2026:HHC:48790

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. M.P. No. : 1208 of 2026 in
Cr. A(C-DB) No. : 45 of 2026
Reserved on : 27.10.2026
Date of decision: 05.11.2026
Uploaded on : 05.11.2026

Soni Kumar @ Sonu **…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]

For the Appellant **: *Mr. Jagjeet Singh Bagga, Advocate.***

For the Respondent-State **: *Mr. Raj Negi, 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 applicant/appellant/convict (hereinafter shall be referred to as 'accused'), seeking suspension of sentence awarded to him by learned Additional Sessions Judge, Fast Track Special Court (Rape/

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

POCSO), Kinnaur at Rampur Bushahr, District Shimla, H.P., vide judgment of conviction and order of sentence dated 18.12.2025 passed in Sessions Trial No.32/2024, titled as *'State of H.P. Vs. Soni Kumar @ Sonu'* in case FIR No.61/2024 dated 08.08.2024 under Section 137(2) and 64 of Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station Jhakri, District Shimla, H.P..

2. The accused was put to trial for the commission of the offences punishable under Sections 137(2) and 64 of BNS and Section 6 of POCSO Act by SHO Police Station Jhakri, District Shimla, H.P., before learned Additional Sessions Judge, Fast Track Special Court (Rape/POCSO), Kinnaur at Rampur Bushahr, District Shimla, H.P., in Sessions Trial No.32/2024, titled as *'State of H.P. Vs. Soni Kumar @ Sonu'.* The accused after his trial stood convicted for the commission of an offence punishable under Section 137(2) of BNS and Section 6 of POCSO Act, 2012, vide judgment of conviction and order of sentence dated 18.12.2025 as under:-

Sr. No.	Offence for which the convict has been convicted	Substantive sentence imposed	Fine imposed	Simple imprisonment in default of payment of fine

1.	Section 6 of POSCO Act	Rigorous imprisonment for a period of twenty years	Rs.10,000/- (Rupees ten thousand only)	two months
2.	Section 137(2) of BNS	Simple imprisonment for a period of three years	Rs.2,000/- (Rupees two thousand only)	One month

3. As per the prosecution allegations and accusations, on 26.01.2024 during the day time at place Jeori, Tehsil Rampur, District Shimla, H.P., the accused kidnapped the Victim Child/Prosecutrix 'A' minor aged 17 years from the lawful guardianship of her parents and thereafter subjected her to forcible sexual intercourse (penetrative sexual assault) on the night of 26.01.2024 in room No.111 of Amar Deep Guest House situated at New Bus Stand Rampur, Bushahr and thereafter repeatedly subjected her to forcible sexual intercourse (penetrative sexual assault) at village Barkal, PO Munish Bahli(Deothi), Tehsil Rampur Bushahr, District Shimla, H.P. w.e.f. 27.01.2024 to 29.07.2024.

4. Mr. Jagjeet Singh Bagga, learned counsel appearing for the accused/appellant submits that the accused has been falsely implicated by the Victim Child/Prosecutrix ‘A’ in the alleged incident and the learned trial Court without appreciating the facts of the case and evidence brought on record held him guilty for the commission of the offences punishable under Section 137(2) of BNS and

Section 6 of POCSO Act. It is submitted that the Victim Child/Prosecutrix ‘A’ accompanied the accused and stayed with him at his native village for about six months out of her own volition as she intended to marry him. She was never subjected to forcible sexual intercourse (penetrative sexual assault) during the said period by the accused. The evidence of the Victim Child/Prosecutrix ‘A’ does not inspire confidence and there is no medical or forensic evidence in support thereof. As per his submission there are fair chances of the accused being acquitted in the pending criminal appeal, therefore, considering his fair chances of acquittal, he needs to be enlarged on bail, till disposal of the criminal appeal.

5. Per contra, Mr. Raj Negi, learned Deputy Advocate General has strenuously opposed the application by submitting that the learned trial Court has committed no error while passing the impugned judgment. As per the evidence of the Victim/Prosecutrix ‘A’, she was kidnapped by the accused and thereafter, she was repeatedly subjected to forcible sexual intercourse (penetrative sexual assault) during the period w.e.f. 26.01.2024 to 29.07.2024. The evidence of the Victim/Prosecutrix ‘A’ inspires confidence and has been rightly relied upon by the learned trial Court. Furthermore, her evidence is supported by the evidence of her mother examined

as PW-1. Since the accused has been convicted in a heinous sexual offence, therefore, he deserves no indulgence of the Court for being released on bail pending the appeal.

6. The learned trial Court heavily relied upon the statement of the Victim Child/Prosecutrix 'A', examined as PW-2, her statement recorded by the Police under Section 180 of BNSS and her statement recorded by learned Additional Chief Judicial Magistrate, Rampur Bushahr, District Shimla, H.P., under Section 183 of BNSS (Ex.P5/PW2). Her testimony remained consistent without inconsistencies and major contradictions and was found to be of sterling quality.

7. Before embarking upon the factual matrix of the case, it may be pertinent to refer to the relevant case law, which is attracted while dealing with the application under section 430 of BNSS.

8. 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)*

9. 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)*

10. 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.

11. 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.

12. In **Preet Pal Singh v. State of Uttar Pradesh (2020) 8 SCC 645**, the Hon'ble Supreme Court observed as under:-

> *"35. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. and Anr. (supra). However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C."*

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. In order to ascertain whether the Victim Child/Prosecutrix ‘A’ is a “Child” as defined under Section 2(d) of the POSCO Act, 2012, the learned trial Court referred to the documents i.e. Matriculation Examination Certificate (Ex.P19/PW8 and Ex.PA) and the Certificate issued by the Principal Government Senior

Secondary School, Badhal (Ex.P25/PW11) wherein her Date of Birth is recorded as 15.09.2006. The aforesaid documents in our considered view are valid and legal proof of age as per Section 94(2) of Juvenile Justice Act, 2015 and as per Rule 12(3)(a)(ii) of Juvenile Justice Rule 2007. Therefore, the age of the Victim Child/Prosecutrix ‘A’ as on 26.01.2024 was 17 years 4 months and 11 days, therefore, she was minor at the time of alleged incident and a “Child” as per Section 2(d) of POCSO Act, 2012.

17. The Victim Child/Prosecutrix ‘A’ was examined as PW-2 and her mother ‘S’ examined as PW-1. The close scrutiny of the statements of these witnesses reveal that the Victim Child/Prosecutrix ‘A’ was repeatedly subjected to forcible sexual intercourse w.e.f. 26.01.2024 to 29.07.2024. Even if it is assumed that the sexual relationship between the Victim Child/Prosecutrix ‘A’ and the accused was consensual in nature, even then her consent is immaterial since she was a minor (Child) as per Section 2(d) of POCSO Act being below the age of 18 years at the relevant time. The act and conduct of the accused in keeping the Victim Child/Prosecutrix ‘A’ at his house for about six months is completely unjustified as there is nothing on record to interfere that he was unaware of minority of the Victim Child/Prosecutrix ‘A’. It is also

apparent that the Victim Child/Prosecutrix ‘A’ got pregnant and was administered the medicine to abort the pregnancy without medical opinion.

18. Having considered the said legal settled principles and the ratio of law laid down by the Hon’ble Supreme Court in the judgments referred supra and peculiar facts and circumstances of the case, we are of the opinion that the accused does not deserves to be given the benefit of Section 430 of BNSS.

19. Hence, the present application is dismissed being devoid of merits.

20. 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 the present application.

(Vivek Singh Thakur)
Judge

5th November, 2026

(Kiran)

(Bhupesh Sharma)
Judge