

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP No. 1194 of 2026 in Cr. Appeal (C-DB) No. 43 of 2026

Reserved on: 9.9.2026

Decided on: 15.9.2026

Uploaded on: 15.9.2026

Kulwinder Singh.

...Appellant/Applicant.

Versus

State of H.P.

...Respondent.

Corum

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

Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting?¹

For the Applicant.

Mr. Virbahadur Verma and Mr.Aditya Singh Rathore, Advocates.

For the Respondent:

Mr.I.N. Mehta, Senior Additional Advocate General.

Vivek Singh Thakur, Judge

This application has been filed by the applicant/appellant for suspension of sentence awarded to him in sequel to the impugned judgment and order dated 19.12.2025 passed in Sessions Trial No.137/7 of 2020 titled '*State of Himachal Pradesh vs. Kulwinder Singh*', arising out of FIR No.25/2020 dated 27.02.2020 registered at Police Station Kot-Kehloor,

¹***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

District Bilaspur, H.P., under Sections 354-D, 376, 506 of Indian Penal Code ('IPC') and Section 4 of Prevention of Children from Sexual Offences Act, 2012 ('POCSO'), whereby the applicant has been convicted and sentenced to undergo imprisonment rigorous imprisonment for 20 years under Section 4(2) of the POCSO Act; to further undergo simple imprisonment of 6 months each under Sections 354A, 354D, and 506 IPC and also to pay a fine of ₹2,000/- under Section 354D IPC, and in default of payment of fine, to further undergo simple imprisonment for two months.

2. Learned counsel for the applicant/appellant has submitted that there is fair chance of acquittal of the applicant and, therefore, the sentence of the applicant deserves to be suspended.

3. It has been submitted the prosecution has failed to produce evidence of date of birth of the victim as required under law and, therefore, there is no valid evidence of date of birth of victim on record and the State is trying to fill up the lacuna by proposing to lead additional evidence by placing on record Matriculation Certificate, however, the said evidence is yet to be led and as on date there is no proper evidence to prove that victim was minor at the time of incident and, therefore, commission of offence by the applicant/appellant under the POCSO Act is under cloud, and thus he is entitled to be enlarged by suspending his sentence.

4. Learned counsel for the applicant/appellant has also referred the complaint submitted by victim to the Police Post In-charge, Naina Devi

Ji, and her statement recorded under Section 164 Cr.P.C., wherein victim had stated that she had been in talking terms with the applicant/appellant on phone and on 24.2.2020, he had called her on her mobile at 11:00 PM to come during the night near the field, knowing that the father of the victim was not at home on that day. After receiving call from the applicant/appellant, she went out at 12:00 midnight to the field, where the applicant/appellant violated her person despite her repeated requests not to do so. Further, on 26.2.2020, she was again called by the applicant/appellant to the field by blackmailing her, saying that he had her photographs on his mobile which will be circulated on the Facebook, whereupon, she went to the field, where applicant was accompanied by three boys who had come on a motorcycle and applicant started compelling her to allow him to violate her person, but on her refusal, he again extended threats to circulate her photographs on Facebook, but she did not succumbed and by that time, people arrived at the spot ("उतनी देर में शोर-शराबा पड़ गया।"), whereupon appellant and his companions fled by leaving their motorcycle on the spot, which was handed over to the police on 27.2.2020.

5. Learned counsel for the applicant/appellant has submitted that at the time of incident, victim was studying in Class 10+1 and as per the prosecution case her age was about 16 years, whereas age of the accused was 19 years. Both at that time were teenagers, and from the statement of

victim, it appears that they were in contact with each other on mobile phone. It was only upon being caught red-handed by the relatives the FIR was registered.

6. It has been further submitted by learned counsel for the applicant/appellant that as per prosecution case, a pink salwar was taken into possession on 29.2.2020, whereas in the State FSL report Ex. P-5/PW-15, reference is made to dark pink slacks/pyjama, and the exhibit was mentioned as slacks of the victim. Learned counsel for the applicant has stated that when no slacks were taken into possession from the victim, then reference of slacks creates serious doubt about the veracity of the claim of the prosecution.

7. It has been further submitted that on some places the salwar has been described as maroon and in Ex. P-1/PW-14 salwar has been stated as purple and, therefore, possibility of manipulation of exhibits can be presumed for the reasons that complaint was made on 27.2.2020 and applicant/accused was arrested on 29.2.2020, and thereafter clothes of the victim are alleged to have been taken into possession and there are material discrepancies regarding the colour and description of the salwar/slacks in various documents and thus on this ground also medical evidence regarding matching of DNA profile deserves to be ignored.

8. It has been further submitted by learned counsel for the applicant that from statement of victim, it is apparent that she is not alleging

violation on 26.02.2020 and if it was so, then from where semen came on slacks, is also a relevant factor to be considered for suspension of sentence.

9. Learned Senior Additional Advocate General has opposed the application by submitting that the applicant has committed a heinous crime against a minor victim and, therefore, he does not deserve any leniency.

10. Learned counsel for the applicant/appellant has submitted that the aforesaid discrepancies, coupled with the age of the victim and the applicant/appellant, who are stated to be class fellows in the complaint made by the victim, applicant deserves to be enlarged by suspending his sentence at this stage.

11. Taking into consideration material on record and after considering the aforesaid submissions, we are of the opinion that balance of convenience lies in favour of suspension of sentence imposed upon the applicant.

12. Accordingly, substantive sentence imposed upon the applicant is ordered to be suspended during the pendency of the appeal, subject to furnishing a personal bond in the sum of ₹1,00,000/- with one surety in the like amount to the satisfaction of the Trial Court, undertaking therein to appear in Court as and when directed to do so, and to surrender to serve the remaining sentence in case appeal is dismissed. Applicant shall also not indulge in illegal activity, much less in commission of similar

nature of offence and in case breach of this condition, suspension of sentence of the applicant shall be liable to be cancelled.

13. Bail bonds so furnished by the applicant shall be transmitted by the Trial Court to the Registry of this Court for placing the same on record.

14. Any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the same has been given only for the purpose of deciding present application only.

15. Parties are permitted to produce a copy of this order downloaded from the web-page of the High Court of Himachal Pradesh, before the Trial Court, and the Trial Court shall not insist for production of certified copy of order, rather Trial Court shall verify passing of this order from the Web-page of the High Court.

The application is disposed of in aforesaid terms.

***(Vivek Singh Thakur),
Judge.***

***(Bhupesh Sharma),
Judge.***

15th September, 2026
(Keshav)