IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1894 of 2026
Reserved on: 30.10.2026
Date of Decision: 31.10.2026
Uploaded on: 31.10.2026

Abdul Javed ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram
Hon'ble Mr Justice Chirag Bhanu Singh, Judge.
Whether approved for reporting?[1]

For the Petitioner	:	Mr. Sudhir Thakur, Senior Advocate, with M/s. Sahil Thakur & Somesh Sharma, Advocates.
For the Respondent/State	:	Mr. Lokender Kutlehria, Additional Advocate General assisted by ASI Sandeep Kumar, Police Station Kala Amb, District Sirmour, H.P.

Chirag Bhanu Singh, Judge

The petitioner has preferred the present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, "BNSS"), seeking post-arrest bail in Case FIR No.75 of 2026, dated 11.06.2026, registered at Police Station

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

Kala Amb, District Sirmaur, H.P., under Sections 333, 151(2), 62 and 64 of the Bharatiya Nyaya Sanhita, 2023 and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act").

2. The facts which emerge from the status report, so filed by the State is that the on 10.06.2026, the mother of the prosecutrix (a minor aged around 15 years) got recorded her statement under Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). It was stated that on 09.06.2026, the complainant had gone to the hospital at Nahan, leaving the victim and her younger brother at home. When the complainant returned home at about 1:00 PM, the victim appeared scared and frightened.

3. On enquiry, the victim disclosed to her mother that in her absence, the accused, Javed, came to the house. Finding the victim alone inside the bedroom, he caught hold of her, laid her on the bed and kissed her. He attempted to force himself upon her, however, in the meantime, the younger brother entered the room, whereupon the accused threatened the victim

and her younger brother with dire consequences and fled the spot.

4. The mother of the victim further disclosed in the complaint that a few days prior to the incident, the accused had met the victim in the fields while she was tending to her goats, where he had caught hold of her, sexually assaulted her and threatened her not to disclose the matter to anyone.

5. On the basis of the aforesaid complaint, FIR No.75 of 2026 was registered. The petitioner was arrested on 11.06.2026 and is presently lodged in judicial custody.

6. I have heard learned counsel for the parties and gone through the records meticulously.

7. The learned counsel for the petitioner contends that the petitioner is a married person having three children, is the sole breadwinner of the family and that the entire family is dependent upon him. It is further submitted that the petitioner and the complainant party are neighbours and closely related to each other. A long-standing dispute exists between the families regarding a path/passage passing through the petitioner's land leading to the complainant's house, which the petitioner had

not agreed to grant for a considerable time. It is contended that on account of this passage dispute, a false and concocted case has been foisted upon the petitioner. It is also submitted that investigation is complete, the challan stands filed and there are no chances of the petitioner's fleeing from justice nor there is any likelihood of his tempering with the prosecution evidence.

8. *Per contra,* Mr. Lokender Kutlehria, learned Additional Advocate General, has vehemently opposed the grant of bail, primarily taking into consideration the tender age of the prosecutrix (being less than 16 years) and the gravity of the offences alleged. The victim herself appeared before this Court and raised objections to the release of the petitioner on bail.

9. The case set up by the prosecution itself reflects that the allegations pertain to an attempt, both on 09.06.2026 and even on the previous occasion. A perusal of the statement of the prosecutrix itself reveals that on 09.06.2026, the accused caught hold of her, laid her on the bed and kissed her. Prior to that, in the fields, he had allegedly caught hold of her, caressed her and attempted to remove her *pyjama*, thereby physically pestering her despite her resistance.

10. A perusal of the medical evidence on record indicates that the allegations involve physical contact without penetration. While the alleged acts fall within the definition of sexual assault under Section 7 of the POCSO Act, no signs of penetrative sexual assault were found even in the medical examination.

11. Though the mother of the victim in her initial complaint attempted to project penetrative assault, the statement of the victim herself clarifies that it was only an attempt to sexually assault her.

12. The investigation is complete and the challan stands filed before the competent Court. Seeing to the fact that the complainant party and the petitioner are related and a dispute regarding passage has been ongoing between the parties, the possibility of embellishment and false implication cannot be ruled out at this stage, particularly in light of the ocular and medical evidence discussed hereinabove (supra).

13. In view of the aforesaid facts and circumstances, the pre-trial incarceration of the petitioner may not be necessary, as the same is otherwise loathed by the Courts. The

investigation having been completed and the challan having been presented, there is no apprehension that the petitioner would abscond or tamper with the prosecution evidence.

14. Since the charge- sheet has already been filed. The culmination of the trial is thus likely to take sufficient time. Pre-trial incarceration is otherwise generally loathed by the Courts, as has been held by the Hon'ble Supreme Court in catena of decisions including ***Union of India vs. K.N. Nazeeb 2021 (3) SCC 713 & Javed Gulam Nabi Shaikh vs. State of Maharashtra & Another (Criminal Appeal No.2787 of 2024 decided on 03.07.2024).***

15. "Bail, not jail" is the golden thread which has been running right through the various judgments rendered by the Hon'ble Supreme Court starting from ***Gurbaksh Singh Sibbia & Others v. State of Punjab, (AIR 1980 SC 1632)***, which has consistently been followed till the decision rendered in ***P. Chidambaram v. Directorate of Enforcement, (AIR 2019 SC 4198) Chandra & Others v. Central Bureau of Investigation, (AIR 2012 SC 830)***. The Hon'ble Supreme Court has further reiterated that grant of bail was a general rule, as was categorically held in

Dataram Singh v. State of Uttar Pradesh, [(2018) 3 SCC 22 : AIR 2018 SC 980].

16. The Hon'ble Supreme Court and this Court, in a catena of decisions, have repeatedly held that an accused is presumed to be innocent until proven guilty. The trial is still at its inception and is likely to take sufficient time.

17. For all the reasons discussed hereinabove, the bail petition is thus allowed. As a sequel, the petitioner is ordered to be released on bail subject to his furnishing bail bonds to the tune of Rs.50,000/- with two local sureties of the like amount, to the satisfaction of the learned trial Court subject to the following conditions:-

> i) That the petitioner shall not temper with the prosecution evidence nor intimidate, threaten or coerce the witnesses conversant with the facts of the case;
>
> ii) That the petitioner shall put in appearance before the Investigating Officer or the Court as and when directed;
>
> iii) That the petitioner shall not leave the territory of India without the express permission of the Court, he shall surrender passport, if any, before the investigating agency."

18. The observations, made hereinabove, shall not be taken, as an expression of opinion, on the merits of the case, as

these observations are confined only for the purposes of the disposal of the present petition.

19. The petition stands accordingly disposed of. A copy of this order be sent to the Superintendent, **Central Jail Nahan, District Sirmour, H.P. and the learned Trial Court by FASTER.**

20. Petition stands disposed off in the aforesaid terms, so also the pending miscellaneous applications, if any.

(Chirag Bhanu Singh)
Judge

31st October, 2026
(Shamsh Tabrez)

SHAMSH TABREZ

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