IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. M.P. No. : 4013 of 2026
in Cri. A.(C-DB) No.:129 of 2026
Reserved on : 18.11.2026
Date of decision : 25.11.2026
Uploaded on : 25.11.2026

Shani Sen …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. Paresh Sharma, Advocate.**

For the Respondent-State : **Ms. Sharmila Patial, Additional 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 Shani Sen (hereinafter referred to as the 'accused'), seeking suspension of sentence, awarded to him by learned Additional Sessions Judge, Fast Track Special Court (POCSO), Solan, District Solan, H.P. vide judgment of conviction and order of sentence dated 24.07.2026, in Sessions Trial Case

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

No.40-S/7 of 2021, titled as *'State of Himachal Pradesh vs. Shani Sen'*, in case FIR No.67 of 2021 dated 25.08.2021, registered at Women Police Station, Baddi, District Solan, H.P.

2. The accused was put up for trial for the commission of offences punishable under Sections 363, 366A and 376 of Indian Penal Code and Sections 6 of the Protection of Children From Sexual Offences Act, 2012, by the SHO, Women Police Station Baddi, District Solan, H.P. before learned Additional Sessions Judge, Fast Track, Special Court (POCSO), Solan, District Solan, H.P. in Sessions Trial No.40-S/7 of 2021, titled as *'State of Himachal Pradesh vs. Shani Sen.*'. The accused stood convicted for the commission of offences punishable under Sections 363, 366A of Indian Penal Code and Sections 6 of the Protection of Children From Sexual Offences Act, 2012 vide judgment of conviction and order of sentence dated 24.07.2026 as under:-

Sr. No.	Offence for which the convict has been convicted	Substantive sentence imposed	Fine imposed	Imprisonment in default of payment of fine
1.	Section 6 of the POCSO Act	Rigorous imprisonment for a term of 20 years	Rs.20,000/- (Rupees twenty thousand only)	Rigorous Imprisonment for a term of one year
2.	Section 363 of IPC	Rigorous imprisonment for a term of 5 years	Rs.10,000/- (Rupees ten thousand only)	Rigorous imprisonment for a term of 6 months.

3.	Section 366-A of IPC	Rigorous imprisonment for a term of 5 years	Rs.10,000/- (Rupees ten thousand only)	Rigorous imprisonment for a term of 6 months.

3. As per prosecution allegations, on 23.08.2021 at about 9:00 AM, the accused kidnapped the Victim Child/Prosecutrix 'J', minor aged 17 years, out of the lawful guardianship of her parents from Guru Majra (Kishanpura), Tehsil Baddi, District Solan, H.P. and thereafter, repeatedly subjected her to forcible sexual intercourse (penetrative sexual assault) w.e.f. 23.08.2021 to 24.08.2021 in his rented accommodation at Village Juddi Kalan, Ward No. 6, Baddi, District Solan, H.P.

4. The learned Trial Court, on the basis of oral and documentary evidence led by the prosecution, found complicity of the accused in kidnapping the Victim Child/Prosecutrix 'J' out of the lawful guardianship of her parents with the intent that she may be compelled and forced to have illicit intercourse, and in pursuance thereof, repeatedly subjected her to forcible sexual intercourse (penetrative sexual assault) w.e.f. 23.08.2021 to 24.08.2021 in his rented accommodation at Village Juddi Kalan, Ward No. 6, Baddi, District Solan, H.P

5. The learned counsel for the applicant/convict submits that the learned trial Court wrongly convicted the accused by

holding that the Prosecutrix 'J' was minor on the day of incident and a 'Child' as defined under Section 2(d) of the Protection of Children from Sexual Offences Act, 2012. There is no legally admissible evidence on record proving the factum that the Victim Child /Prosecutrix 'J' was minor at the relevant time. It is further submitted that the Victim Child/Prosecutrix 'J' voluntarily accompanied and entered into matrimonial alliance with the accused, and started residing as legally wedded wife. The parties solemnized the marriage on 24.07.2021 at Shiv Mandir (Talab Wala Sewa Samiti), Nalagarh, District Solan, H.P. The accused has a fair chance of acquittal, and therefore, he is entitled for the suspension of sentence and bail during the pendency of the appeal.

6. 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.

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 **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."*

12. 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.

13. 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.

14. 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.

15. The perusal of the record and the impugned judgment dated 24.07.2026 of the learned Trial Court reveals that the age of the Prosecutrix 'J' (PW-1) was taken as 08.02.2004 by the learned trial Court, and on the basis of the said entry, she was opined to be minor and a 'Child' as per Section 2(d) of the POCSO Act. The

learned Trial Court relied upon the School Record, Mark 'L', in order to ascertain this fact.

16. It is admitted that the Victim Child/Prosecutrix 'J' (PW-1) was working along with the accused at Nex Pharma, a Pharmaceutical Company, situated at Guru Majra (Kishanpura), Tehsil Baddi, District Solan, H.P., and she was residing with her parents at Village Guru Majra (Kishanpura), Tehsil Baddi, District Solan, H.P. On 23.08.2021, she left the matrimonial home, and on 24.08.2021, she solemnized marriage with the accused at Shiv Mandir (Talab Wala), Ward No.2, Ropar Road, Nalagarh. In this regard, a Marriage Certificate was issued by the Pradhan, Shiv Mandir (Talab Wala Sewa Samiti), Nalagarh, District Solan, H.P., which is Ext.P5/PW-5, and the relevant entry in the record is at Serial No.68 Ext.P6/PW5. Apart from this, there are affidavits of marriage executed by the Victim Child/Prosecutrix 'J' and the accused, Ext.P8/PW-7 and Ext.P7/PW-7, respectively. The aforesaid documents clearly reflect the date of birth of the Victim Child/Prosecutrix 'J' as 01.01.1998. Apart from this, the copy of the Aadhaar Card and copy of PAN Card also reflect the date of birth of the Victim Child/Prosecutrix 'J' (PW-1) as 01.01.1998.

17. The learned trial Court, while determining the age of the victim, has solely and heavily relied upon the School Mark-sheet issued by Principal, Dr. B.R. Ambedkar Junior High School, Akrauli (Muradabad), Uttar Pradesh, placed on record as Mark 'L', wherein her date of birth is recorded as 08.02.2004. Apparently, the aforesaid document has not been legally proved on record. Apart from the aforesaid evidence, there is nothing on record to establish that the date of birth of the Victim Child/Prosecutrix 'J' (PW-1) is 08.02.2004.

18. It may be pertinent to refer to the statement of the complainant 'R' (Father of the Victim), examined as PW2, wherein he has admitted that he got entered the date of birth of his daughter 'J' as per approximation.

19. On carefully considering the aforesaid evidence and the statement of the Victim Child/Prosecutrix 'J', examined as PW-1, it can be inferred that she married the accused out of her own volition without being forced or compelled by him. Since evidence on record raises reasonable suspicion regarding the actual date of birth of the Victim Child/Prosecutrix 'J' (PW-1), therefore, having considered documents on record, the accused has a fair chance of

acquittal and this Court is satisfied that the accused is entitled to be given the benefit of Section 430 of BNSS.

20. 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 are suspended, subject to his 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 **05.12.2026,** 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.

21. 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 application.

(Vivek Singh Thakur)
Judge

25th November, 2026

(sanjeev)

(Bhupesh Sharma)
Judge