

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. M.P. No. : 2354 of 2026 in
Cr. A(C-DB) No. : 32 of 2026 &
Cr. M.P. No. : 1238 of 2026 in
Cr.A (C-DB) No. : 8 of 2026
Reserved on : 16.09.2026
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1. Cr. M.P. No.2354 of 2026 in Cr. A(C-DB) No. 32 of 2026.

Vishal Kumar

...Applicant/Appellant.

Versus

State of Himachal Pradesh.

...Respondent.

2. Cr. M.P. No. 1238 of 2026 in Cr.A (C-DB) No.8 of 2026.

Bhuru Ram & Anr.

...Applicants/Appellants.

Versus

State of Himachal Pradesh.

...Respondent.

Coram

Hon'ble Mr Justice Vivek Singh Thakur, Judge.

Hon'ble Mr Justice Ranjan Sharma, Judge.

Whether approved for reporting?¹

For the Petitioners : Mr. Bhupinder Singh Ahuja, Advocate
in Cr. M.P. No.2354 of 2026 in Cr.
A(C-DB) No. 32 of 2026.

Mr. Ashok K. Thakur, Advocate in Cr.
M.P. No. 1238 of 2026 in Cr.A (C-DB)
No.8 of 2026.

For the Respondents : Mr. Raj Negi, Deputy Advocate
General, for the respondent/State in
both the Cr.M.Ps.

Coram

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

The Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting?¹

Bhupesh Sharma, Judge

Both the aforesaid petitions are being disposed of by way of a common order, as the main Cr. Appeals have arisen out the same judgment passed by learned trial Court.

2. These applications, under section 430 of Bhartiya Nagrik Suraksha Sanhita, 2023 (for short 'BNSS'), have been preferred by the appellant/convict Vishal Kumar (hereinafter shall be referred to as 'A-1') and appellants/convicts Bhuru Ram and Monu Devi (hereinafter shall be referred to as 'A-2' and 'A-3' respectively), seeking suspension of sentence awarded to them by learned Special Judge, Fast Track Court (POCSO), Kangra at Dharamshala, District Kangra, H.P., vide judgment of conviction dated 28.11.2025 and order of sentence dated 12.12.2025, passed in Sessions Case No.07-D/VII/2024, in case FIR No.05 of 2024 dated 05.01.2024 for the commission of offences punishable under Sections 17 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') as under:-

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

Name of convict	Offence under Section	Sentence	In default of payment of fine
Vishal Kumar	6 of POCSO Act	Rigorous Imprisonment for a term of 20 years and fine of Rs.20,000/-	Rigorous Imprisonment for a term of one year.
Bhuru Ram	17 read with section 6 of POCSO Act	Rigorous Imprisonment for a term of 20 years and fine of Rs.10,000/-	Rigorous Imprisonment for a term of six months.
Monu Devi	17 read with section 6 of POCSO Act	Rigorous Imprisonment for a term of 20 years and fine of Rs.10,000/-	Rigorous Imprisonment for a term of six months.

3. In the present case, the accused Vishal Kumar (A-1) has been held guilty for commission of aggravated sexual assault on the minor Victim Child/ Prosecutrix 'S'. He committed penetrative sexual assault on the Victim Child/ Prosecutrix 'S' twice i.e. on the night intervening 2nd January, 2024 and 3rd January, 2024 at place village Bagdu, P.O. Basnoor, Tehsil Shahpur, District Kangra, H.P. and again on the night intervening 3rd January, 2024 and 4th January, 2024 at village Badla (Boharka), Bhali, Tehsil Jawali, District Kangra, H.P. The accused persons i.e. Bhuru Ram (A-2) and Monu Devi (A-3) being sworn maternal uncle and aunt of the Victim Child/ Prosecutrix 'S', abetted the offence of aggravated penetrative sexual assault on the minor Victim Child/ Prosecutrix 'S', by accused Vishal

Kumar (A-1) by abetting as well as by way of instigation. As per the accusations, the Victim Child/ Prosecutrix 'S' was brought from her elder sister by her father along with accused Bhuru Ram (A-2) at the house of A-1. The accused persons Bhuru Ram (A-2) and Monu Devi (A-3) performed engagement ceremony of Victim Child/ Prosecutrix 'S' with accused Vishal Kumar (A-1) and subsequently, they compelled her to sleep with the accused Vishal Kumar (A-1) on the night intervening 2nd January, 2024 and 3rd January, 2024 at place village Bagru, P.O. Basnoor, Tehsil Shahpur, District Kangra, H.P. and again on the night intervening 3rd January, 2024 and 4th January, 2024, at village Badla (Boharka), Bhali, Tehsil Jawali, District Kangra, H.P., during which period, she was subjected to forcible penetrative sexual assault by the accused Vishal Kumar (A-1).

4. Learned counsel(s) for the accused persons submitted that in the present case, *prima facie*, arguable points have arisen in the appeals in their favour on account of nature of evidence and apparent infirmities, therefore, there is every likelihood of the appeal being allowed, and he has a fair chance of acquittal. Learned counsel(s) for the accused persons also argued that the accused Bhuru Ram (A-2) and Monu Devi (A-3) got performed only

engagement ceremony of Victim Child/ Prosecutrix 'S' with accused Vishal Kumar (A-1) with the consent of her father with understanding that their marriage would be performed later on when the Victim Child/Prosecutrix 'S' would attain the age of majority. They have further disputed that the accused Vishal Kumar (A-1) committed rape/ aggravated penetrative sexual assault on the Victim Child/ Prosexutrix 'S' on the alleged dates.

5. Per contra, learned Deputy Advocate General, has submitted that the accused persons Bhuru Ram (A-2) and Monu Devi (A-3), being sworn maternal uncle and aunt of the Victim Child/ Prosecutrix 'S', abetted the commission of offence by the accused Vishal Kumar (A-1). Specific reference has been made to the testimonies of the witnesses i.e. Victim Child/ Prosecutrix 'S', examined as PW-1, her father, examined as PW5, her sister, examined as PW-6, her brother-in-law, examined as PW-7 and her brother examined as PW-9.

6. In order to appreciate the respective submissions raised by the parties, it may be necessary to refer to Section 430 of BNSS, which deals with the suspension of sentence.

7. 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.

8. 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)

9. 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)

10. 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.

11. 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.

12. 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.

13. 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.

14. It is further a trite law that the Appellate Court should not re-appreciate 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.

15. Now, advertent to the factual matrix of the case.

16. At the very outset, it may be pertinent to mention that the accused persons have neither denied nor disputed the fact that the Victim Child/ Prosecutrix 'S' was minor at the time of the alleged incidents. As per the evidence on record, the date of birth of the Victim Child/ Prosecutrix 'S' is 12.06.2006, therefore, she was aged 17½ years at the relevant time. It is also not in dispute that the Victim Child/ Prosecutrix 'S' (PW-1) at the relevant time was residing with her sister (PW-6) and her brother-in-law (PW-7), from where, she was taken to the house of the accused Vishal Kumar (A-1) on 02.01.2024 by her father (PW-5) and accused Bhuru Ram (A-2). It is

also not in dispute that the Victim Child/ Prosecutrix 'S' was got engaged to accused Vishal Kumar (A-1) at his house at village Bagdu, P.O. Basnoor, Tehsil Shahpur, District Kangra, H.P., where engagement ceremony was performed by the priest Prahlad Sharma (PW-10) and the ceremony was attended by the family members of the accused persons and the father of the Victim Child/ Prosecutrix 'S'. The photographs of the engagement ceremony are Ext.DA-1 and Ext.DA-2. It is further evident that on 03.01.2024, after engagement ceremony, the Victim Child/ Prosecutrix 'S' (PW-1) was taken from the house of the accused Vishal Kumar (A-1) to the house of the accused Bhuru Ram (A-2) and Monu Devi (A-3), where she stayed till the night of 04.01.2024.

17. It is alleged that the accused Vishal Kumar (A-1) after engagement ceremony subjected the Victim Child/ Prosecutrix 'S' to forcible sexual intercourse twice i.e. on the night intervening 2nd January, 2024 and 3rd January, 2024 at place village Bagdu, P.O. Basnoor, Tehsil Shahpur, District Kangra, H.P. and again on the night intervening 3rd January, 2024 and 4th January, 2024 at the house of the accused persons Bhuru Ram and Monu Devi.

18. Although, the Victim Child/ Prosecutrix 'S' in her evidence as PW1 has testified of she being subjected to forcible

sexual intercourse by the accused Vishal Kumar (A-1) twice i.e. on night intervening 2nd January, 2024 and 3rd January, 2024, at place village Bagdu, P.O. Basnoor, Tehsil Shahpur, District Kangra, H.P. and again on the night intervening 3rd January, 2024 and 4th January, 2024, however, the evidence on record fails to corroborate her testimony on this aspect. It is apparent that no injury was found in the private part of the Victim Child/ Prosecutrix 'S' by the Medical Officer Dr. Kritika (PW-14) in the MLC (Ext.P-1/PW-1), issued by her. As per her opinion, there were no signs of inflammation in labia minora and no injuries were observed on her body including her private parts. Furthermore, as per her opinion, in case, the hymen is torn in first time sexual activity, inflammation in labia minora and congested torn edges of hymen with tenderness, are generally observed for at least 3-4 days.

19. After carefully considering the factual matrix of the case and nature of evidence adduced by the prosecution and the findings recorded by the learned Special Judge, we are of the opinion that there are arguable points involved in the appeals which needs close appreciation. Without making any comments on the merits of the case, it appears that it is a fit case where the accused

persons can be given benefit of Section 430 of BNSS till the disposal of the appeal by this Court.

20. In the aforesaid peculiar facts and circumstances of the case, and in view of the provisions of Section 430 of the BNSS and the pronouncements of the Hon'ble Apex Court, the substantive sentence as well as the fine imposed upon the appellants-applicants are suspended, subject to their furnishing personal bonds in the sum of Rs.1(One) lakh each with one surety in the like amount each to the satisfaction of learned trial Court on or before **12.10.2026**, undertaking therein to appear before this Court as and when directed to do so and also to surrender, in case the appeal is dismissed, to serve the remaining sentence.

21. Any expression of opinion herein-above shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of these applications.

(Vivek Singh Thakur)
Judge

8th October, 2026

(sanjeev2)

(Bhupesh Sharma)
Judge