2026:HHC:10090

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.396 of 2026
Date of Decision: 2.4.2026

Suneel Kumar

.....Petitioner

Versus

State of Himachal Pradesh and Anr.

.....Respondent

Coram

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

For the Petitioner: Mr. Vijay Chaudhary, Advocate.

For the Respondents: Mr. Rajan Kahol, Additional Advocate General and Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, J. *(Oral)*

Bail petitioner namely Suneel Kumar, who is behind bars since 5.1.2026, has approached this court in the instant proceedings filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, for grant of regular bail, in case FIR No. 5 of 2026 dated 5.1.2026, registered at Police Station Chowari, District Chamba, Himachal Pradesh, under Section 64(2) of the Bharatiya Nyaya Sanhita, 2023 (in short "BNS") and Section 6 of the Protection of Children from Sexual Offences Act (in short "Act").

2026:HHC:10090

2. In terms of order dated 17.3.2026, respondent-State has filed the status report and SI Pradeep Kumar, PS Chowari, has come present with record.

3. Close scrutiny of record/status report reveals that on 15.1.2026, police received information from Civil Hospital Chowari, District Chamba, to the effect that one minor girl has been brought for delivery of a child. Police after having reached the hospital found victim-prosecutrix to be minor. Since persons accompanying her were unable to produce any document with regard to her majority as well as marriage, police lodged FIR and arrested the bail petitioner, who otherwise claimed himself to be husband of victim-prosecutrix. Since challan stands filed in the competent court of law and nothing remains to be recovered from him, bail petitioner has approached this Court in the instant proceedings for grant of regular bail.

4. Mr. Vijay Chaudhary, learned counsel for the petitioner, submitted that at the time of registration of FIR, victim-prosecutrix and bail petitioner had already solemnized marriage and they both had come to the hospital for delivery of a child. He stated that at the time of lodging of FIR, age of the victim-prosecutrix was less than seventeen years, but fact remains that she had already solemnized marriage with the bail petitioner

2026:HHC:10090

and since her marriage had been residing with the family of the bail petitioner. He submitted that petitioner can be said to have committed heinous crime punishable under the POCSO Act, but this Court may not lose sight of the fact that victim-prosecutrix has already given birth to a child and it would be difficult for her to raise minor child in the absence of her husband. He stated that once factum of marriage inter-se petitioner and victim-prosecutrix stands established and victim-prosecutrix is living happy married life, this court may enlarge the bail petitioner on bail.

5. While fairly acknowledging factum with regard to filing of the challan in the competent court of law, Mr. Ravi Chauhan, learned Deputy Advocate General, stated 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 deserves any leniency. Mr. Chauhan, submitted that though victim-prosecutrix has claimed to have solemnized marriage with the bail petitioner of her own volition, but having regard to her age, consent, if any, of her is immaterial as per law laid down by Hon'ble Apex Court. However, learned Deputy Advocate General fairly admitted that in the event of stand, as has been taken by the victim-prosecutrix before this court, chances of conviction of the bail petitioner are very remote and bleak.

2026:HHC:10090

6. Having heard learned counsel for the parties and perused the material available on record, this Court finds that victim-prosecutrix, who is still minor, has already solemnized marriage with the bail petitioner as is evident from her statement recorded by the learned Judicial Magistrate under Section 183 of the BNSS. Bare perusal of aforesaid statement nowhere suggests that she was not sexually assaulted against her wishes, rather she of her volition and out of her love for bail petitioner, had been joining his company. It also emerges from the investigation as well as afore statement of victim-prosecutrix that they had solemnized marriage and had been residing together since then in the house of the bail petitioner in the company of his parents.

7. No doubt, petitioner is accused of commission of heinous crime punishable under Section 64 of the BNS and Section 6 of the POCSO Act, but having regard to the subsequent development, wherein victim-prosecutrix has given birth to a child coupled with the fact that FIR was not lodged by victim-prosecutrix or her family, rather matter came to be reported to the police by Civil Hospital Chowari, where victim-prosecutrix was brought for delivery, this Court sees no reason to let the bail petitioner incarcerate in jail for indefinite period during trial, because in that event,

2026:HHC:10090

ultimate sufferer would be victim-prosecutrix, who would otherwise be left alone to raise her minor child.

8. Victim-prosecutrix, who has come present in Court with her mother-in-law, fairly admitted factum of her relationship and marriage with the bail petitioner and stated before this Court that she of her own volition and without any external pressure had joined the company of bail petitioner with whom she has already solemnized marriage and out of their wedlock, one child has also been born. She stated that since she is living happy married life, case lodged against her husband may be quashed and he be enlarged on bail.

9. Hon'ble Apex Court in **K. Kirubakaran v. State of T.N., 2025 SCC OnLine SC 2307** has categorically held that where the child was born as a result of love and not lust and the victim expressed her desire to live a peaceful and stable family life, the incarceration of the husband would disrupt the family unit and cause irreparable hardship to the victim, child and the social fabric. Relevant para of the afore judgment reads as under:

> "9. Per the law made by the legislature, the appellant, having been found guilty of a heinous offence, the proceedings in the present case on the basis of a compromise between the appellant and his wife cannot be quashed. But ignoring the cry of the appellant's wife for compassion and empathy will not, in our opinion, serve the ends of justice. Even the most serious offenders of the law do receive justice moderated by compassion from the courts, albeit in appropriate cases. Given the peculiar facts and circumstances here, a

2026:HHC:10090

> balanced approach combining practicality and empathy is necessary. The appellant and the victim are not only legally married, but they are also in their family way. While considering the offence committed by the appellant punishable under the POCSO Act, we have discerned that the crime was not the result of lust but love. The victim of crime herself has expressed her desire to live a peaceful and stable family life with the appellant, upon whom she is dependent, without the appellant carrying the indelible mark on his forehead of being an offender. Continuation of the criminal proceedings and the appellant's incarceration would only disrupt this familial unit and cause irreparable harm to the victim, the infant child, and the fabric of society itself.
>
> 10. We are, thus, persuaded to hold that this is a case where the law must yield to the cause of justice."

10. In the case at hand, victim-prosecutrix is two months short for attaining age of 17 years and her husband, who is father of the child born from the victim-prosecutrix, is in custody and his continuous detention besides disrupting the family of victim-prosecutrix may also further cause trauma for their child. Since charge sheet already stands filed and nothing remains to be recovered from the bail petitioner, otherwise there appears to be no justification for continuous incarceration of the bail petitioner, especially in view of the statement made by the victim-prosecutrix as has been recorded herein above. In totality of facts and circumstances of the case noticed herein above, this Court is not inclined to accept the contention raised at the behest of the respondent-State that in the event of his being enlarged on bail, bail petitioner may flee from justice and cause

2026:HHC:10090

harm to the victim-prosecutrix, who is yet to depose before the learned trial Court. Once victim-prosecutrix has candidly admitted factum of her having solemnized marriage with the bail petitioner and out of their wedlock, one child has also been born, case of the prosecution is bound to fail.

11. Hon'ble Apex Court as well as this Court in catena of cases have repeatedly held that one is deemed to be innocent till the time guilt, if any, of his/her is not proved in accordance with law, as such, this Court sees no reason to curtail the freedom of the bail petitioner indefinitely during trial.

12. Needless to say, 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, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. 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.

13. The Hon'ble Apex Court in ***Sanjay Chandra versus Central Bureau of Investigation*** **(**2012)1 Supreme Court Cases 49; held as under:-

2026:HHC:10090

> *" The 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. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India , it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."*

14. In **Manoranjana Sinh Alias Gupta** versus **CBI** 2017 (5) SCC 218, The Hon'ble Apex Court has held as under:-

> *" This Court in Sanjay Chandra v. CBI, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is neither punitive or preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him to taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care ad caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of*

2026:HHC:10090

the relevant considerations while examining the application of bail but it was not only the test or the factor and the grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

15. 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.

16. The Hon'ble Apex Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee and Another*** (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

(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.

17. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, petitioner has carved out a case for grant of bail, accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to his furnishing personal bond in the sum of Rs.50,000/- with one local surety 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.

2026:HHC:10090

18. 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.

19. 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.

20. The bail petitioner is permitted to produce copy of the order downloaded from the High Court Website and the trial court shall not insist for certified copy of the order, however, it may verify the order from the High Court website or otherwise.

April 2, 2026 **(Sandeep Sharma),**
(manjit) **Judge**