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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1530 of 2026

Reserved on: 17.09.2026.

Decided on: 23.09.2026

Susheel Kumar

.... Petitioner

Versus

State of H.P.

.... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner : Mr K.B. Khajuria, Advocate.

For the Respondent/State : Mr Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 9 of 2025 dated 20.01.2025 registered at Women Police Station Chowari, District Chamba, H.P. for the commission of offences punishable under Sections 64(2), 77, 123, 137 (2), and 351(2) of Bharatiya Nyaya Sanhita (BNS) and Sections 4,

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

6 and 15 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. It has been asserted that the investigation is complete and the charge sheet has been filed before the Court. The allegations against the petitioner are false, and there is no material to connect him to the commission of the crime. The prosecution has cited 39 witnesses, out of whom statements of 2 witnesses have been recorded, and there is no likelihood of early conclusion of the trial. The petitioner would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

3. The petition is opposed by filing a reply asserting that the informant was born on 16.10.2006. She had gone to her cousin's house in July, 2023, where she met the petitioner. The petitioner recorded the video of the informant while she was taking a bath. He sent the video to the informant and asked her to make a video call to him. He asked the informant to remove her clothes during the video call. When she declined, he threatened to circulate the video taken by him. The victim did whatever was asked. The petitioner screen-recorded the video call. The petitioner threatened to make the videos

viral and entered into a sexual relationship with the victim. The victim made a complaint to the police. The police registered the FIR and investigated the matter. The police found the video recording, which was circulated on Instagram. The mobile phones were sent to the FSL, and the Instagram I.D and the video recording were found in the mobile phone. The police recorded the statements of witnesses and filed the charge sheet before the Court. The prosecution has cited 39 witnesses, out of whom the statements of 2 witnesses have been recorded. The matter was listed on 10.09.2026 and 11.09.2026. The prosecution evidence is yet to be recorded. The petitioner would intimidate the witnesses in case of his release on bail. Hence, it was prayed that the present petition be dismissed.

4. I have heard Mr K.B. Khajuria, learned counsel for the petitioner and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

5. Mr K.B. Khajuria, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The prosecution has cited 39 witnesses, out of whom the statements of two witnesses have been recorded. The trial is not likely to conclude soon. Section 35 (2) of the POCSO Act provides that

the Special Court shall complete the trial within 1 year from the date of taking cognisance of the offence. This provision has not been followed by the learned Special Judge, and there is no likelihood of the conclusion of the trial within 1 year. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail. He relied upon the judgment of this Court in *Manoj Kumar @ Manu vs. State of H.P.* 2025:HHC:24826 in support of his submission.

6. Mr Jitender Sharma, learned Additional Advocate General for the respondent/State, submitted that the petitioner is involved in the commission of a heinous offence, the statements of witnesses are being recorded, and the petitioner can intimidate the witnesses in case of his release on bail. Section 35 cannot be used for enlarging a person on bail as it is meant for the benefit of the victims. Therefore, he prayed that the present application be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. The parameters for granting bail were considered by the Hon'ble Supreme Court in *Pinki v. State of U.P.*, (2025) 7 SCC 314: 2025 SCC OnLine SC 781, wherein it was observed at page 380:

(i) Broad principles for the grant of bail

56. In *Gudikanti Narasimhulu v. High Court of A.P.*, (1978) 1 SCC 240: 1978 SCC (Cri) 115, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of personal liberty of a person under trial, has laid down the key factors that should be considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)

“7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence is also pertinent. The punishment to which the party may be liable, if convicted or a conviction is confirmed, also bears upon the issue.

8. *Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. [Patrick Devlin, “The Criminal Prosecution in England” (Oxford University Press, London 1960) p. 75 — Modern Law Review, Vol. 81, Jan. 1968, p. 54.]*

9. *Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.” (emphasis supplied)*

57. In *Prahlad Singh Bhati v. State (NCT of Delhi)*, (2001) 4 SCC 280: 2001 SCC (Cri) 674, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284-85, para 8)

“8. *The jurisdiction to grant bail has to be exercised on the basis of well-settled principles, having regard to the*

circumstances of each case and not in an arbitrary manner. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce *prima facie* evidence in support of the charge.” (emphasis supplied)

58. This Court in *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598: 2002 SCC (Cri) 688, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

“3. Grant of bail, though being a discretionary order, but, however, calls for the exercise of such a discretion in a judicious manner and not as a matter of course. An order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts do always vary from case to case. While the placement of the accused in society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, the same should always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — the more heinous is the crime, the greater is the chance of rejection of

the bail, though, however, dependent on the factual matrix of the matter.” (emphasis supplied)

59. In *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

60. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765, this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under: (SCC p. 499, para 9)

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*

(vii) *reasonable apprehension of the witnesses being influenced; and*

(viii) *danger, of course, of justice being thwarted by grant of bail.*” (emphasis supplied)

XXXXXXX

62. One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is *Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (*Pappu Kumar v. State of Bihar*, 2021 SCC OnLine Pat 2856 and *Pappu Singh v. State of Bihar*, 2021 SCC OnLine Pat 2857) of the High Court granting bail to the accused, observed as follows: (*Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170)], SCC p. 511, para 35)

“35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time, while considering an application for bail, courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record to enable a court to arrive at a *prima facie* conclusion. While considering an application for the grant of bail, a *prima facie* conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction *vis-à-vis* the offence(s) alleged against an accused.” (emphasis supplied)

9. Hon’ble Supreme Court held in *State of Rajasthan v. Balchand*, (1977) 4 SCC 308: 1977 SCC (Cri) 594: 1977 SCC OnLine SC 261 that the normal rule is bail and not jail, except where the gravity of

the crime or the heinousness of the offence suggests otherwise. It was observed at page 308:

2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also, the heinousness of the crime....”

10. The present petition has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

11. The status report mentions that the petitioner had recorded the video of the victim while she was taking a bath. He asked the victim to remove her clothes and recorded the video call made by him. This fact was confirmed in the report of the analysis, in which the video recording was found on the mobile phone. This video was circulated by the petitioner. The victim further stated that the petitioner had asked her to maintain a sexual relationship with her by threatening to make the video viral. The victim was born on 16.10.2006 and was a minor on the date of the incident. The

allegations in the FIR *prima facie* show the petitioner's involvement in the commission of the crime.

12. It was submitted that there is a delay in the progress of the trial and the petitioner is entitled to bail. Reliance was placed upon Section 35 of the POCSO Act. This submission will not help the petitioner. It was laid down by the 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 that the provision of Section 35 is not mandatory but directory. However, the Courts have to conduct the trial expeditiously without granting any adjournment. It was observed at page 298:

25. It is submitted by Mr Srivastava that in both the States, the cases are pending at the evidence stage beyond one year. We are absolutely conscious that Section 35(2) of the Act says "as far as possible...."

13. It was held by the Karnataka High Court in *Mohiddin v. State of Karnataka*, 2017 SCC OnLine Kar 5687 that the Court cannot grant bail on the ground of violation of Section 35 of the POCSO Act. It was observed:

10. Now, coming to the legal aspect of the case is concerned, I have perused provision Section 35(1) of the POCSO Act, which reads as under:

"35. Period for recording of evidence of child and disposal of case.-(1) The evidence of the child shall be recorded

within a period of thirty days of the Special Court taking cognisance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

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

It is true that, as per Section 35(1) of the said Act, the evidence of the child shall be recorded within a period of thirty days by the Special Court taking cognisance of the offence and the reasons for the delay, if any, shall be recorded by the Special Court. Admittedly, in this case, cognisance of the offence has been taken by the Court below on 20.01.2017 and within a period of 30 days, in compliance with Section 35(1) of the Act, the evidence of the victim girl is not recorded, but only on that ground, it cannot be said that the entire case of the prosecution is to be disbelieved or it is to be brushed aside and bail order is to be granted to the petitioner. Even if the evidence is not recorded within a period of thirty days, the concerned Court has to record the reasons for the delay, if any.

14. Similar is the judgment in *Hanumantha Mogaveera v.*

State of Karnataka, 2021 SCC OnLine Kar 12300: ILR 2021 Kar 3469:

wherein it was observed at page 3526:

41. Be that as it may. The second point of reference is whether the accused is entitled to be released on bail if the evidence of the child has not been recorded within a period of thirty days of taking cognisance of the offence or if the Special Court does not complete the trial within a period of one year from the date of taking cognisance. Such an interpretation would be an additional clause under the said provision and give an additional right to the accused. Even under Section 309 of Cr.P.C., the trial of the proceedings has to be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded. The proviso thereto has been amended with effect

from 03.02.2013, and the proviso thereto deals with trial relating to offence under Section 376 and related Sections of the Penal Code, 1860, wherein the trial has to be completed within a period of two months from the date of filing of the charge-sheet, as far as possible. Thus, the expression 'as far as possible' is also found in the proviso to sub-Section (1) of Section 309 of Cr.P.C. Section 309 of Cr.P.C. also speaks about the circumstances under which no adjournment could be granted. The use of the expression "as far as possible" is also on account of the fact that under Section 37 of the POCSO Act, the trial has to be conducted in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence. But if the Special Court is of the opinion that the child needs to be examined at a place other than the Court, it shall proceed to issue a commission in accordance with the provisions of Section 284 of Cr.P.C. In such a case, the circumstances under which a commission for examination of witness is issued under Section 284 of Cr.P.C. would apply, namely that if the child cannot be procured without an amount of delay, expense or inconvenience, but in the circumstances of the case, would be unreasonable, then the Special Court may dispense with such attendance and may issue a commission for the examination of witness in a place other than the Court. The provisions dealing with Commission for the examination of witness *mutatis mutandis* apply when the Special Court orders examination of the child at a place other than the Court. Therefore, in such circumstances, there may be delay in recording the evidence of the child within a period of thirty days of taking cognisance of the offence by the Special Court or even delay in completion of trial within a period of one year from the date of taking cognisance of the offence. In such an event, it cannot be treated as a default, which would enure to the benefit of the accused so as to give the accused a right to be released on bail.

42. It is observed that the object and purpose of Section 35 of the POCSO Act is for the benefit of the child victim and is not to be considered as an additional clause for the purpose of granting bail to the alleged perpetrator or the accused.

43. As discussed above, there may be various reasons and circumstances beyond the control of the Special Court under which the conclusion of the proceedings within a period of one year may not happen. As already noted, the reasons for the same have been discussed above. Under such circumstances, the accused cannot enforce the right to be released on bail. No such right is envisaged under the said provisions of the Act and the same cannot be read into it by way of an interpretation which may go against the interest of the child victim. If the aforesaid interpretation is to be made, then there would be every attempt made to delay the proceedings before the Special Court beyond the period of one year and seek release of the accused on bail. Such a position cannot be encouraged nor is it envisaged under the POCSO Act.

49. If, for reasons beyond the control of the Special Court, the evidence of the child is not recorded within the period of thirty days of the Special Court taking cognisance of the offence, or if the trial itself is not completed within a period of one year from the date of cognisance of the offence, the same cannot lead to the accused being released on bail. The object and purpose of Section 35 of the POCSO Act is to ensure that the victim child is secured from the trauma of trial of the case at the earliest so that she or he could be rehabilitated and reintegrated into society at the earliest. The said provision is not to be interpreted in favour of the accused so as to mandate release of the accused if, for any reason, evidence is not recorded within a period of thirty days of taking cognisance of the offence or the Special Court not completing the trial within a period of one year from the date of taking cognisance of the offence.

50. In our view, non-compliance with Section 35 of the POCSO Act cannot be the basis for releasing the accused on bail as that would be a misreading of the provision. One has to bear in mind the fact that the docket explosion under the POCSO Act is not commensurate with the sufficient number of Special Courts being constituted with the requisite human resources as well as infrastructure. It may be practically impossible for

the Trial Court to conclude the trial within one year from the date of cognisance by the said Court in a majority of the cases. But that does not give a right to the accused to seek bail for the reason that the mandate under Section 35 of the POCSO Act has not been completed.

15. The status report mentions that the prosecution has cited 39 witnesses, out of whom statements of 2 witnesses have been recorded. The matter was listed before the learned Special Judge on 10.09.2026 and 11.09.2026. The fact that the learned Trial Court has listed the matter on consecutive days for hearing shows the concern of the learned Trial Court to expeditiously dispose of the trial.

16. In *Manoj Kumar* (supra), the Co-ordinate Bench of the Court found that there was a delay in the progress of the trial and the petitioner was suffering from tuberculosis. It was held that in these circumstances, the continued detention of the petitioner therein was not justified. In the present case, the petitioner is not shown to be suffering from any serious ailment, and the cited judgment does not apply to the present case.

17. The status report mentions that the statements of witnesses have not been recorded. Therefore, releasing the petitioner on bail can result in the intimidation/influencing of the witnesses and is impermissible.

18. Therefore, the petitioner cannot be held entitled to bail at this stage.

19. In view of the above, the present petition fails and is dismissed. However, the petitioner is at liberty to file an application for bail in case it is found that the trial is not concluded expeditiously, despite the cooperation of the petitioner.

20. The observation made hereinbefore shall remain confined to the disposal of the instant petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

23rd September, 2026
(Nikita)