against

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

him because of previous enmity and financial disputes. FIR No. 61 of 2019 has been registered against the petitioner in Police Station Haroli, District Una, for the commission of offences punishable under Sections 420, 467 and 468 of IPC. The petitioner is regularly attending the trial, which shows his law-abiding conduct. The petitioner is 54 years old and the sole earner of the family. He is suffering from chronic kidney disease, which requires medical attention and a regulated diet. These facilities are not available inside the prison. The police have filed the charge sheet before the Court after the completion of the investigation. The petitioner would abide by the terms and conditions that the Court may impose. Hence, the petition.

3. The petition is opposed by filing a status report asserting that the victim was working in the house of Ashok Kumar on 23.08.2025. The petitioner repeatedly came to Ashok Kumar's house and enquired about the inmates of the house. The victim replied that there was no one in the house. The petitioner came to the house at about 8:30 AM and tried to rape her. The petitioner had earlier raped her. The victim narrated the incident to Ashok Kumar and also reported it to the police. The police registered the FIR and investigated the matter. The victim and the

petitioner were medically examined. The victim produced her clothes, which were seized by the police. The police have filed the charge sheet on 26.10.2025. The result from RFSL is awaited. The petitioner would intimidate the witnesses in case of his release on bail. FIR No. 61 of 2019 was registered against the petitioner. Hence, the status report.

4. I have heard Mr Pankaj Chaudhary, learned counsel for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

5. Mr Pankaj Chaudhary, learned counsel for the petitioner, submitted that there are various discrepancies in the statement of the victim. She complained of the rape by the petitioner one year before the incident, but she had not made any complaint to any person, which falsified her version in the FIR. Police have filed the charge sheet before the Court, and no fruitful purpose would be served by detaining the petitioner in custody. Hence, 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

has criminal antecedents and he is likely to indulge in the commission of a similar offence in case of his release on bail. He would intimidate the witnesses. 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 record 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:

“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, 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 the grant of bail.” (emphasis supplied)*

XXXXXXX

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. The status report shows that the victim has made a specific allegation against the petitioner regarding an attempt to rape her. She also stated that the petitioner had raped her one year before the incident, but her husband was ill, and she could not report the matter to the police. It was submitted that she had

not made any complaint regarding the rape having been committed one year before the date of the incident, which makes the whole prosecution case suspect. This submission will not help the petitioner. It was laid down by the Hon'ble Supreme Court in *State of Himachal Pradesh Versus Sanjay Kumar @ Sunny* (2017) 2 SCC 51, that the delay of three years in reporting the matter in a case of sexual assault is not fatal.

11. It was laid down by the Hon'ble Supreme Court in *Anil Kumar Yadav v. State (NCT of Delhi)*, (2018) 12 SCC 129: (2018) 3 SCC (Cri) 425: 2017 SCC OnLine SC 1363 that the Court granting the bail should avoid the consideration of the details of the evidence and concentrate on the *prima facie* case. It was observed:

“15. As held in *Puran v. Rambilas*, (2001) 6 SCC 338: 2001 SCC (Cri) 1124, while considering the question of grant of bail, the court should avoid consideration of details of the evidence as it is not a relevant consideration. While it is necessary to consider the *prima facie* case, an exhaustive exploration of the merits of the case should be avoided. We, therefore, consciously refrain from considering the merits of the materials/evidence collected by the prosecution.”

12. *Prima facie*, there is nothing to disbelieve the version of the victim.

13. It is undisputed that FIR No. 61 of 2019 was registered against the petitioner, which shows that he has criminal

antecedents. This Court exhaustively dealt with the relevance of criminal antecedents in *Aminodin vs State of H.P.* 2024: HHC: 6091 and held, after referring to various judgments, that a Judge must consider the criminal antecedents of the accused, the nature of offences and his general conduct while considering the bail petition. Bail should not be generally granted to an accused with criminal antecedents when there is a likelihood of the commission of the crime.

14. 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 circumstances suggest creating trouble by repeating the offence. 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.

15. It was held in *Gudikanti Narasimhulu v. High Court of A.P.*, (1978) 1 SCC 240: 1978 SCC (Cri) 115 that where the person seeking bail has criminal antecedents, he is not entitled to bail. It was observed:

“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)

16. It was held in *V. Senthil Balaji v. Enforcement Directorate*, 2024 SCC OnLine SC 2626, that where the petitioner can become a threat to society because of her criminal antecedents, she should not be released on bail. It was observed:

“27.....An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary.”

17. Similarly, it was held in *Union of India v. Barakathullah*, 2024 SCC OnLine SC 1019, that where the persons were involved in the commission of similar offences, they should not be released on bail. It was observed: –

“20. ... So far as the respondents in the instant appeals are concerned, they are in custody for hardly one and a half years, apart from the fact that all the respondents are

shown to have been involved in previous cases. There are about 8 to 9 previous cases shown in the chargesheet against the respondents, except accused Nos. 1, 4 and 6, who are shown to have been involved in two cases. Considering the nature and gravity of the alleged offences and considering their criminal antecedents, in our opinion High Court should not have taken a lenient view, more particularly when there was sufficient material to show their *prima facie* involvement in the alleged offences under the UAPA.

18. It was laid down by the Hon'ble Supreme Court in *Pinki v. State of U.P.*, (2025) 7 SCC 314: 2025 SCC OnLine SC 781 that the liberty of a person has to be balanced with peace and harmony in society. Liberty cannot be elevated to such a high pedestal as would bring in anarchy or disorder in society. It was observed at page 384:

“65. We are absolutely conscious that the liberty of a person should not be lightly dealt with, for the deprivation of the liberty of a person has an immense impact on the mind. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of emptiness. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law, an individual is expected to grow within the social restrictions sanctioned by law. Individual liberty is restricted by larger social interests, and its deprivation must have due sanction of law. In an orderly society, an individual is expected to live with dignity, having respect for the law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice,

its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated, and such regulations, which are the source of law, subserve the social balance and function as a significant instrument for the protection of human rights and the security of the collective. This is because, fundamentally, laws are made for their obedience so that every member of the society lives peacefully in a society to achieve their individual as well as social interests. That is why Edmond Burke, while discussing liberty, opined, “*it is regulated freedom*”.

66. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal that it would bring in anarchy or disorder in society. The prospect of greater justice requires that law and order prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude, but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society, the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing, J. Oerter stated: “*Personal liberty is the right to act without interference within the limits of the law.*”

67. Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one, and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act. (See: *Ash Mohammad v. Shiv Raj Singh*, (2012) 9 SCC 446: (2012) 3 SCC (Cri) 1172.).

19. Therefore, the petitioner is not entitled to bail because of his criminal antecedents.

20. The matter is at the initial stage. The statement of the witnesses has not been recorded. Therefore, there is force in the submission of the learned Additional Advocate General for the respondent/State that releasing the petitioner on bail would interfere with the fair trial.

21. The nature of the allegations against the petitioner is heinous and punishable with life. 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, when the crime charged (of which a con-

viction 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.

22. Considering the nature of the offence and the severity of the punishment, the petitioner is not entitled to bail. Hence, the present petition fails, and it is dismissed.

23. The observation made herein before shall remain confined to the disposal of the instant petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

24th November 2025
(Nikita)