

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. M.P. No. : 924 of 2026****in****Cri. Appeal No. : 36 of 2026****Reserved on : 07.09.2026****Date of decision: 23.09.2026****Uploaded on : 23.09.2026****Sonu alias Ali****...Appellant/accused.****Versus****State of Himachal Pradesh.****...Respondent.*****Coram******The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.******The Hon'ble Mr. Justice Bhupesh Sharma, Judge.******Whether approved for reporting?¹ Yes.******For the Appellant : Mr. Karan Kapoor, Advocate.******For the Respondent-State : Mr. I.N. Mehta, Senior Additional Advocate General.*****Bhupesh Sharma, Judge**

This order shall dispose of an application under section 430 of Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS) for suspension of sentence passed against the appellant (hereinafter shall be referred to as 'accused') by learned Additional Sessions

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

Judge-1, Shimla, District Shimla, H.P. in Session Trial No.27-S/7 of 2021, titled, 'State of H.P. v. Sonu alias Ali'.

2. The accused was put to trial in the Court of learned Additional Sessions Judge-1, Shimla, District Shimla, H.P. in Session Trial No.27-S/7 of 2021 for the offences punishable under sections 302, 326, 382, 504 and 506 of Indian Penal Code (in short 'IPC'), in case FIR No.19 of 2021 dated 28.01.2021, of Police Station Dhalli, District Shimla, H.P. The accused has been convicted for the commission of offence punishable under section 302 of IPC and has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/- and in default of payment of fine to further undergo simple imprisonment for a term of one year.

3. As per the prosecution allegations, the accused committed murder of the deceased Bharat on 27.01.2021 at about 11:00 P.M., in the basement room of under construction Hotel 'The Jungle Mountain Retreat', situated at Village Nambreli, Mundaghat, Tehsil and District Shimla, H.P. The accused allegedly physically assaulted and gave beatings to the accused with an iron angle, causing his death.

4. Learned counsel for the accused/appellant has vehemently submitted that learned trial Court committed a serious

error in passing the impugned judgment of conviction dated 28.11.2025 and order of sentence dated 01.12.2025. He has further submitted that there is merit in the appeal and the accused/appellant has a good case and fair chances of acquittal.

5. Per contra, learned Senior Additional Advocate General vehemently opposed the application submitting that the learned trial Court has committed no error while passing the impugned judgment. Learned trial Court has appreciated the material evidence on record in its right perspective and since the accused has been convicted for the commission of offence punishable under section 302 of IPC, being a heinous offence, therefore, the application is liable to be dismissed.

6. From perusal of Section 430 of BNSS, it is evident that save and except the matter falling under the category of sub-section (3), neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction.

7. The Hon'ble Supreme Court in **Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and Another, reported in (2012) 9 SCC 446**, has observed in para No. 30, as follows:

"30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction on liberty of the accused." (Emphasis supplied)

8. In **Bhagwan Rama Shinde Gosai and Others v. State of Gujarat, reported in (1999) 4 SCC 421**, wherein the appellants were convicted by the Trial Court against which, the appeal was pending before the High Court, the High Court successively rejected the prayer for grant of bail till the pendency of

appeal after suspending the sentence. Thus, it has been held as follows:

"3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. 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. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted." (Emphasis supplied)

9. In the case of **Atul Tripathi v. State of Uttar Pradesh and Others, reported in (2014) 9 SCC 177**, the Hon'ble Supreme Court apart from identifying the differences of consideration of prayer for grant of bail relating to pre-conviction stage as well as post-conviction stage, set down the principles to be followed therein.

10. In **Kishori Lal v. Rupa and Others, reported in (2004) 7 SCC 638**, the Hon'ble Supreme Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389 of the Cr.P.C. in cases involving serious offences like murder etc.

11. In **Vijay Kumar v. Narendra and Others reported in (2002) 9 SCC 364 and Ramji Prasad v. Rattan Kumar Jaiswal and Another reported in (2002) 9 SCC 366**, it was held by Hon'ble Supreme Court that in cases involving conviction under Section 302 of the IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted.

12. The aforesaid view is reiterated by Hon'ble Supreme Court in the case of **Vasant Tukaram Pawar v. State of Maharashtra reported in (2005) 5 SCC 281 and Gomti v. Thakurdas and Others reported in (2007) 11 SCC 160**.

13. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we

shall have to see that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal.

14. Furthermore, it is clearly settled that while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable, which is very apparent or gross on the face of the record. On the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable.

15. It is further a trite law that the Appellate Court should not reappreciate the evidence at the stage of Section 430 of BNSS, 2023 and try to pick up few lacunas or loopholes here or there in the case of the prosecution.

16. Now advertng to the factual matrix of the case; as per the prosecution allegations and accusations, the accused committed murder of deceased Bharat with an iron angle on 27.01.2021 at about 11:00 P.M. in the basement room of under construction Hotel 'The Jungle Mountain Retreat', at village Nambrela, Mundaghat, Tehsil and District Shimla, H.P.

17. The material facts relied upon by the prosecution in securing the conviction of the accused is the evidence of Anuj (PW-2), being an eye witness to the incident, medical evidence i.e. MLC of deceased Ext.P2/PW8, postmortem report Ext.P4/PW17, corroborated by the evidence of Dr. Mahesh Kumar (PW8) and Dr. Piyush Kapila (PW17). Perusal of the medical evidence and forensic expert's opinion reveals the cause of death as a result of antemortem traumatic brain injury, homicidal in nature.

18. As is evincible, the accused pursuant to his arrest and during the course of investigation, made disclosure statement under section 27 of the Indian Evidence Act (Ext.P1/PW-14) and in sequel thereof, the police effected recovery of the incriminating article i.e. the weapon of offence, mobile phone, motorcycle vide recovery and seizure memo is Ext.P2/PW-6 and Ext.P5/PW1. Apart from this, the police also managed to recover blood stained Quilt, Cap and Jacket from the spot vide recovery and seizure memo Ext.P3/PW1 and blood stained clothes of the accused vide recovery and seizure memo Ext.P2/PW-14.

19. Aforesaid incriminating evidence was sent for chemical examination to State Forensic Science Laboratory, Junga

and report thereof Ext.P11/PW-19 and DNA report Ext.P-12/PW19 were procured separately.

20. Having considered the settled legal principles and the ratio laid down by the Hon'ble Supreme Court in the judgments referred (supra), we are not embarking upon to reappraise the prosecution evidence at this stage. The material evidence referred herein above is sufficient to dis-entitle the accused from the benefit of section 430 of BNSS, 2023, therefore, we do not deem fit to accept the prayer of the accused.

Hence, the present application is dismissed being devoid of merits.

(Vivek Singh Thakur)
Judge

23rd September, 2026

(Sanjeev2)

(Bhupesh Sharma)
Judge