2026:HHC:47535

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. M.P. No. : 3345 of 2026
in Cri. Appeal No. : 167 of 2025
Reserved on : 26.10.2026
Date of decision 30.10.2026
Uploaded on : 30.10.2026

Chaman Singh …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. Kulbhushan Khajuria, Advocate.

For the Respondent-State : Ms. Sharmila Patial 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 (hereinafter referred to as the 'accused'), seeking suspension of sentence, awarded to him by the learned Special Judge, Chamba, District Chamba, H.P. vide judgment of conviction and order of sentence dated 18.03.2025, in

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

Sessions Trial Case No.6 of 2020, titled as *'State of Himachal Pradesh vs. Chaman Singh'*, in case FIR No.30 of 2020 dated 14.03.2020 under Sections 366A and 376 of Indian Penal Code (for short 'IPC') and Section 4 of the Prevention of Children From Sexual Offences Act, 2012 (for short 'POCSO'), registered at Police Station Tissa, District Chamba, H.P.

2. The accused was put to trial for the commission of offences punishable under Sections 366A and 376 of IPC and Section 4 of POCSO Act, 2012 by the SHO, Police Station Tissa, District Chamba, H.P. before learned Special Judge, Chamba, District Chamba, H.P. in Sessions Trial No.6/2020, titled as *'State of Himachal Pradesh vs. Chaman Singh*'. The accused after his trial stood convicted for the commission of the offences punishable under Sections 376(1) of IPC and under Section 4 of POCSO Act, 2012, vide judgment of conviction and order of sentence dated 18.03.2025, whereby he was sentenced to undergo rigorous imprisonment for a term of ten years and to pay a fine of Rs.20,000/- and in default of payment of fine to further undergo simple imprisonment for a term of six months.

3. As per the prosecution allegations and accusations, on 09.03.2020, at about 04:00 A.M., at Village Bedka, Tehsil Churah,

District Chamba, H.P., the accused induced the Victim Child/Prosecutrix 'UK' minor aged 16 years (Date of Birth 01.01.2004), to leave her parental home with intent and knowledge that she may be forced into illicit sexual intercourse. On the night intervening 10.03.2020 and 11.03.2020, at Jharmajri (Baddi), District Solan, H.P., the accused subjected her to forcible sexual intercourse (penetrative sexual assault).

4. Mr. Kulbhushan Khajuria, learned counsel appearing for the accused submits that the accused has been falsely implicated in the present case by the Victim Child/Prosecutrix 'UK' and her parents. It is denied that the accused forcibly took the Victim Child/Prosecutrix 'UK' out of the lawful guardianship of her parents with intent and knowledge that she may be forced into illicit sexual intercourse. The facts alleged by the prosecution are not well substantiated on the basis of oral and documentary evidence brought on record. It is further submitted that the Victim Child/Prosecutrix 'UK' was never subjected to forcible sexual intercourse by the accused and there is no evidence whatsoever in support thereof. The evidence of the Victim Child/Prosecutrix 'UK' does not inspire confidence, therefore, the conviction recorded by the learned trial Court on the basis of her sole testimony suffers from

infirmity and perversity and is liable to be set aside. It is submitted that 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 trial.

5. Per contra, Ms. Sharmila Patial, learned Additional Advocate General opposed the application by submitting that the learned trial Court has committed no error while passing the impugned judgment and the findings of the learned trial Court are based on proper appreciation of oral and documentary evidence and inspires confidence. The evidence of the Victim Child/Prosecutrix 'UK' has been rightly relied upon by the learned trial Court. Furthermore, her evidence is supported by the evidence of her cousin examined as PW-2 and her father examined as PW-3. Since, the accused has been convicted in a heinous sexual offence involving a minor, therefore, he deserves no indulgence of the Court for being released on bail pending the appeal.

6. As per the prosecution case, the Date of Birth of the Victim Child/Prosecutrix 'UK' is 01.01.2004, therefore, at the time of alleged incident, she was minor.

7. It is admitted case of the prosecution that the Victim Child/Prosecutrix 'UK' and the accused had prior acquaintance being friends for over a year, being students of the same school i.e. Government Senior Secondary School, Bairagarh, Tehsil Churah, District Chamba, H.P. On 09.03.2020, at about 04:00 A.M., she left her parental house to accompany the accused of her own volition and later travelled from her Village to Bhanjraru and thereafter to Chamba, thereafter to Ambala, thereafter to Baddi and to Pathankot (Badhani) w.e.f. 09.03.2020 to 12.03.2020. Later, she was recovered by the police at Pathankot (Badhani) along with the accused and was brought to Police Station Tissa. The Victim Child/Prosecutrix 'UK' initially denied any overt act on the part of the accused in sexually assaulting her. As per her version, she accompanied and travelled with the accused at various places during intervening period of her own volition. However, later, she disclosed to her sister on persuasion, of having interacted sexually with the accused.

8. On 14.03.2020, the matter was reported to the police at Police Station Tissa and on the basis of statement of the Victim Child/Prosecutrix 'UK' recorded under Section 154 Cr.P.C, case FIR No.30 of 2020 dated 14.03.2020 under Sections 366A and 376 of

IPC and Section 4 of POCSO Act, 2012 was registered against the accused at Police Station Tissa, District Chamba, H.P.

9. Although, the Victim Child/Prosecutrix 'UK' has alleged that the accused committed forcible sexual intercourse (penetrative sexual assault) against her will and without her consent on 10.03.2020 at Jharmajri (Baddi), nevertheless, her version is to be assessed keeping in view the other corroborative evidence led by the prosecution. Since, the accused has been convicted on the basis of sole testimony of Victim Child/Prosecutrix 'UK', therefore, her evidence assume much importance.

10. 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.

11. 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)*

12. 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)*

13. 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.

14. 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.

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. Now adverting to the facts of the case and the evidence adduced by the prosecution in support thereof.

19. Charge against the accused under Section 366A IPC was not proved during the course of trial on the basis of oral and documentary evidence, therefore, the learned trial Court acquitted

him for the said offfence. Accordingly, this Court is not touching upon the aforesaid aspect of the matter.

20. The factum whether the Victim Child/Prosecutrix 'UK' was subjected to forcible sexual intercourse (penetrative sexual assault) on 10.03.2020 during night time at Village Jharmajri (Baddi), District Solan, H.P., the evidence adduced by the prosecution needs to be considered.

21. Exhibit PW1/A is the statement of the Victim Child/Prosecutrix 'UK', recorded by the Police under Section 154 Cr.P.C., wherein, she has put on record the facts regarding the incident and involvement of the accused therein. Similarly, Exhibit PW1/D is the statement of the Victim Child/Prosecutrix 'UK' recorded under Section 164 Cr.P.C. by the learned Judicial Magistrate 1st Class, Tissa, District Chamba, H.P. Careful perusal of the aforesaid evidence reveals that there are material improvements in the subsequent statement of the Victim Child/Prosecutrix 'UK', which does not find mention in her initial statement. It is also evincible that the Victim Child/Prosecutrix 'UK' initially denied any overt act on the part of the accused in sexually assaulting her, but later on, she disclosed the factum of sexual assault, to her sister (PW-2). The reason and explanation put forth by the Victim Child/Prosecutrix 'UK'

for initially denying the involvement of the accused appears to be incomprehensible and apparently after thought to meet out a valid justification.

22. As per the version of the Victim Child/Prosecutrix 'UK' (PW-1), the accused subjected her to forcible sexual assault (penetrative sexual assault) during the night of 10.03.2020 at Village Jharmajri (Baddi), District Solan, H.P. The police during the course of investigation got the spot identified form her and also took into possession bed sheet (Ext.P-1) from the room, where the offence was allegedly committed, for the purpose of forensic examination vide memo Ext.PW1/B. The said article was duly secured, sealed and then sent to Regional Forensic Science Laboratory (NR) Dharamshala along with other samples and clothes of the Victim Child/Prosecutrix 'UK' (PW-1).

23. Furthermore, she was subjected to medical examination on 15.03.2020 at Pandit Jawahar Lal Nehru Medical College and Hospital, Chamba, District Chamba, H.P. She was medically examined by Dr. Shilpa Katoch (PW-20). As per the evidence of aforesaid witness, there was no evidence of recent forcible sexual intercourse. Also, the Regional Forensic Science Laboratory Report (NR) Dharamshala No.581 RFSL BIO(63)2020

dated 08.05.2020 also fails to suggest the factum of forcible sexual intercourse having been taken place. As per the said report, blood and semen were not detected in exhibit-1a (bra, UK), exhibit-1b (underwear, UK), exhibit-2a (vaginal swab, UK), exhibit-2b (pubic hair, UK), exhibit-2d (UPT kit, UT), exhibit-2e (vaginal slides, UK), exhibit-3 (bedsheet), exhibit-5a (underwear, Chaman Singh), exhibit-5b (penile swab, Chaman Singh), exhibit-5c (scalp hair, Chaman Singh), exhibit-5d (pubic hair, Chaman Singh) and exhibit-5f (smegma swab, Chaman Singh).

24. Therefore, considering the medical and forensic evidence i.e. the MLC Ext.P2/PW20 and the RFSL report Ext.PX, the factum of sexual intercourse having taken place is not corroborated and substantiated.

25. Admittedly, the conviction of the accused has been based solely on the sole testimony of the Victim Child/Prosecutrix ‘UK’.

26. This Court is mindful of the fact that the statement of the victim in sexual cases if found to be worthy of credence requires no corroboration and the Court may convict the accused on her sole testimony. However, the evidence of the victim should be credible enough to bring home the guilt against the accused.

27. In the present case, the factum whether any sexual assault was committed by the accused upon the Victim Child/Prosecutrix 'UK' (PW-1) is to be ascertained after reassessing her oral testimony and other corroborative evidence. The material aspects of the prosecution case needs reassessment and re-appreciation by this Court. Therefore, considering the act and conduct of the Victim Child/Prosecutrix 'UK' for accompanying the accused of her own volition and subsequently denying the factum of sexual intercourse having taken place, her evidence needs to be reassessed minutely. Without going into the detailed examination of her testimony and other corroborative evidence at this stage, we are satisfied that it is a fit case where the accused can be given the benefit of Section 430 of BNSS.

28. Therefore, in the aforesaid facts and circumstances of the case and in view of the provisions of Section 430 of BNSS and the pronouncements of the Hon'ble Apex Court, the substantive sentence and the fine imposed upon the accused are suspended subject to the accused furnishing personal bond in the sum of Rs.1,00,000/- (Rs. One Lakh) with one surety in the like amount to the satisfaction of learned trial Court on or before **17.11.2026** 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.

29. 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

30th October, 2026
(Sanjeev)

(Bhupesh Sharma)
Judge