

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.924 of 2026
Date of Decision: 24.08.2026

Girish Chander	Versus	Petitioner
State of Himachal Pradesh		Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Servedaman Rathore, Advocate.

For the Respondent: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General, with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, J. *(Oral)*

By way of instant petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, petitioner-accused (hereinafter “**accused**”) has prayed for quashing/setting aside of order dated 28.07.2026 passed by the learned Additional Sessions Judge (Fast Track) POCSO, Sirmaur, H.P., whereby defence of the accused came to be closed.

2. Precisely, the grouse of the accused, as has been highlighted in the grounds of petition and further canvassed by Mr. Servedaman Rathore, learned counsel representing the accused, is that Court below, while passing order dated 13.07.2026, violated Section 233 of the CrPC (pari materia to Section 256 of the Bharatiya Nagarik Suraksha Sanhita), under which provision of law, the witnesses proposed by the accused are required to be summoned by the Court. However, in the instant case, Court

below, vide order dated 13.07.2026, directed the accused to cause presence of defence witnesses on self-responsibility.

3. Mr. Vishal Panwar, learned Additional Advocate General, while putting in appearance on behalf of respondent-State, states that there is no illegality or infirmity in the order impugned in the instant proceedings, because bare perusal of the same suggests that despite repeated opportunities, accused failed to produce the defence witnesses. He stated that once the petitioner had agreed to cause presence of defence witnesses on self-responsibility, he cannot be permitted to state that order dated 13.07.2026, laid challenge in the instant proceedings, is in violation of Section 233 of CrPC.

4. Having heard learned counsel representing parties and perused material available on record, vis-a-vis order dated 13.07.2026, whereby Court below, after recording the statement of the accused under Section 313 CrPC, directed the accused to lead defence evidence on 28.07.2026, this Court is persuaded to agree with learned counsel representing the accused that in terms of Section 233 CrPC, if the accused applies for the issuance of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. In the instant case, careful perusal of order dated 13.07.2026 clearly reveals that direction came to be

issued to the accused to produce the defence witnesses at self-responsibility.

5. Though at this stage, Mr. Vishal Panwar, learned Additional Advocate General, attempted to argue that no prayer in terms of Section 233(3) of CrPC ever came to be made at the behest of the accused to issue any process for compelling the attendance of any witness or production of any document, but having perused aforesaid order in its entirety, this Court is persuaded to agree with learned counsel representing the accused that Court below straightway, without apprising the accused with regard to his right to apply for issuance of process in terms of Section 233(3) of CrPC, proceeded to direct learned counsel representing the accused to produce evidence at self-responsibility.

6. Once accused had stated that he wanted to lead evidence in defence, Court below, while permitting the accused to furnish bonds under Section 437-A of CrPC, ought to have apprised him with regard to his right under Section 233(3) of CrPC to seek issuance of process, if any, for compelling the attendance of any witness. Since order dated 13.07.2026 came to be passed in violation of Section 233(3) of CrPC, subsequent orders, which otherwise have been laid challenge in the instant proceedings, may not be of much consequence and as such, same also deserve to be quashed and set aside.

7. Consequently, present petition is allowed and order dated 13.07.2026, inasmuch as accused came to be directed to produce defence

witnesses at self-responsibility, is quashed and set aside, with a direction to accused to file appropriate application for issuance of process in terms of Section 233 of CrPC within a period of one week from today, enabling Court below to issue process for causing presence of proposed defence witnesses. In case needful is not done within time stipulated by this Court, order dated 13.07.2026 shall automatically revive and no more opportunity shall be granted to the accused to lead defence evidence.

8. In view of aforesaid order passed by this Court, subsequent orders dated 28.07.2026 and 07.08.2026 are also quashed and set aside. Non-bailable warrants, if any, issued against the accused stand cancelled. The petition stands disposed of along with all pending applications.

August 24, 2026

Sunil

**(Sandeep Sharma),
Judge**