IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. M.P. No. : 2233 of 2026
in Cri. A.(C-DB) No.: 71 of 2026
Reserved on : 17.11.2026
Date of decision : 23.11.2026
Uploaded on : 23.11.2026

Sabri …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/applicant:	**Mr. Sunil Dutt Gautam and Mr. Harmohan Thakur, Advocates.**
For the Respondent-State :	**Mr. Yashwardhan Chauhan, Senior Additional 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 Sabri (hereinafter referred to as the 'A-2'), seeking suspension of sentence, awarded to her by learned Additional Sessions Judge, Fast Track Special Court (Rape/POCSO), Sirmaur, District at Nahan, H.P. vide judgment of

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

conviction and order of sentence dated 21.05.2026, in Sessions Trial Case No.7-ST(P)/7 of 2024, titled as *'State of Himachal Pradesh vs. Sahil Tandan & Anr.'*, in case FIR No.3 of 2024 dated 11.01.2024, under Section 376 of Indian Penal Code and Sections 6 and 21 of the Protection of Children From Sexual Offences Act, 2012, registered at Police Station Nahan, District Sirmaur, H.P.

2. The accused Sabri (A-2) along with her co-accused Sahil Tandan (hereinafter referred to as the 'A-1') was put to trial for the commission of offences punishable under Section 376 of Indian Penal Code and Sections 6 and 21 of the Protection of Children From Sexual Offences Act, 2012, by the SHO, Women Police Station Nahan, District Sirmaur, H.P. before learned Additional Sessions Judge, Fast Track, Special Court (Rape/POCSO), Sirmaur District at Nahan, District Sirmaur, H.P. in Sessions Trial No.7-ST(P)/7 of 2024, titled as *'State of Himachal Pradesh vs. Sahil Tandan & Anr.*'. Both the accused persons after trial stood convicted for the commission of offences punishable under Sections 6, 17 and 21 of the Protection of Children From Sexual Offences Act, 2012 vide judgment of conviction and order of sentence dated 21.05.2026 as under:-

<u>Accused Sahil Tandan (A-1)</u>

Sr. No.	Offence for which the Accused Sahil Tandan (A-1) has been convicted	Substantive sentence imposed	Fine imposed	Simple imprison ment in default of payment of fine
1.	Section 6 of POSCO Act, 2012	Rigorous imprisonm-ent for a period of twenty years	Rs.20,000/- (Rupees Twenty Thousand Only)	One year.

Accused Sabri (A-2).

Sr. No.	Offence for which the accused Sabri (A-2) has been convicted	Substantive sentence imposed	Fine imposed	Simple imprison ment in default of payment of fine
1	Section 17 of the POSCO Act, 2012	Rigorous imprisonme-nt for a period of twenty years	Rs.5,000/- (Rupees Five Thousand Only)	One Yes.
2.	Section 21 of the POSCO Act, 2012	Simple imprisonme-nt for 6 months	Rs.1000/-	One Month

3. As per the prosecution allegations and accusations, the accused Sahil Tandan (A-1) during the period between January 2023 to September, 2023 at place Village Kaulawala Bhood, Tehsil

Nahan, District Sirmaur, repeatedly subjected the Victim Child/Prosecutrix 'R' minor aged 17 years to forcible sexual intercourse (penetrative sexual assault) resulting in her pregnancy and subsequently birth of a child.

4. The allegations against the accused Sabri (A-2) are that she was instrumental in facilitating meetings and telephone calls inter se the accused and Victim Child/Prosecutrix ‘R’ during the said intervening period and her co-accused Sahil Tandan (A-1) taking undue advantage of those meetings repeatedly subjected the Victim Child/Prosecutrix ‘R’ to forcible sexual intercourse (penetrative sexual assault) resulting in her pregnancy and subsequently birth of a child. She apparently abetted the commission of offence (Rape) and further failed to report the commission of offence to the family and Police.

5. Pertinently, accused Sabri (A-2), after investigation was found to have committed an offence under Section 21 of the Protection of Children From Sexual Offences Act, 2012, which is apparent after going through the Final Report under Section 173(2) Cr.P.C., filed by SHO, Women Police Station, Nahan, District Sirmaur, H.P. However, she was charged for the commission of offences punishable under Sections 17 and 21 of the Protection of

Children From Sexual Offences Act, 2012 by the learned trial Court vide order dated 11.06.2024.

6. The learned trial Court in para No.8 of the impugned judgment dated 21.05.2026 formulated following points for determination:-

1. *Prosecution proved beyond reasonable doubt that from January, 2023 to September, 2023, at Kaulawala Bhood, Tehsil Nahan, A-1 repeatedly committed rape over the victim against her will and without her consent and thereby committed an offence punishable under Sections 376(2)(n) IPC?*
2. *Prosecution proved beyond reasonable doubt that during the aforesaid period and place A-1 criminally intimidated the victim by threatening her to do away with her life in case, she will not terminate her pregnancy and thereby committed an offence punishable under Section 506 IPC?*
3. *Prosecution proved beyond reasonable doubt that during the aforesaid period and place A-1 committed repeat penetrative sexual assault over the victim and thereby committed an offence punishable under section 6 of the POCSO Act?*
4. *Prosecution proved beyond reasonable doubt that from January, 2023 to September, 2023, at Kaulawala Bhood, Tehsil Nahan, A-2 instigated A-1 or intentionally aided him by any act or illegal omission the doing of offence of penetrative sexual assault by him over the victim and abetted the commission of offence of penetrative sexual assault and thereby committed an offence punishable under section 17 of the POCSO Act?*
5. *Prosecution proved beyond reasonable doubt that during the aforesaid period and place A-2 failed to report the commission of offence of rape*

over the victim by A-1 resulting into her pregnancy in which A-2 himself abetted him to commit the offence and thereby committed an offence punishable under Section 21 of the POCSO Act?

6. Final Order.

7. This Court is presently dealing with application under Section 430 of BNSS preferred by the accused Sabri (A-2), therefore, the record of the learned trial Court and the findings rendered in the impugned judgment dated 21.05.2026 with respect to accused Sabri (A-2) are being considered.

8. The learned trial Court while recording findings on points No.4 and 5 in para No.34 onward in the impugned judgment has discussed the role and complicity of the accused Sabri (A-2) in the commission of the offences with the support of relevant case law. The learned trial Court apparently heavily relied upon the evidence of the Victim Child/Prosecutrix ‘R’, examined as PW3, her Uncle ‘R’ examined as PW4 and her Aunt ‘M’ examined as PW6. Apart from this, reliance has been placed upon the Call Detail Records Ext.P7/PW13.

9. 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.

10. 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)*

11. 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)*

12. 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.

13. 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.

14. 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."*

15. 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.

16. 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.

17. 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.

18. The learned trial Court took note of the fact that accused Sabri (A-2) was instrumental in facilitating meetings and telephone calls *inter se* the accused Sahil Tandan (A-1) and the Victim Child/Prosecutrix ‘R’ (PW3)during the intervening period, more specifically during night time and used to call the Victim Child/Prosecutrix ‘R’ to her house for night support in absence of her husband. Therefore, the aforesaid act on the part of the accused Sabri (A-2) amounts to active instigation through intentional aid or illegal means. Furthermore, heavy reliance has been placed on the Call Detail Records Ext.P7/PW13.

19. There is no denial of the fact that the Victim Child/Prosecutrix ‘R’ (PW3) was repeatedly subjected to forcible sexual intercourse (penetrative sexual assault) by Sahil Tandan (A-1), which has resulted in her pregnancy and subsequently birth of a child. However, role and complicity of the accused Sabri (A-2) in the commission of offence punishable under Sections 17 and 21 of the Protection of Children From Sexual Offences Act, 2012 is to be reconsidered by this Court while hearing her appeal on merits. Whether Victim Child/Prosecutrix ‘R’ used to meet the accused

Sahil Tandan (A-1) during night hours under instigation, aid and abetment of accused Sabri (A-2) or of her own volition, is a fact under re-consideration/re-appreciation before this Court. Also use of Cellphone of accused Sabri (A-2) by the Victim Child/Prosecutrix ‘R’ (PW3) does not necessarily establish that the accused Sabri (A-2) was facilitating for fostering relationship *inter se* the Victim Child/Prosecutrix ‘R’ and the accused Sahil Tandan (A-1).

20. Needless to mention that the accused Sabri (A-2) is aged 26 years and was on bail during the course of trial.

21. Having considered the facts of the case and the evidence on record as well as the findings recorded by the learned trial Court, this Court is satisfied that the accused Sabri (A-2) is entitled to be given the benefit of Section 430 of BNSS.

22. In the aforesaid peculiar facts and circumstances of the case, and in view of the provisions of Section 430 of the BNSS and the pronouncements of the Hon'ble Apex Court, the substantive sentence as well as the fine imposed upon the accused Sabri (A-2) are suspended, subject to her furnishing personal bonds in the sum of Rs.50,000/- (Rs. Fifty Thousand Only) with one surety in the like amount to the satisfaction of learned trial Court on or before **11.12.2026** undertaking therein to appear before this Court as and

when directed to do so and also to surrender, in case the appeal is dismissed, to serve the remaining sentence.

23. 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

23rd November, 2026
(sanjeev)

(Bhupesh Sharma)
Judge