IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. M.P. No. : 1798 of 2026
in Cr.A. (C-DB) No. : 38 of 2026
Reserved on : 06.10.2026
Date of decision : 27.10.2026
Uploaded on : 27.10.2026

Rakesh Kumar @ Kaku Minhas
...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 applicant/appellant : Mr. N.S. Chandel, Sr. Advocate, with Mr. Sidharth, Advocate, vice Mr. Rajesh Verma, Advocate.

For the respondent-State : Mr. Raj Negi, Deputy Advocate General.

Bhupesh Sharma, Judge

This application under Section 430 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (for short 'BNSS') herein preferred by the applicant/convict (hereinafter referred to as the 'Accused-2'), seeking suspension of sentence

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

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awarded to him by learned Additional Sessions Judge, Palampur, District Kangra, H.P., vide judgment of conviction and order of sentence dated 29.11.2025/19.12.2025, in Sessions Case No. 30-P/VII/2023/2015, titled as 'State of Himachal Pradesh Vs. Rajesh Kumar @ Raja and another', in case FIR No. 22 of 2015, dated 17.02.2015, under Section 302/34 of the Indian Penal Code (for short 'IPC'), registered at Police Station Baijnath, District Kangra, H.P.

2. The accused and his co-accused Rajesh Kumar @ Raja (A-1) were put to trial for the commission of the offence punishable under Section 302 read with Section 34 of the IPC, by SHO Police Station, Baijnath before learned Additional Sessions Judge, Palampur, District Kangra, H.P., in Sessions Trial No. 30-P/VII/2023/2015, titled as 'State of H.P. Vs. Rajesh Kumar @ Raja and another'. The accused Rakesh Kumar @ Kaku Minhas (A-2) has been convicted alongwith his co-accused Rajesh Kumar @ Raja (A-1) for the commission of the offence punishable under Section 302 read with Section 34 of the IPC, vide judgment of conviction dated 29.11.2025 and have been sentenced, as under:-

Sr. No.	**Name of the Convicts**	**Offence under which accused is convicted**	**Sentence passed**	**Default Jail in view of Non payment of fine (as per Ss. 60, 65 and 66 of IPC)**
1.	Rajesh Kumar @ Raja	S.302 r/w S. 34 of IPC	Life imprisonment and fine of Rs. 1,00,000/- (rupees one lac only)	Six months of rigorous imprisonment
2.	Rakesh Kumar @ Kaku Minhas	S.302 r/w S. 34 of IPC	Life imprisonment and fine of Rs. 50,000/- (rupees fifty thousand only)	Three months of rigorous imprisonment

3. As per the prosecution allegations and accusations, on the intervening night of 16.02.2015 and 17.02.2015, at about 2:40 AM at Sansai-Chadhiyar, Tehsil Baijnath, District Kangra, H.P., the accused persons i.e. Rajesh Kumar @ Raja (A-1) and Rakesh Kumar @ Kaku (A-2) in furtherance of common intention physically assaulted and gave beatings to Sunil @ Siploo with baseball bat causing his death.

4. Mr. N.S. Chandel, learned Senior Counsel appearing for the convict (A-2) submits that there is no evidence whatsoever against the accused Rakesh Kumar @ Kaku (A-2). He has been falsely implicated in the alleged

crime and has been held guilty for the commission of the offence punishable under Section 302 read with Section 34 of the IPC and sentenced for life imprisonment. He has further submitted that there are very fair chances of the accused getting acquitted in the pending criminal appeal, therefore, considering his fair chance of acquittal, he needs to be enlarged on bail, pending the final disposal of his criminal appeal.

5. *Per contra*, learned Deputy Advocate General strenuously opposed the application, submitting that the learned Trial Court has committed no error while passing the impugned judgment. The facts and material on record have been duly considered and appreciated in the right perspective, leading to the conviction of the accused along with his co-accused for the commission of an offence punishable under Section 302 read with Section 34 of the IPC. Since the accused has been convicted in heinous offence, therefore, he deserves no indulgence of the Court for being released on bail pending the appeal.

6. From perusal of Section 430 of BNSS, it is evident that save and except the matter falling under the

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category of sub-section (3), neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction.

7. 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)

8. 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)*

9. 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.

10. 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.

11. In **Vijay Kumar v. Narendra and Others reported in (2002) 9 SCC 364, Ramji Prasad v. Rattan Kumar Jaiswal and Another reported in (2002) 9 SCC 366** ***and*** **Anil Ari v. State of West Bengal reported in (2009), 11 SCC 363,** it was held by Hon'ble Supreme Court that in cases involving conviction under Section 302 of the IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted.

12. It is well-settled, as observed in Vijay Kumar (supra), that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 of IPC, the Court should consider all the relevant factors, like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing a serious offence of murder. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.

13. The aforesaid view is reiterated by Hon'ble Supreme Court in the case of **Vasant Tukaram Pawar v. State of Maharashtra reported in (2005) 5 SCC 281, Gomti v. Thakurdas and Others reported in (2007) 11 SCC 160 and Atul Tripathi v. State of U.P. and Anr. reported in (2014) 9 SCC 177.**

14. 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.

15. 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.

16. 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.

17. Now adverting to the factual matrix of the case.

18. As per the prosecution allegations, accused and his co-accused Rajesh Kumar @ Raja (A-1), committed the murder of the deceased Sunil @ Siploo, on the night intervening 16.02.2015 and 17.02.2015, at 02:40 AM, at Sansai-Chadhiyar, Tehsil Baijnath, District Kangra, H.P. with baseball bat. The victim was allegedly physically assaulted by the accused persons in furtherance of common intention resulting in his death.

19. Learned Trial Court after considering circumstantial evidence, eyewitness accounts, admissions, forensic pathology, forensic biology/DNA and material analysis, extensive documentary and seizure/chain of custody evidence found involvement of both the accused persons in the incident i.e. committing murder of Sunil @ Siploo on the said day, time and place with the recovered weapon of offence.

20. Learned Trial Court in Paragraph No. 161 (xiii), held as under:-

> *"Needless to say that, Accused no.1, has evidently acted as an aggressor and without any sudden grave and sudden provocation, while taking possible undue*

advantage of a helpless intoxicated victim, he in furtherance of common intention, if not active participation of Accused No.2, has intentionally committed the murder."

21. This Court being the Appellate Court cannot embark upon the detailed and minute examination of the oral and documentary evidence adduced by the prosecution before the learned Trial Court while dealing with an application under Section 430 of BNSS, 2023. However, it may be necessary and imperative to refer to the material evidence in brief on the basis of which the accused persons stood convicted and sentenced by the learned Trial Court.

22. The prosecution in order to bring home the guilt against the accused persons examined 35 witnesses along with exhaustive documentary evidence collected during the course of investigation. Out of the said oral and documentary evidence, we would like to refer the statement of Surinder Rana (PW-3), working as salesman at Liquor vend, Chadhiyar, where the incident allegedly took place. The aforesaid witness in his statement has testified that on the night of the occurrence, three persons came on the spot in

two different cars. Although, he has failed to mention the registration number of the car, nevertheless, it is evident that two vehicles i.e. Alto Car No. HP-53A-0549 and Nano Car No. HP-53-3131, were taken into possession by the police during the course of investigation having been used in the commission of the crime. Similarly, the statement of Kamna Devi (PW-4), being the sister of the deceased Sunil @ Siploo, has testified that the accused Rakesh Kumar @ Kaku (A-2) came to her house on the night intervening 16.02.2015 and 17.02.2015, looking for the deceased and his aforesaid act and conduct was rather unusual and suspicious. Similarly, Piar Chand (PW-5) and Prem Singh (PW-13) have testified the presence of the accused persons with the deceased on the said night. It may be pertinent to refer to the statement of Prem Singh (PW-13), recorded under Section 164 of the Cr.P.C. (Exhibit-P1/PW-13) which explicitly refer to the sequence of events unfolding on the said night and involvement of the accused persons in physically assaulting and beating the deceased with the baseball bat resulting in his death.

23. It is further evident after going through the records that the police during the course of investigation, recovered bloodstained torn clothes of the deceased, vide memo Exhibit PW7/B. The police also recovered the bag of the deceased containing his belongings alongwith the weapon of offence, on the basis of the disclosure statement made by the accused Rajesh Kumar @ Raja (A-1), under Section 27 of the Evidence Act. The relevant documents in this regard are Exhibit PW10/B, Exhibit P13/PW7 and Exhibit PW9/L.

24. The medical evidence adduced by the prosecution i.e. MLC (Exhibit PW6/C), final opinion (Exhibit PW6/D), post-mortem report (Exhibit P24/PW30) and opinion (Exhibit P25/PW30), connects with the weapon of offence (Exhibit P10), with the injuries sustained by the deceased.

25. The medical evidence is further supported by the forensic evidence i.e. SFSL report (Exhibit P15/PW25), (Exhibit P16/PW26), (Exhibit P22/PW8), (Exhibit P77/PW31), (Exhibit P78/PW31) and (Exhibit P79/PW31).

26. Having considered the settled legal principles and the ratio of law laid down by the Hon'ble Supreme Court

in the judgments referred (supra), we are of the opinion that this is not a case, where, *ex-facie* appears a likelihood of acquittal of the appellant at the time of final hearing. Therefore, the present application being devoid of merits, deserves dismissal. Ordered accordingly.

27. 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 this application.

(Vivek Singh Thakur)
Judge

27th October, 2026
(sushma)

(Bhupesh Sharma)
Judge