

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP(M) No.1432 of 2026
Date of Decision: 01.09.2026

Deepak Kumar	Versus	Petitioner
State of Himachal Pradesh		Respondent

Coram:
The Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?¹ Yes.

For the Petitioner:	Mr. Anirudh R.H. Sharma, Advocate.
For the Respondent:	Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General and Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.
	ASI Pradeep Kumar, PS Dharampur, District Solan, Himachal Pradesh, present along with record.

Sandeep Sharma, J. (Oral)

Bail petitioner namely Deepak Kumar, who is behind the bars since 2.8.2025, has approached this Court in the instant proceedings filed under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023, for grant of regular bail in case FIR No.137/2025, dated 02.08.2025, under Sections 62, 65(1), 76, 115(2), 45, 132(2) and 127 of Bharatiya Nyaya Sanhita, 2023 and Sections 4, 12, 17 and 18 of Protection of Children from Sexual Offences Act, registered at PS Dharampur, District Solan, Himachal Pradesh.

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

2. Respondent/State has filed status report and ASI Pradeep Kumar, has come present along with record. Record perused and returned.

3. Victim-prosecutrix has also come present along with her elder sister. She states that she does not want to engage any lawyer, rather she will adopt the arguments advanced by the learned Deputy Advocate General appearing on behalf of the respondent-State.

4. Close scrutiny of status report/record reveals that on 02.08.2025, victim/prosecutrix, aged 14 years 9 months, lodged a complaint at Police Station Dharampur, stating therein that though she lives in Manali, but had come to Solan on account of surgery of her sister. She stated that since her schools were closed with effect from 12.08.2025 at Manali, she was living with her sister in a rented accommodation at Solan for a period of one month. She alleged that on 01.08.2025, Golu alias Kushal, who is her friend, gave her a telephonic call and also sent messages to come along with him. She alleged that at 12:00 PM, she along with her friend Kushal, who was already present on the road with vehicle, went towards Sukki Johari, from where, above named Golu alias Kushal took her to a room of his friend. She alleged that after 10 minutes of her arrival in the room, one unknown person appeared, who subsequently disclosed his name to be Deepak i.e. present bail

petitioner. She alleged that aforesaid person was under the influence of liquor and gave money to his friend Golu alias Kushal to bring food and after taking advantage of her being alone in the room, he attempted to sexually assault her. She alleged that above named person attempted to unclothe her, but she succeeded in coming out of the room and bolted herself inside the toilet. She alleged that she raised hue and cry and thereafter, one male and female came from the neighbourhood and rescued her. In the aforesaid background, FIR came to be lodged against present bail petitioner as well as co-accused Golu alias Kushal. Golu alias Kushal, who is a juvenile, already stands enlarged on bail on 11.8.2025, whereas present petitioner is behind bars since 02.08.2025.

5. Since challan stands filed in the competent Court of law and nothing remains to be recovered from him, prayer has been made on behalf of the petitioner for grant of regular bail.

6. Mr. Anirudh R.H. Sharma, learned counsel representing the petitioner states that more than one year has passed, but till date, prosecution has not been able to record the statement of victim/prosecutrix, who otherwise, despite repeated notices issued by the competent Court of law, has failed to come present, as a result thereof, petitioner is behind bars for an indefinite period. He states that otherwise also,

bare perusal of statement of victim/prosecutrix recorded under Section 183 BNSS nowhere suggests that harm, if any, was caused to her by the petitioner, rather she was brought to the room of the present bail petitioner by co-accused Kushal alias Golu, who already stands enlarged on bail. While referring to Section 35(2) of POCSO Act, 2012, learned counsel states that Special Court is under obligation to complete the trial as far as possible within a period of one year from the date of taking cognizance of the offence, but in the case at hand, mandate of aforesaid provision of law has not been complied with and as such, petitioner is entitled to be enlarged on bail. He states that since considerable time is likely to be consumed in conclusion of trial, no fruitful purpose would be served by keeping the bail petitioner behind bars.

7. While fairly admitting factum with regard to filing of challan in the competent Court of law, Mr. Ravi Chauhan, learned Deputy Advocate General states that though nothing remains to be recovered from the 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 attempted to sexually assault the victim/prosecutrix, who at the relevant time was minor and as such, no illegality can be said to have been committed by

police by registering FIR under relevant provisions of law. He states that prosecution has already examined two formal witnesses and for recording the statement of remaining witnesses, matter has been fixed on 17th, 18th, 19th and 20th November 2026, and as such, prayer made on behalf of the petitioner for grant of regular bail during pendency of trial cannot be accepted. However, learned Deputy Advocate General fairly admits that despite notice, victim/prosecutrix has failed to come present before the Court below for getting her statement recorded.

8. Having heard learned counsel for the parties and perused material available on record, this Court finds that victim/prosecutrix, who at the relevant time was minor, was brought to the room of the present bail petitioner by co-accused Golu alias Kushal and present bail petitioner, who is a taxi driver, reached his room after 10 minutes of the arrival of the victim/prosecutrix and co-accused Golu alias Kushal. As per own statement of victim/prosecutrix recorded under Section 183 BNSS, 2023, present bail petitioner committed no wrong with her, but she also alleged that while her friend Golu alias Kushal had gone to fetch food, present bail petitioner forcefully pulled her pants and thereafter attempted to sexually assault her, but she rescued herself by locking herself

in the toilet. No doubt, bail petitioner is accused of heinous crime, punishable under the relevant provisions of law as detailed herein above, but this Court cannot lose sight of the fact that he is behind bars for more than one year and till date, prosecution has not been able to record the statement of victim/prosecutrix. As per own case of prosecution, as has been fairly admitted by learned Deputy Advocate General, victim/prosecutrix, despite having received notice, failed to put in appearance before the Court below for getting her statement recorded. In the case at hand, challan was filed on 29.08.2025. If it is so, trial was required to be concluded within one year in terms of Section 35 of POCSO Act. In the instant case, charge was framed on 05.06.2026. After framing of charge, though dates repeatedly came to be fixed for recording the statement of prosecution witnesses, but fact remains that till date, prosecution has been able to record the statements of only two formal witnesses.

9. Victim/prosecutrix, who has come present before this Court to oppose the bail of the petitioner, has admittedly failed to come present before the Court below for getting her statement recorded, as a result thereof, petitioner is behind bars for an indefinite period, that too without his being held guilty. Though the bail petitioner is accused of heinous crime, but guilt, if any, of his is yet to be established on record by the

prosecution by leading cogent and convincing evidence. As such, this Court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial, especially when nothing remains to be recovered from him.

10. At this stage, this Court has to take note of Section 35(2) of POCSO Act, 2012, which reads as under:

“35(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.”

11. Bare perusal of aforesaid provision of law clearly reveals that Special Court is under obligation to complete the trial as far as possible within a period of one year from the date of taking cognizance of the offence. In the instant case, more than one year has passed, but till date, prosecution has not been able to record the statement of victim/prosecutrix. Though status report reveals that Court, after having recorded the statements of two formal witnesses, has fixed the matter in the month of November for recording the statement of remaining witnesses, but once it took almost one year for prosecution to record the statements of two formal witnesses, coupled with the fact that till date prosecution has not been able to record the statement of victim/prosecutrix, this Court has reason to believe that considerable time is likely to be consumed in conclusion of trial, as such, there appears to be no justification to let the bail petitioner incarcerate in jail for

an indefinite period during trial, which would not only amount to pre-trial conviction, but would also violate fundamental right of life and liberty guaranteed under Article 21 of the Constitution of India.

12. As per Section 35(1) of POCSO Act, the evidence of child shall be recorded within a period of thirty days of the Special Court taking cognizance of offence and reasons for delay, if any, shall be recorded by the Special Court. In the instant case, statement of child victim is yet to be recorded.

13. Hon'ble Supreme Court in **Alakh Alok Srivastava v. Union of India**, (2018) 17 SCC 291: (2019) 4 SCC (Cri) 184: 2018 SCC OnLine SC 478 observed that the trial of cases registered under POCSO Act be conducted expeditiously. Hon'ble Apex Court observed as under:

“25.3. The instructions should be issued to the Special Courts to fast-track the cases by not granting unnecessary adjournments and following the procedure laid down in the POCSO Act and thus complete the trial in a time-bound manner or within a specific time-frame under the Act.”

14. From the facts narrated hereinabove, it is clear that learned trial Court has not been able to conclude trial within the time provided under the Act and trial is not likely to be concluded in near future.

15. In **Mohd. Muslim v. State (NCT of Delhi)**, 2023 SCC OnLine SC 352, Hon'ble Apex Court held the right to

speedy trial to be constitutional right of an accused. The right of bail is curtailed on the premise that the trial would be concluded expeditiously. Hon'ble Apex Court held as under:

“13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in *Vaman Narain Ghiya v. State of Rajasthan*, [2008] 17 SCR 369; (2009) 2 SCC 281 ('the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....'). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in *Kartar Singh v. State of Punjab*, [1994] 2 SCR 375; (1994) 3 SCC 569 made observations to this effect. In *Shaheen Welfare Association v. Union of India*, [1996] 2 SCR 1123; (1996) 2 SCC 616 again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on:

a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an under trial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately

found innocent are not unnecessarily kept in jail for long periods.”

16. The Court highlighted the effects of pre-trial detention and the importance of speedy trial as under:

“22. Before parting, it would be important to reflect that laws which impose stringent conditions for the grant of bail, may be necessary in the 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 of 31st December 2021, over 5,54,034 prisoners were lodged in jails against a total capacity of 4,25,069 lakhs in the country[National Crime Records Bureau, Prison Statistics in India [https://ncrb.gov.in/sites/default/files/P SI-2021/Executive ncrb Summary-2021.pdf](https://ncrb.gov.in/sites/default/files/P%20SI-2021/Executive%20ncrb%20Summary-2021.pdf)]. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. 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**, 1993 Cri 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 7 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. '

24. 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'[Working Papers - Group on Prisons & Borstals - 1966 U.K.] (also see Donald Clemmer's 'The Prison Community' published in 1940[Donald Clemmer, The Prison Community (1968) Holt, Rinehart & Winston, which is

referred to in Tomasz Sobiecki, 'Donald Clemmer's Concept of Prisonisation', available at: https://www.tkp.edu.pl/wpcontent/uploads/2020/12/Sobiecki_sklad.pdf (accessed on 23rd March 2023). 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.”

17. In **Shaheen Welfare Assn. v. Union of India**, (1996) 2 SCC 616: 1996 SCC (Cri) 366 Hon'ble Apex Court held that a person cannot be kept behind the bars when there is no prospect of trial being concluded expeditiously. It was observed at page 621 as under:

“8. It is in this context that it has become necessary to grant some relief to those persons who have been deprived of their personal liberty for a considerable length of time without any prospect of the trial being concluded in the near future. Undoubtedly, the safety of the community and the nation needs to be safeguarded looking to the nature of the offences these undertrials have been charged with. But the ultimate justification for such deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged. If such a finding is not likely to be arrived at within a reasonable time some relief becomes necessary.”

18. Similarly, it was laid down by the Hon'ble Supreme Court in **Jagjeet Singh v. Ashish Mishra**, (2022) 9 SCC 321:

(2022) 3 SCC (Cri) 560: 2022 SCC OnLine SC 453 that no accused can be subjected to unending detention pending trial.

It was observed at page 335 as under:

“40. Having held so, we cannot be oblivious to what has been urged on behalf of the respondent-accused that cancellation of bail by this Court is likely to be construed as an indefinite foreclosure of his right to seek bail. It is not necessary to dwell upon the wealth of case law which, regardless of the stringent provisions in a penal law or the gravity of the offence, has time and again recognised the legitimacy of seeking liberty from incarceration. To put it differently, no accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory provisions expressly bar the grant of bail, such as in cases under the Unlawful Activities (Prevention) Act, 1967, this Court has expressly ruled that after a reasonably long period of incarceration, or for any other valid reason, such stringent provisions will melt down, and cannot be measured over and above the right of liberty guaranteed under Article 21 of the Constitution (see *Union of India v. K.A. Najeeb* [*Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, paras 15 and 17]).”

19. Hon’ble Supreme Court recently in **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.** Criminal Appeal No. 2787 of 2024 decided on 03.07.2024 observed that the right to speedy trial of the offenders facing criminal charges is an important facet of Article 21 of the Constitution of India and inordinate delay in the conclusion of the trial entitles the accused to grant of bail. Hon'ble Apex Court held as under:

“12 Long back, in *Hussainara Khatoon v. Home Secy., the 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 a speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long 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 may be, 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 a 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 a speedy trial on the ground that he did not ask for or insist upon a speedy trial.”

20. Hon'ble Apex Court in **Javed Gulam Nabi Shaikh** supra has observed that if the State or the prosecuting agency does not have wherewithal to protect fundamental right of accused to speedy trial, as enshrined under Art. 21 of the Constitution of India, it should not oppose plea for bail on the ground that offence allegedly committed is heinous. Hon'ble Apex Court referred to its judgments in **Union of India v. K.A. Najeeb**, (2021) 3 SCC 713, **Satender Kumar Antil v. Central Bureau of Investigation**, (2022) 10 SCC 51.

21. In **Manish Sisodia v. Enforcement Directorate**, 2024 SCC OnLine SC 1920, placing reliance upon **Javed Gulab Nabi Shaikh** reiterated the right of an accused to speedy trial. In **Jalaluddin Khan v. Union of India**, 2024 SCC OnLine SC 1945, Hon'ble Apex Court enlarged the accused on bail, on the ground of inordinate delay. In **Prem Prakash v. Union of India through the Directorate of Enforcement**, Petition for Special Leave to Appeal (Crl.) No. 5416 of 2024, Hon'ble Apex Court proceeded to enlarge the accused on bai, on the ground of delay in conclusion of trial, while relying upon **Ramkripal Meena v. Directorate of Enforcement**, SLP (Crl.) No. 3205 of 2024 dated 30.7.2024, **Javed Gulam Nabi Shaikh** supra, **Manish Sisodia**.

22. In the aforesaid judgments, Hon'ble Apex Court having taken note of all judgments passed in recent times, categorically held that bail is rule and jail is an exception. If all the judgments taken note herein above are read in conjunction, Hon'ble Apex Court has categorically held that court, while considering prayer for grant of bail, may not be impressed with arguments advanced by the prosecution, that charge against the person seeking bail is serious, but in case, court finds that on account of inordinate delay in conclusion of trial, fundamental right of speedy trial is being violated, it should proceed to grant bail. No doubt, in the case at hand, charge against the petitioner is serious, but there is no denial to the fact that bail petitioner is languishing in jail for more than eleven months, despite his not being held guilty.

23. In the aforesaid judgment, Hon'ble Apex Court has held that while considering the prayer for grant of bail, 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.

24. Consequently, in view of above, bail petitioner has carved out a case for himself, as such, present petition is

allowed. Bail petitioner is ordered to be enlarged on bail, subject to furnishing bail bonds in the sum of Rs.1.00 Lakh with one surety in the like amount, 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.”

25. 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.

26. 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.

A downloaded copy of this order shall be accepted by the learned trial Court, while accepting the bail bonds from the petitioner and in case, said court intends to ascertain the veracity of the downloaded copy of order presented to it, same may be ascertained from the official website of this Court.

(Sandeep Sharma)
Judge

1st September, 2026
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