

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. M.P. No. : 2607 of 2026 in
Cr. A(C-DB) No. : 82 of 2026
Reserved on : 23.09.2026
Date of decision: 30.09.2026
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Thakur Dass**...Applicant/Appellant.****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. Rajiv Rai, Advocate.******For the Respondent-State : Ms. Sharmila Patial, Additional Advocate General and J.S. Guleria, Deputy Advocate General.*****Bhupesh Sharma, Judge**

This application, under section 430 of Bhartiya Nagrik Suraksha Sanhita, 2023 (for short 'BNSS'), has been preferred by the appellant/convict (hereinafter shall be referred to as 'accused'), seeking suspension of sentence awarded to him by learned Special Judge, Kullu, District Kullu, H.P., exercising powers under The

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

Protection of Children from Sexual Offences Act, 2012 vide judgment of conviction dated 06.06.2026 and order of sentence dated 10.06.2026 passed in Sessions Trial No.04 of 2023 in case FIR No.290 of 2020 dated 02.10.2020 under Section 376 and 506 of the IPC and Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

2. The accused has been convicted under Sections 6 and 8 of the POCSO Act, 2012 and Section 506 IPC. He has been sentenced to undergo rigorous imprisonment for a term of 20 years and to pay a fine of Rs.50,000/- for the commission of an offence under Section 6 of the POCSO Act, to undergo rigorous imprisonment for a term of three years and to pay a fine of Rs.10,000/- for the commission of an offence under Section 8 of the POCSO Act and to further undergo simple imprisonment for a term of two years and to pay a fine of Rs.5,000/- for an offence punishable under Section 506 IPC. All the sentences were directed to run concurrently.

3. As per the prosecution allegations, the accused, being paternal uncle of the Victim Child/Prosecutrix 'C' (minor) aged 7 years, repeatedly subjected her to sexual abuse during the years

2019-20 till the matter was reported on 02.10.2020 by her parents with the SHO, Police Station Sadar, Kullu.

4. The learned counsel for the accused/appellant submitted that in the present case, *prima facie*, arguable points have arisen in the appeal in favor of the appellant/accused 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. The learned counsel made a specific reference to the compromise deed dated 03.10.2020 entered *inter se* the parties, and in pursuance thereof, a cancellation report was prepared by the Police and was presented in the Court of learned Special Judge, Kullu. The subsequent reviving of the proceedings arose due to the land dispute *inter se* the parties, whereby the complainant party filed objections before the learned Special Judge, and the matter was sent for re-investigation and filing of the final report under Section 173(8) Cr.PC against the accused.

5. To substantiate the aforesaid plea, the learned counsel for the applicant/appellant has referred to the compromise deed dated 03.10.2020 (Exhibit P-1/PW-3) and also to the statements of the parties i.e. the Victim Child/Prosecutrix 'C' examined as PW-3, her mother examined as PW-2, and her father examined as PW-8.

Apart from this, the statement of the Victim Child/Prosecutrix 'C' recorded under Section 164 Cr.PC on 03.10.2020 (Exhibit P-3/PW-3) has also been specifically referred to put across the aforesaid plea.

6. Per contra, learned Additional Advocate General and learned Deputy Advocate General have submitted that the compromise deed dated 03.10.2020, signed by the parents of the Victim Child/Prosecutrix 'C', was under family pressure, for which they never agreed voluntarily. Since the matter pertained to the family, therefore, they were compelled to settle the matter initially, but the accused did not mend his ways, therefore, the aforesaid recourse was taken against him. It was also pointed out that even if the compromise deed dated 03.10.2020 is read explicitly, it clearly indicates the involvement of the accused in assaulting the Victim Child/Prosecutrix 'C'; therefore, the aforesaid document cannot be said to be in favor of the accused/applicant.

7. 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.

8. 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.

9. 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)

10. 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)

11. 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.

12. 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.

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 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.

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

17. It is admitted case of the parties that the accused is the paternal uncle of the Victim Child/Prosecutrix 'C', and the families are residing jointly. As per the allegations, the accused taking undue advantage of his relationship, repeatedly subjected the Victim Child/Prosecutrix 'C' to sexual abuse. On 01.10.2020, the Victim Child/Prosecutrix 'C' disclosed to her mother that the accused had been repeatedly indulging in sexually abusing her for over one and a half years. The accused allegedly indulged in touching her private parts inappropriately and committed digital rape as per Section 3(a), 3(b), and 3(c) of the POCSO Act, 2012. Pursuant to the disclosure of the

facts, the matter was reported to the Police by the mother in consultation with her husband, and case FIR No. 290/2020 dated 02.10.2020 under Sections 376 and 506 of the IPC and Sections 6 and 10 of the POCSO Act was registered at Police Station Sadar, Kullu, District Kullu (H.P.) against the accused.

18. It transpires from the record that pursuant to the registration of the case FIR No. 290/2020, the parties entered into a compromise on 03.10.2020, wherein the matter was settled and the complainant party withdrew from taking legal action against the accused. Apparently, the aforesaid compromise (Exhibit P-1/PW-3) was entered into by the parties in consultation and under the influence of the family members. In pursuance thereof, the Victim Child/Prosecutrix 'C' also made a statement before the learned Judicial Magistrate First Class, Kullu on 03.10.2020, wherein she denied for being subjected to any sexual harassment. However, it appears that during the course of the proceedings of the cancellation of the FIR before the learned Special Judge, the complainant party impressed upon to pursue legal action against the accused since he failed to mend his ways despite the matter being compromised. The matter was reopened, the accused was challaned and put to trial, and subsequently convicted. Although it

has been argued that the matter is the outcome of personal enmity *inter se* the parties due to the land dispute, nevertheless, the aforesaid fact did not find mention in the compromise (Exhibit P-1/PW-3), which the parties entered *inter se* after registration of the FIR against him on 02.10.2020. All the material witnesses have been elaborately cross-examined in order to prove the factum of enmity, nevertheless, nothing is emerging on record that the parties were having animosity prior to the filing of the FIR on 02.10.2020.

19. The Victim Child/Prosecutrix 'C' examined as PW-3, her mother examined as PW-2, and her father examined as PW-8 have supported the prosecution allegations, which is further substantiated by her statement recorded under Section 164 Cr.PC on 28.10.2022 by the learned Judicial Magistrate First Class, Kullu, which is Exhibit P-3/PW-3. She has elaborately and explicitly put on record all the material facts regarding the incident and the nature of sexual assault committed upon her by the accused repeatedly over a period of one and a half years.

20. This Court, at this stage, finds no reason to disregard the statement of the Victim Child/Prosecutrix 'C' examined as PW-3 and her parents examined as PW-2 and PW-8, respectively. The contentious issues raised by the accused have been appropriately

dealt with by learned trial Court while recording findings in paragraph No. 61 of the impugned judgment.

21. Hence, taking into consideration, the aforesaid facts and circumstances, we are of the considered opinion that this is not a case where, *ex facie*, it appears that there is a likelihood of acquittal of the appellant at the time of final hearing. Therefore, the present application, being devoid of any merits, deserves dismissal. Ordered accordingly.

22. 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 this application.

(Vivek Singh Thakur)
Judge

30th September, 2026
(Kiran)

(Bhupesh Sharma)
Judge