IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 240 of 2014
Reserved on: 09.10.2026
Date of Decision: 26.10.2026.

Jaswant Singh ...Petitioner

Versus

State of H.P. ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] *No*

For the Appellant : Mr Neeraj Gupta, Senior Advocate with Mr Pranjal Munjal, Advocate.

For the respondent/State : Mr Ajit Sharma, Deputy Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 02.06.2014 passed by learned Additional Sessions Judge, Kullu, HP (learned Appellate Court) vide which the judgment of conviction dated 09.08.2012 and order of sentence dated 21.08.2012 passed by learned Chief Judicial Magistrate, Kullu (learned Trial Court) were upheld. *(The*

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

parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 279, 337 and 304A of the Indian Penal Code (IPC). It was asserted that the informant, Mehar Singh (PW7), was waiting for a bus on 28.08.2006 at Sharabai. A tanker bearing registration No. HR-68B-0061 and a scooter bearing registration No. PB-03J-3419 were going from Bajaura towards Bhuntar. The tanker hit the scooter at a high speed. The driver of the scooter, Rakesh Kumar and pillion rider Alam Chand (PW1) sustained injuries. They were referred to the hospital, where Rakesh Kumar succumbed to his injuries. An intimation was given to the police, and the police recorded an entry (Ext.PW6/A) in the daily diary. HC Upender Singh (PW10) went to the hospital for verification. He recorded the informant's statement (Ext.PW7/A) and sent it to the Police Station where FIR (Ext.PW10/G) was registered. Upender Singh (PW10) conducted the inquest on the dead body and sent the dead body to Regional Hospital, Kullu, for

postmortem examination. Upender Singh (PW10) seized the scooter bearing registration number PB-03J-3419 and tanker bearing registration number HR-68B-0061 vide memos (Ext.PW2/A and Ext.PW2/B). He prepared the site plan and took the photographs (Ext.PW10/B1 to Ext.PW10/B6), whose negatives are Ext.PW10/P7 to Ext.PW10/P12. Upender Singh (PW10) filed an application (Ext.PW10/C) for the postmortem examination of the deceased. Dr Mahesh Kapoor (PW3) conducted the postmortem examination and issued a report (Ext.PW3/A) stating that the deceased died of multiple injuries to the chest and head leading to shock and cardiorespiratory arrest. Dr Rakesh Mohan (PW4) conducted the medical examination of Alam Chand (PW1) and found that he had sustained multiple injuries which could have been caused in a Motor Vehicle accident. He issued the report (Ext.PW4/A). The mechanical examination of the tanker and scooter was conducted by Puran Chand, who found that there was no mechanical defect in them that could have led to the accident. Statements of witnesses were recorded as per their version, and after the completion of investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of offences punishable under Sections 279, 337 and 304-A of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined ten witnesses to prove its case. Alam Chand (PW1) was the pillion rider. Tikam Ram (PW2) did not support the prosecution case. Dr Mahesh Kapoor (PW3) conducted the postmortem examination of the deceased. Dr Rakesh Mohan Gautam (PW4) conducted the medical examination of Alam Chand (PW1). Suresh Kumar (PW5) is an eyewitness. HC Mohan Dass (PW6) proved the entry in the daily diary. Meher Singh (PW7) carried the dead body to the hospital. Constable Avtar Krishan (PW8) was informed about the accident. ASI Amar Singh (PW9) had visited the spot after the police was informed about the accident. Upender Singh (PW10) investigated the matter.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the prosecution case in its entirety. He claimed that a false case

was made against him. He did not produce any evidence in his defence.

6. The learned Trial Court held that the testimonies of Alam Chand (PW1) and Suresh Kumar (PW5) proved that the accused was driving the tanker which had hit the scooter moving ahead of the tanker. The negligence of the accused had led to the accident, and the scooter was dragged for some distance. The riders of the scooter had sustained injuries. Rakesh Kumar succumbed to the injuries, and Alam Chand sustained simple and grievous injuries. Hence, the learned Trial Court convicted and sentenced the accused as under:

Sections	Sentence
Section 279 of IPC	To undergo simple imprisonment for three months, pay a fine of ₹1000/- and in default of payment of fine, to undergo simple imprisonment for 10 days.
Section 337 of IPC	To undergo simple imprisonment for two months, pay a fine of ₹500/- and in default of payment of fine, to undergo simple imprisonment for 10 days.
Section 338 of IPC	To undergo simple imprisonment for one year, pay a fine of ₹1000/-

	and in default of payment of fine, to undergo simple imprisonment for 10 days.
Section 304A of IPC	To undergo simple imprisonment for two years, pay a fine of ₹2000/- and in default of payment of fine, to undergo simple imprisonment for 10 days.
All the substantive sentences of imprisonment were ordered to run concurrently.	

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Additional Sessions Judge, Kullu, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused was driving the tanker on the date of the accident, the tanker had hit the scooter and dragged it for some distance, which showed the negligence of the driver of the tanker, the mere fact that an independent witness had turned hostile was not sufficient to make the prosecution case doubtful, and there was no infirmity in the judgment and order passed by the learned Trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by learned Courts below, the accused has filed the present revision asserting that learned Courts below erred in appreciating the material on record. Two eyewitnesses had turned hostile. The testimonies of other witnesses lacked confidence, and the prosecution had failed to prove its case beyond reasonable doubt. Alam Chand (PW1) was moving ahead of the tanker and could not have seen the driver of the tanker, and his testimony was not sufficient to prove the guilt of the accused. Tikkam Ram (PW2) and Mehar Singh (PW7) had turned hostile, and they had not supported the prosecution version. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Neeraj Gupta, learned Senior Advocate, assisted by Mr Pranjal Munjal, learned counsel for the petitioner/accused and Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State.

10. Mr Neeraj Gupta, learned Senior Advocate for the petitioner/accused, submitted that the Learned Courts below

presumed that the accused was driving the tanker without any evidence. Aalam Chand (PW1) could not have identified the driver of the tanker as the scooter was moving ahead of the tanker and the other witnesses had turned hostile. Therefore, he prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

11. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the learned Courts below have concurrently held that the accused was driving the tanker which had hit the scooter moving ahead of the tanker. The tanker had dragged the scooter for a distance, which showed the negligence of the accused. This Court should not re-appreciate the evidence while deciding the revision. Hence, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** that a

revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:
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> > "**438. Calling for records to exercise powers of revision.—**(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
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> > *Explanation.* —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in the ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003,*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and

reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its

jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ..."

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in ***Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of NI Act, while setting aside the impugned order, observed as under:

"27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction,

> to upset the concurrent findings of the Trial Court and the Sessions Court."
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> **7.5.** In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

14. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. Tikam Ram (PW2) stated that the accident had not occurred in his presence. He was permitted to be cross-examined. He denied the previous statement that the driver of the tanker bearing registration No. HP-68B-0061 had hit the scooter. He denied that the accident had occurred because of the negligence of the accused present in the Court. Therefore, the testimony of this witness does not support the prosecution version.

16. Mehar Singh (PW7) stated that he saw a dead body at Sharabai. He carried the dead body to the hospital. He had not seen the accident. He was permitted to be cross-examined, and he denied that the tanker bearing registration No. HR-68B-0061 had hit the scooter bearing registration No. PB-03J-3419 at a high speed. He denied the previous statement recorded by the police. Thus, the testimony of this witness also does not prove the identity of the accused.

17. Alam Chand (PW1) stated that he and Rakesh Kumar were riding the scooter bearing registration No. PB-03J-3419. A tanker bearing registration No. HR-68B-0061 hit the scooter at a high speed. Rakesh Kumar died in the accident. The accident occurred because of the negligence of the accused present in the Court, whose name was found to be Jaswant after the accident. He stated in his cross- examination that no person had told him about Jaswant. He had seen the tanker and the tanker driver himself. The people were discussing the name of the tanker driver. He admitted that he had filed a claim petition and got ₹3.5 lac/- as compensation.

18. Suresh Kumar (PW5) stated that a tanker had hit the scooter and the scooter riders sustained injuries. The driver of the tanker ran away from the spot, and his name was subsequently found to be Jaswant. The accident occurred because of the negligence of the tanker driver. He could not identify the accused present in the Court because the accused had run away from the spot. He stated in his cross-examination that no incident had occurred in his presence.

19. The testimony of this witness that the driver had run away from the spot was not disputed by the prosecution by re-examining him or declaring him hostile. Therefore, the testimony of this witness is binding upon the prosecution. In similar circumstances, when a witness had supported the case of the defence, but was not re-examined by the prosecution to clarify his testimony, it was held in ***Ramsewak v. State of M.P.*, *(2004) 11 SCC 259: 2004 SCC OnLine SC 477*** that the benefit of the discrepancy would go to the defence. It was observed at page 265:

> "14.... Even assuming that there is some doubt as to the interpretation of this part of his evidence since the same is not clarified by the prosecution by way of re-examination, the benefit of doubt should go to the

> defence which has, in specific terms, taken a stand that the FIR came into being only after the dead body was recovered...."

20. It was held in ***Javed Masood v. State of Rajasthan*, *(2010) 3 SCC 538: (2010) 2 SCC (Cri) 1176: 2010 SCC OnLine SC 347*** that the defence can take advantage of any statement made in the cross-examination. It was observed at page 543:

> "20. In the present case, the prosecution never declared PWs 6, 18, 29 and 30 "hostile". Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence from relying on their evidence.
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> 21. This Court in ***Mukhtiar Ahmed Ansari v. State (NCT of Delhi) [(2005) 5 SCC 258: 2005 SCC (Cri) 1037]*** observed: (SCC pp. 270-71, paras 30-31)
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> > "*30.* A similar question came up for consideration before this Court in ***Raja Ram v. State of Rajasthan (2005) 5 SCC 272: 2005 SCC (Cri) 1050***. In that case, the evidence of the doctor who was examined as a prosecution witness showed that the deceased was being told by one *K* that she should implicate the accused or else she might have to face prosecution. The doctor was not declared 'hostile'. The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the doctor, and it was binding on the prosecution.
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> *31.* In the present case, evidence of PW 1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to the police, in which the police had gone to the Bahai Temple and apprehended the accused. When Goel did not support that case, the accused could rely on that evidence."

> The proposition of law stated in the said judgment is equally applicable to the facts in hand."

21. The testimony of this witness that the driver of the tanker had run away from the spot will also make the testimony of Alam Chand (PW1) doubtful because if the driver had run away from the spot, Alam Chand (PW1) would have no opportunity to see the accused and identify him in the Court. Further, Alam Chand (PW1) has not stated that he knew the accused before the incident, and the prosecution has relied upon his identification made in the Court. However, not much advantage can be derived from the identification made for the first time in the Court. Professor Rupert Cross has stated in his celebrated treatise, ***Cross on Evidence***, Fifth Edition, Butterworths, that identification of the accused for the first time in the dock is highly suspect. He observed:

> "It might be thought that in criminal cases there could not be better identification of an accused than that of a witness who goes into the box and swears that the man in the dock is the one he saw coming out of a house at a particular time, or the man who assaulted him. Nevertheless, such evidence is suspect where there has been no previous identification of the accused by the witness, and this is because its weight is reduced by the reflection that there is any degree of resemblance between the man in the dock and the person previously seen by him. The witness may very well think to himself that the police must have got hold of the right person,

> particularly if he has already described the latter to them, with the result that he will be inclined to swear positively to a fact of which he is by no means certain.
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> People have mistakenly identified friends and relations well known to them with sufficient frequency to make them question the propriety of convicting an accused person on nothing more than the visual identification of a single witness who may only have had a fleeting glance of him in poor light."

22. It has been stated in ***Halsbury's Laws of England 4th Edition Volume 2*** that the identification of the accused for the first time in the Court is improper and the witness should be asked to identify the accused in a prior test identification parade. It has been observed in para 363:

> "A witness shouldn't be asked to identify the defendant for the first time in the dock at his trial; and as a general practice, it is preferable that he should have been placed previously in a parade with other persons, so that potential witnesses may be asked to pick him up."

23. It was laid down by the Hon'ble Supreme Court in ***P. Sasikumar v. State of T.N., (2024) 8 SCC 600: (2024) 3 SCC (Cri) 791: 2024 SCC OnLine SC 1652*** that when the accused were not known to the witnesses on the date of the incident, their identification in the dock is not acceptable. It was observed on page 605:

> "**17.** The admitted position in this case is that the test identification parade (hereinafter referred to as "TIP")

was not conducted. All the prosecution witnesses who identified the accused in the Court, such as PW 1 and PW 5, were not known to the present appellant, i.e. Accused 2. They had not seen the present appellant before the said incident. He was a stranger to both of them. More importantly, both of them have seen the appellant/Accused 2 on the date of the crime while he was wearing a "green-coloured monkey cap"!

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21. It is well settled that TIP is only a part of the police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence, is only dock identification, that is, identification made by a witness in court during the trial. This identification has been made in court by PW 1 and PW 5. The High Court rightly dismissed the identification made by PW 1 for the reason that the appellant, i.e. Accused 2, was a stranger to PW 1 and PW 1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP, to admit the identification by PW 1 made for the first time in the court was not proper.

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23. We are afraid the High Court has gone completely wrong in believing the testimony of PW 5 as to the identification of the appellant. In cases where the accused is a stranger to a witness, and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (see: ***Kunjumon v. State of Kerala***, (*2012) 13 SCC 750: (2012) 4 SCC (Cri) 406*).

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27. In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP, which has not been done. The emphasis of TIP in a given case is of vital importance, as has been shown by this Court in the

recent two cases of ***Jayanv. State of Kerala, (2021) 20 SCC 38*** and ***Amrik Singh v. State of Punjab, (2022) 9 SCC 402: (2023) 2 SCC (Cri) 404***.

28. In ***Jayan v. State of Kerala, (2021) 20 SCC 38***, this Court disbelieved the dock identification of the accused therein by a witness, and while doing so, this Court discussed the aspect of TIP in the following words: (***Jayan v. State of Kerala, (2021) 20 SCC 38***, SCC p. 44, para 18)

"*18*. It is well settled that the TI parade is a part of the investigation, and it is not substantive evidence. The question of holding a TI parade arises when the accused is not known to the witness beforehand. The identification by a witness of the accused in the Court who has, for the first time, seen the accused in the incident of the offence is a weak piece of evidence, especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, the TI parade may make the identification of the accused by the witness before the Court trustworthy."

24. Therefore, the identification of the accused by the witnesses for the first time in the Court without any corroboration from previous Test Identification Parade is meaningless, and cannot be relied upon to record the conviction.

25. There is no other witness to the incident. Learned Courts below erred in relying upon the sole testimony of Alam Chand (PW1) when it was contradicted by the statement of Suresh Kumar regarding the presence of the tanker driver.

Therefore, the submission made on behalf of the accused has to be accepted as correct that the prosecution had failed to prove the identity of the accused as the driver of the tanker. Learned Courts below had not considered this aspect and had relied upon the sole testimony of Alam Chand (PW1) that the accused was driving the tanker at the time of the accident, which is not sufficient as noticed above.

26. In view of the above, the judgments and order passed by learned Courts below cannot be sustained. Hence, the present revision is allowed, and the accused is acquitted of the charged offences. The fine, if deposited, be refunded to the petitioner/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

27. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the petitioner/accused is directed to furnish personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned

Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

28. A copy of this judgment, along with the records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

26th October, 2026
(Nikita)