2026:HHC:50042

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr.MP(M) No. 1844 of 2026**
**Reserved on: 06.11.2026**
**Date of Decision: 19.11.2026.**

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Om Prakash ....Petitioner

Versus

State of HP .... Respondent

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*Coram*

***Hon'ble Mr Justice Rakesh Kainthla, Judge.***

***Whether approved for reporting?[1] No***

For the Petitioner : Mr K.B. Khajuria, Advocate.

For the Respondent/State : Mr Ajit Sharma, Deputy Advocate General.

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***Rakesh Kainthla, Judge***

The petitioner has filed the present petition seeking regular bail in FIR No. 35 of 2025, dated 27.09.2025, registered at Women Police Station Sadar, Chamba, District Chamba for the commission of offences punishable under Section 376AB, 376 (2) (f), 376(2)(n) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act").

2. It has been asserted that a false case has been registered against the petitioner based on a statement made by

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

the informant's father to the police. There is no material to connect the petitioner to the commission of the crime. The petitioner belongs to a respectable family, and there is no chance of his absconding. The police have completed the investigation and filed the charge sheet before the Court. The petitioner would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

3. The petition is opposed by filing a status report asserting that the informant had made a complaint to the police that her mother was admitted to the hospital. She and her sister were residing alone in the house. The petitioner is the informant's uncle. He would visit the home while intoxicated and abuse the informant. She narrated the incident to her teacher. The police registered the FIR and investigated the matter. The police obtained the date of birth certificate from the school and found that the informant was born on 28.01.2013. The police obtained the record from District Hospital, Chamba, and found that the informant's mother was admitted to the hospital between 07.10.2022 and 15.11.2022. The informant and her sister were handed over into the custody of the petitioner. However, the

petitioner had abused his position and raped the informant. The police have filed the charge sheet before the Court, and the prosecution has cited 22 witnesses, of whom the statements of 7 witnesses have been recorded, and 2 witnesses have been given up. The matter is listed before the learned Trial Court on 28.11.2026 and 30.11.2026. FIR No. 150 of 2008 has been registered against the petitioner. The petitioner would intimidate the witnesses in case of his release on bail. Hence, the status report.

4. I have heard Mr Kulbhushan Khajuria, learned counsel for the petitioner and Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State.

5. Mr Kulbhushan Khajuria, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The matter was reported to the police belatedly, and there is nothing to connect the petitioner to the commission of the crime. There are discrepancies in the statements of the informant and her mother recorded by the learned Trial Court. The police have completed the investigation and filed the charge sheet before the Court, and no fruitful

purpose would be served by detaining the petitioner in custody. The petitioner would abide by the terms and conditions that the Court may impose. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the petitioner is the informant's close relative. He had abused his position. The mere delay in the sexual offences is not sufficient to doubt the prosecution case. The petitioner would intimidate the witnesses in case of his release on bail. Therefore, he prayed that the present petition be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. The parameters for granting bail were considered by the Hon'ble Supreme Court in ***Pinki v. State of U.P., (2025) 7 SCC 314: 2025 SCC OnLine SC 781,*** wherein it was observed at page 380:

> **(*i*) *Broad principles for the grant of bail***
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> **56.** In ***Gudikanti Narasimhulu v. High Court of A.P., (1978) 1 SCC 240: 1978 SCC (Cri) 115***, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of personal liberty of a person under trial, has laid down the key factors that should be

considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)

> "7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence is also pertinent. The punishment to which the party may be liable, if convicted or a conviction is confirmed, also bears upon the issue.
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> *8. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.* [***Patrick Devlin, "The Criminal Prosecution in England"*** (Oxford University Press, London 1960) p. 75 — Modern Law Review, Vol. 81, Jan. 1968, p. 54.]
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> *9. Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.*" (emphasis supplied)

**57.** In ***Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280: 2001 SCC (Cri) 674***, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284-85, para 8)

> "*8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles, having regard to the circumstances of each case and not in an arbitrary manner. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support*

*thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge*." (emphasis supplied)

**58.** This Court in ***Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688***, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

"*3. Grant of bail, though being a discretionary order, but, however, calls for the exercise of such a discretion in a judicious manner and not as a matter of course. An order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts do always vary from case to case. While the placement of the accused in society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, the same should always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — the more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.*" (emphasis supplied)

**59.** In ***Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977***, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

**60.** In ***Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765***, this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under: (SCC p. 499, para 9)

> "*9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are*:
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> (*i*) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence*;
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> (*ii*) *nature and gravity of the accusation*;
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> (*iii*) *severity of the punishment in the event of conviction*;
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> (*iv*) *danger of the accused absconding or fleeing, if released on bail*;
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> (*v*) *character, behaviour, means, position and standing of the accused*;
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> (*vi*) *likelihood of the offence being repeated*;

(*vii*) *reasonable apprehension of the witnesses being influenced; and*

(*viii*) *danger, of course, of justice being thwarted by grant of bail*." (emphasis supplied)

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**62.** One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is ***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170***, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (***Pappu Kumar v. State of Bihar, 2021 SCC OnLine Pat 2856*** and ***Pappu Singh v. State of Bihar, 2021 SCC OnLine Pat 2857***) of the High Court granting bail to the accused, observed as follows: (***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170]***), SCC p. 511, para 35)

"*35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time, while considering an application for bail, courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record to enable a court to arrive at a prima facie conclusion. While considering an application for the grant of bail, a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.*" (emphasis supplied)

9. Hon'ble Supreme Court held in ***State of Rajasthan v. Balchand, (1977) 4 SCC 308: 1977 SCC (Cri) 594: 1977 SCC OnLine SC***

*261* that the normal rule is bail and not jail, except where the gravity of the crime or the heinousness of the offence suggests otherwise. It was observed at page 308:

> **2.** The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.
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> **3.** It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also, the heinousness of the crime...."

10. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

11. The status report mentions that the informant's mother was admitted to the hospital and the informant and her sister were put in the petitioner's custody. The petitioner abused his relationship and sexually abused the informant. The police found during the investigation that the informant's mother was, in fact, admitted to the hospital between 07.10.2022 and 15.11.2022. Thus, the informant's version is to be *prima facie* accepted as correct.

12. It was submitted that there is a delay in the reporting of the matter to the police, which is fatal to the prosecution case. This submission cannot be accepted. The informant was a minor and would not have been aware of what was happening to her. The status report specifically mentions that the children of the school were counselled about the sexual abuse when the informant narrated the incident to her teacher. This shows that the informant came to know that whatever had happened to her was wrong only after the counselling and reported the matter to her teacher. It was rightly submitted on behalf of the State that the delay in the matters of sexual offences involving the minor cannot be used to scuttle the prosecution case because the children are unable to understand the significance of the acts done to them and report the matter to anyone, especially against the persons who are related to them and enjoy a position of trust qua them. Therefore, the delay cannot be used to grant bail to the petitioner.

13. It was submitted that there are discrepancies in the statements of the witnesses which would entitle the petitioner to bail. This submission cannot be accepted. It was laid down by the Delhi High Court in ***Dineet v. State (NCT of Delhi), 2025 SCC OnLine***

***Del 8603,*** that it is impermissible for the bail Court to appreciate the evidence recorded during the trial and grant bail to the petitioner. It was observed:

> **"17.** Addressing Mr Mahajan's submissions, it is pertinent to note that nearly the entirety of the petitioner's case rests upon the assumption that this Court may enter into witness testimonies and evidence to determine contradictions and the hostility of witnesses at the stage of bail.
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> **18.** However, it is trite that the same is not within the power of this Court at the stage of bail, as laid down in ***Satish Jaggi v. State of Chhattisgarh (2007) 11 SCC 195 : (2008) 1 SCC (Cri) 660***, paragraphs 11 and 12 of which merit reproduction:
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> > "11. On the aforesaid reasoning, the learned Chief Justice thought it fit to grant bail. Mr A.K. Ganguli, learned Senior Counsel appearing on behalf of the appellant complainant, Mr Amarendra Sharan, learned ASG appearing on behalf of CBI and Mr Rajiv Dutta, learned Senior Counsel appearing on behalf of the State of Chhattisgarh strenuously contended that having regard to the observations and findings of the learned Chief Justice as recorded above, it clearly shows that the learned Chief Justice, while granting bail to the accused, virtually decided the case on merit, which amounts to acquitting the accused of the criminal charge levelled against him without trial. Per contra, Mr Vivek Tankha, learned Senior Counsel, contended that now the evidence is closed, so there is no question of the accused tampering with the prosecution witnesses or fleeing from justice. He further contended that now the arguments in the case have finally started, and the arguments of the prosecution are over, and only the defence is to give its reply. He, accordingly,

> contended that the bail granted by the learned Chief Justice need not be disturbed.
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> 12. Normally, if the offence is non-bailable, bail can also be granted if the facts and circumstances so demand. We have already observed that in granting bail in a non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of society were not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress, and if such findings are allowed to stand, it would seriously prejudice the prosecution's case. At the stage of granting bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of the credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial."

**19.** By virtue of the aforementioned paragraphs from the Hon'ble Supreme Court's decision in *Satish Jaggi*, it is evinced that this Court, at the stage of Bail, cannot look into the allegations of PW2 being a witness who has turned hostile, nor apply its mind to alleged contradictions in his statement under Section 161 of the CrPC when compared with his testimony in Court, as the same would amount to appreciation of the evidentiary value of his statement and testimony, and this is an exercise that is only to be conducted during the course of trial.

**20.** The same has been relied upon by the Hon'ble Supreme Court in the judgment of ***State of Karnataka* v. *Sri Darshan*, *2025 SCC OnLine SC 1702***, with the following paragraphs of this decision reproduced for ready reference:

> "20.2.5. *Further, such an approach of the High Court is contrary to the judicial precedents of this Court, including* Satish Jaggi *v.* State of Chhattisgarh *(supra)*, Kanwar Singh Meena *v.* State of Rajasthan[4], *wherein it was held that courts, while considering bail, should not assess the credibility of witnesses, as this function squarely lies within the domain of the trial Court. Thus, the impugned order of the High Court violates this principle by commenting on the delay in the witness statements and imputing a lack of credibility at this stage"* (emphasis supplied)
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> "20.3.6. In the present case, the High Court also proceeded to analyse and discount the credibility of certain prosecution witnesses and forensic material. It observed contradictions in the eyewitness statements concerning the overt acts of the accused (para 26). It expressed doubts about the prosecution's explanation for the delay in recording the statements of CW. 76 and CW. 91 (para 27). It questioned the timing of the doctor's supplementary opinion and weighed its evidentiary worth (para 31). *As already pointed out, the credibility or reliability of witnesses is a matter for the trial Court to determine after full-fledged cross-examination. It is a trite law that statements recorded under section 161 Cr. P.C. are not substantive, and their evidentiary value can only be determined after cross-examination during trial. Any opinion rendered at the bail stage risks prejudging the outcome of the trial and must be avoided. Thus, the court's assessment of these aspects amounts to a premature appreciation of the probative value of prosecution evidence.*" (emphasis supplied)
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> "24. On a cumulative analysis, it is evident that the order of the High Court suffers from serious legal infirmities. The order fails to record any special or cogent reasons for granting bail in a case involving charges under Sections 302, 120B, and 34 IPC. Instead, it reflects a mechanical exercise of discretion, marked by significant omissions of legally relevant facts. *Moreover, the High Court undertook an extensive examination of witness statements at the pre-trial stage, highlighting alleged contradictions and delays - issues that are inherently matters for the trial Court to assess through cross-examination. The trial Court alone is the appropriate forum to evaluate the credibility and reliability of witnesses.* Granting bail in such a serious case, without adequate consideration of the nature and gravity of the offence, the accused's role, and the tangible risk of interference with the trial, amounts to a perverse and wholly unwarranted exercise of discretion. The well-founded allegations of witness intimidation, coupled with compelling forensic and circumstantial evidence, further reinforce the necessity for cancellation of bail. Consequently, the liberty granted under the impugned order poses a real and imminent threat to the fair administration of justice and risks derailing the trial process. In light of these circumstances, this Court is satisfied that the present case calls for the exercise of its extraordinary jurisdiction under Section 439(2) Cr. P.C." (emphasis supplied)

**21.** Drawing inspiration from the judgment in *Darshan*, the hostility of a witness cannot be interpreted as an automatic declaration of the prosecution's case as unconvincing, and thereby, in essence, result in the conduct of a mini-trial at the stage of bail and return findings upon the *ex-facie* merit of the accused's innocence/guilt.

14. It was laid down by the Hon'ble Supreme Court in ***X Vs. State of Rajasthan MANU/SC/1267/2024*** that ordinarily, in serious offences, the Trial Court or the High Court should not entertain the bail application of the accused after the commencement of the trial and grant bail because of some discrepancy in the testimony. It was observed: -

> "14. Ordinarily, in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court, be it the Trial Court or the High Court, should be loath to entertain the bail application of the Accused.
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> 15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete, by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.
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> 16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach its conclusion, which may either result in the conviction of the Accused or the acquittal of the Accused. The moment the High Court exercises its discretion in favour of the Accused and orders the release of the Accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only if the trial gets unduly delayed and that, too, for no fault on the part of the Accused, the Court may be justified in ordering his release

> on bail on the ground that the right of the Accused to have a speedy trial has been infringed."

15. Similarly, it was held by this Court in ***Suraj Singh v. State of H.P., 2022 SCC OnLine HP 268*** that the Court exercising bail jurisdiction cannot appreciate the contradictions in the evidence. It was observed:

> **10.** Petitioner has placed reliance on the statements of witnesses already recorded by the learned Special Judge, in support of his argument to the effect that, from perusal of these statements, reasonable grounds can be entertained for concluding prima facie innocence of the petitioner. The arguments raised on behalf of the petitioner deserve to be rejected for the reason that this Court, while dealing with the bail application, will not appreciate the evidence being recorded during the trial. Undisputedly, only some of the witnesses out of the entire list of witnesses relied upon by the prosecution have been examined. In these circumstances, it is not prudent to form any opinion as to the innocence or guilt of the petitioner based on such partial evidence.

16. Therefore, the petitioner cannot be released on bail because of the discrepancies in the statements of the witnesses.

17. It was submitted that there is a delay in the progress of the trial and the petitioner is entitled to bail on this consideration. This submission will not help the petitioner. The status report mentions that statements of 9 witnesses have been recorded and the matter is listed before the learned Trial Court on 28.11.2026 and 30.11.2026. The recording of the statements of

7 witnesses and giving up 2 witnesses within a period of 1 year does not show any delay. The petitioner has not filed copies of the order sheets to demonstrate that the delay is attributable to the prosecution or the Court and not to the petitioner. Therefore, the petitioner cannot be released on bail because of the delay in the progress of trial.

18. The petitioner is related to the informant and enjoys a position of trust qua her. Therefore, the apprehension that the petitioner's release would influence the witnesses has substance.

19. No other point was urged.

20. In view of the above, the present petition fails and is dismissed.

21. The observation made hereinbefore shall remain confined to the disposal of the instant petition and will have no bearing, whatsoever, on the merits of the case.

**(Rakesh Kainthla)**
**Judge**

19th November, 2026
(Nikita)