IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.380 of 2026
Date of Decision: 27.4.2026

Tara Chand

.....Petitioner

Versus

State of Himachal Pradesh

.....Respondent

Coram

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

For the Petitioner: Mr. Somesh Sharma, Legal Aid Counsel.

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

Sandeep Sharma, J. *(Oral)*

Bail petitioner namely Tara Chand, who is 44 years old and is behind bars since 21.5.2025, has approached this court in the instant proceedings filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, for grant of regular bail, in case FIR No. 46 of 2025 dated 21.5.2025, registered at Police Station Nirmand, District Kullu, Himachal Pradesh, under Sections 64(1), 333 and 351(2) of the Bharatiya Nyaya Sanhita, 2023 (in short "BNS").

2. Respondent-State has filed the status report under the signature of SHO, PS Nirmand, District Kullu, Himachal Pradesh, who has come present with record. Record perused and returned.

3. Close scrutiny of record/status report reveals that on 21.5.2025, complainant lodged a complaint at afore Police Station, alleging therein that on 5.5.2025, her mother, who is 65 years old i.e. victim-prosecutrix, was sexually assaulted against her wish by the petitioner. She alleged that her mother resides in the village alone and on the date of alleged incident, bail petitioner forcibly entered the house and sexually assaulted her against her wishes. In the afore background, FIR detailed herein above, came to be lodged against the petitioner on 21.5.2025 and since then, he is behind the bars. Since investigation in the case is complete and nothing remains to be recovered from him, bail petitioner has approached this Court in the instant proceedings for grant of regular bail.

4. While fairly admitting factum with regard to filing of the challan in the competent court of law, Mr. Rajan Kahol, learned Additional Advocate General, states that though nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of offence alleged to have been committed by him, he does not deserves any leniency. He states that there is overwhelming evidence on record suggestive of the fact that

accused taking advantage of old age of victim-prosecutrix, not only extended threats to her, but also sexually assaulted her against her wishes, as such, prayer made by the petitioner for grant of bail, deserves outright rejection. While admitting factum with regard to recording of statement of victim-prosecutrix, learned Additional Advocate General states that trial is at an advance stage and as such, it would not be in the interest of justice to enlarge the petitioner on bail, because in that event, he may cause harm to the victim-prosecutrix.

5. Having heard learned counsel for the parties and perused the material available on record, this Court finds that allegedly incident took place on 5.5.2025, but report qua the same came to be lodged on 21.5.2025, by daughter of the victim-prosecutrix, who alleged that on the date of the alleged incident, at about 10:00pm, bail petitioner forcibly entered the room of the victim-prosecutrix, who was living alone at her house, and thereafter, sexually assaulted her against her wishes. He also extended threats to victim-prosecutrix that if she discloses the afore fact to anybody, she will face the consequences. Since medical of the victim-prosecutrix was conducted after 15 days of the alleged incident, no cogent and convincing evidence came forth qua the alleged incident of rape. Statement of victim-prosecutrix has already been recorded in the trial

court, perusal whereof reveals that she has not supported the case of the prosecution, rather she has simply stated that bail petitioner may be pardoned. Having carefully perused statement of victim-prosecutrix recorded before the trial court, this court is persuaded to agree with learned Legal Aid Counsel that nothing specific has been stated by prosecutrix qua the alleged incident of sexual assault, if any, by the petitioner, rather repeatedly, it came to be stated by her that accused may be pardoned.

6. In view of the above, this Court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial, especially when he has already suffered for approximately for one year. Though case against the petitioner shall be decided in the totality of facts and evidence led on record by the prosecution, but keeping in view the aforesaid glaring aspect of the matter, this Court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial. Hon'ble Apex Court as well as this Court in catena of cases have repeatedly held that one is deemed to be innocent till the time guilt, if any, of his/her is not proved in accordance with law, as such, this Court sees no reason to curtail the freedom of the bail petitioner indefinitely during trial.

7. Needless to say, object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of

the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

8. The Hon'ble Apex Court in ***Sanjay Chandra versus Central Bureau of Investigation*** **(**2012)1 Supreme Court Cases 49; held as under:-

> *" The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India , it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."*

9. In **Manoranjana Sinh Alias Gupta** versus **CBI** 2017 (5) SCC 218, The Hon'ble Apex Court has held as under:-

> *" This Court in Sanjay Chandra v. CBI, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is neither punitive or preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him to taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care ad caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and the grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."*

10. Hon'ble Apex Court in Criminal Appeal No. 227/2018, **Dataram Singh** vs. **State of Uttar Pradesh & Anr.,** decided on 6.2.2018, has categorically held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. Hon'ble Apex Court further held that while considering prayer for grant of bail, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not

appearing when required by the investigating officer. Hon'ble Apex Court further held that if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case.

11. The Hon'ble Apex Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee and Another*** (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

> *(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.*

12. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, petitioner has carved out a case for grant of bail, accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to his furnishing personal bond in the sum of Rs.1,00,000/- with one local surety in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, with 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.

13. 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.

14. 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 application alone. The petition stands accordingly disposed of.

15. The bail petitioner is permitted to produce copy of the order downloaded from the High Court Website and the trial court shall not insist for certified copy of the order, however, it may verify the order from the High Court website or otherwise.

April 27, 2026 **(Sandeep Sharma),**
(manjit) **Judge**