

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP (M) No. 1035 of 2026

Date of Decision: 25.06.2026

Akhilesh

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram:

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

***Whether approved for reporting?*¹ Yes.**

For the petitioner :

Mr. Rakesh Kumar Chaudhary and
Mr. Panku Choudhary, Advocates.

For the respondents:

Mr. Rajan Kahol & Mr. Vishal
Panwar, Additional Advocate
Generals with Mr. Ravi Chauhan &
Mr. Anish Banshtu, Deputy
Advocates General.

Sandeep Sharma, J. (Oral)

Bail petitioner, namely Akhilesh, who is behind the bars since 15.08.2025, has approached this Court in the instant proceedings filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, for grant of regular bail in case FIR No.84 of 2025, dated 15.08.2025, under Section 64 of Bhartiya Nyaya Sanhita, registered at Police Station, Manpura, District Solan, Himachal Pradesh. Respondent-State has filed status report and HC Vijay Chaudhary has come present with record. Record perused and returned.

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

2. Close scrutiny of the record/status report reveals that on 15.08.2025, police after having received information from CHC, Nalagarh that one girl has been brought for abortion, reached on the spot and recorded the statement of the victim/prosecutrix, aged 19 years (***name withheld to protect her identity***), wherein she alleged that while she was working in the company, she came in the contact of the bail petitioner, who hails from Bihar. She alleged that she and Akhilesh had become good friends and thereafter Akhilesh kept on sexually assaulting her on the pretext of marriage. She alleged that when she was five months pregnant took medicine for abortion, however her condition deteriorated and her sister brought her to the hospital. She alleged that now above named Akhilesh refused to solemnize marriage and as such, appropriate action, in accordance with law, be taken against him. In the aforesaid background, FIR, as detailed hereinabove, came to be lodged against the petitioner and he is behind the bars since 15.08.2025. Since challan stands filed in the competent Court of law and nothing remains to be recovered from the bail petitioner, he has approached this Court in the instant proceedings for grant of regular bail.

3. While fairly admitting factum with regard to filing of the challan in the competent Court of law, Mr. Ravi Chauhan, learned Deputy Advocate General, submits 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 deserve any leniency. He states that there is overwhelming evidence adduced on record suggestive of the fact that bail petitioner sexually assaulted the victim/prosecutrix against her wishes after her having consumed some intoxicating substance. Learned Deputy Advocate General further states that bail petitioner hails from the State of U.P and in the event of his being enlarged on bail, he may not only flee from the justice, but may also tamper with the prosecution evidence.

4. Having heard learned counsel for the parties and perused the material available on record, especially initial statement of the victim/prosecutrix recorded under Section 173 Bhartiya Nyaya Sanhita, this Court finds that she and bail petitioner had become friends, while both were working in the company. Victim/prosecutrix, who is major, had been joining the company of the bail petitioner of her own volition and without there being any external pressure. As per own statement of the victim/prosecutrix she wanted to solemnize marriage with the petitioner but before such proposal could be materialized, victim/prosecutrix became pregnant. Since bail petitioner refused to solemnize marriage, victim/prosecutrix took medicine for abortion, however,

she was brought to the hospital from where matter came to the notice of the police.

5. Though, Mr. Ravi Chauhan, learned Deputy Advocate General, while referring to the statement of the victim/prosecutrix recorded under Section 183 Bhartiya Nyaya Sanhita, stated that there was no consent, if any, of the victim/prosecutrix, rather bail petitioner made victim/prosecutrix to consume some intoxicating substance and thereafter, sexually assaulted her against her wishes, but perusal of the statement of victim/prosecutrix recorded under Section 183 of Bhartiya Nyaya Sanhita in its entirety, suggests intimacy interse the victim/prosecutrix and bail petitioner. As per aforesaid statement, while victim/prosecutrix was under influence of some intoxicating substance, bail petitioner sexually assaulted against her wishes on the pretext that in case she refuses, he would make her video viral, meaning thereby prior to aforesaid alleged incident, victim/prosecutrix and petitioner had been meeting, which fact has been otherwise substantiated from the initial statement of the victim/prosecutrix recorded under Section 173 Bhartiya Nyaya Sanhita. Though, statement of victim/prosecutrix recorded under Section 183 Bhartiya Nyaya Sanhita is to be read in evidence, but this Court cannot lose sight of the fact that two days prior to recording of the statement of victim/prosecutrix under Section 183 Bhartiya Nyaya Sanhita,

victim/prosecutrix, while making her statement under Section 173 Bhartiya Nyaya Sanhita, had given altogether different version, as has been recorded hereinabove.

6. Leaving everything aside, this Court after having noticed conduct of the victim/prosecutrix, which is apparent from her statement, as taken note hereinabove, this Court is not persuaded to agree with learned Deputy Advocate General that bail petitioner took advantage of innocence of the victim/prosecutrix, rather there is ample material suggestive of the fact that bail petitioner and victim/prosecutrix were closed friends and they want to solemnize marriage, but once bail petitioner refused to solemnize marriage, case, as detailed hereinabove, came to be registered against him.

7. Though, case against the petitioner shall be decided by the Court below in totality of evidence led on record by the prosecution, but keeping in view the aforesaid glaring aspect of the mater, this Court sees no reason to let the bail petitioner incarcerate in jail for indefinite period during trial, especially when he has already suffered for almost ten months. Moreover, this Court finds that FIR in the case at hand was lodged on 15.08.2025, but till date, prosecution has been able to examine 6 witnesses, out

of 20 prosecution witnesses, meaning thereby considerable time is likely to be consumed in the construction of the trial

8. Hon'ble Apex Court as well as this Court have held in catena of cases that one is deemed to be innocent till the time his /her guilt is not proved, in accordance with law. Since guilt of the petitioner is yet to be established on record by leading cogent and convincing evidence, there appears to be no justification to let the bail petitioner incarcerate in jail for indefinite period during trial, especially when he has already suffered for more than one year five months. Moreover, as has been taken note hereinabove, prayer made on behalf of the petitioner for grant of bail deserves to be considered on the ground of inordinate delay in conclusion of trial. If during aforesaid period petitioner is left to incarcerate in jail may not only amount to pre-trial conviction but also violate Article 21 of the Constitution of India. Apprehension expressed by the learned Deputy Advocate General that in the event of petitioner's being enlarged on bail, he may flee from justice, can be best met by putting the bail petitioner to stringent conditions as has been fairly stated by the learned counsel for the petitioner.

9. Hon'ble Apex Court in ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another***, Criminal Appeal No.2787 of 2024, decided on 03.07.2024, has categorically held that the right to a speedy trial is an integral facet of the fundamental right

guaranteed under Article 21 of the Constitution of India and that prolonged incarceration of an under trial cannot be justified merely on account of the gravity of the allegations. The Court observed that even where an accused is alleged to have committed a serious or heinous offence, such circumstance by itself cannot eclipse his constitutional right to a speedy trial. Relevant Paras of aforesaid judgment are reproduced herein below, which reads as under:

“7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are inclined to exercise our discretion in favour of the appellant herein keeping in mind the following aspects:

- (i) The appellant is in jail as an under-trial prisoner past four years;
- (ii) Till this date, the trial court has not been able to even proceed to frame charge; and
- (iii) As pointed out by the counsel appearing for the State as well as NIA, the prosecution intends to examine not less than eighty witnesses.

8. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor***, High Court reported in (1978) 1 SCC 240. We quote:

“What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [*R v. Rose*, (1898) 18 Cox] :

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

11. The same principle has been reiterated by this Court in **Gurbaksh Singh Sibba v. State of Punjab** reported in (1980) 2 SCC 565 that the object of bail is to secure the attendance of the accused at the trial, that 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 and that it is indisputable that bail is not to be withheld as a punishment.

12. Long back, in **Hussainara Khatoon v. Home Secy., State of Bihar** reported in (1980) 1 SCC 81, this court had declared that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and content of Article 21 as interpreted by this Court". Remarking that a valid procedure under Article 21 is one which contains a procedure that is "reasonable, fair and just" it was held that:

"Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of along delayed trial in violation of his fundamental right under Article 21."

13. The aforesaid observations have resonated, time and again, in several judgments, such as **Kadra Pahadiya & Ors. v. State of Bihar** reported in (1981) 3 SCC 671 and **Abdul Rehman Antulay v. R.S. Nayak** reported in (1992) 1 SCC 225. In the latter the court re-emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

“The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case maybe, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial.”

14. In ***Mohd Muslim @ Hussain v. State (NCT of Delhi)*** reported in 2023INSC 311, this Court observed as under:

“21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry’s response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State* reported in 1993Cri LJ 3242, as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional

the crime, more honour is paid to the criminal”(also see Donald Clemmer’s ‘The Prison Community’ published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

15. The requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 (hereinafter being referred to as “the 2008 Act”) mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the 2008.

16. A three-Judge Bench of this Court in ***Union of India v. K.A. Najeeb*** reported in (2021) 3 SCC 713] had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act and observed as under : (SCC p. 722, para 17)

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safe-guard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial

of bail or for wholesale breach of constitutional right to speedy trial.”

17. In the recent decision, **Satender Kumar Antil v. Central Bureau of Investigation** reported in (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, maybe, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency

should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

10. 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. The relevant paras of the aforesaid judgment are reproduced as under:

2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the

result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, 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. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to [Section 436](#) of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting [Section 436A](#) in [the Code](#) of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of [Article 21](#) of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in *In Re-Inhuman Conditions in 1382 Prisons*

11. Hon'ble Apex Court in **Sanjay Chandra** versus **Central Bureau of Investigation** (2012)¹ Supreme Court Cases 49 has held that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that 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.

12. In **Manoranjana Sinh alias Gupta** versus **CBI**, (2017) 5 SCC 218, Hon'ble Apex Court has held that the 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 also, normal rule is of bail and not jail. Apart from above, 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 Apex Court in **Prasanta Kumar Sarkar** versus **Ashis Chatterjee and another** (2010) 14 SCC 496, has laid down various principles to be kept in mind, while deciding petition for

bail viz. prima facie case, nature and gravity of accusation, punishment involved, apprehension of repetition of offence and witnesses being influenced.

14. In view of above, bail petitioner has carved out a case for himself. Consequently, present petition is allowed. Petitioner is ordered to be enlarged on bail, subject to furnishing bail bonds in the sum of Rs.2,00,000/- with two local sureties in the like amount each, to the satisfaction of the learned trial Court, besides the 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.
- (e) He shall surrender passport, if any, held by him.

15. 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.

16. 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 petition alone. The petition stands accordingly disposed of.

17. The petitioner is permitted to produce copy of 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.

(Sandeep Sharma)
Judge

June 25, 2026
(shankar)