IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.2093 & 2095 of 2026
Date of Decision: 04.11.2026

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1. Cr.MP(M) No.2093 of 2026

Dimple Kumar **.....Petitioner**

Versus

State of Himachal Pradesh **.....Respondent**

2. Cr.MP(M) No.2095 of 2026

Thakur Sen **.....Petitioner**

Versus

State of Himachal Pradesh **.....Respondent**

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.

For the Petitioner(s): Mr. Prashant Sharma, Advocate.

For the Respondent(s): Mr. Rajan Kahol, Additional Advocate General with Mr. Ravi Chauhan, Deputy Advocate General.

ASI Tilak Raj, PS Banjar, District Kullu present in person along with record.

Sandeep Sharma, J. *(Oral)*

Bail petitioners namely Dimple Kumar and Thakur Sen, who are behind the bars since 17.01.2026, have approached this court in the instant proceedings filed under Section 483 of Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter '***BNSS'***), for grant of regular bail, in case FIR No. 7/2026 dated 07.01.2026, registered at Police Station Banjar, District Kullu, Himachal Pradesh, under Sections 126(2), 115(2), 3(5) and 103(1) of

BNS. Respondent-State has filed status report and ASI Tilak Raj has come present with record. Record perused and returned.

2. Close scrutiny of status report/record reveals that on 07.01.2026, complainant made a telephonic call to helpline, intimating therein that while he was coming to police station along with the deceased Deepak Jha, two motorcycles came from behind and took his taxi back to Gada Gusaini, where number of persons gave beatings to Deepak Jha with fists and kicks and he can identify those persons. Police, after having received the aforesaid telephonic call, while going towards Gada Gusaini, had reached near Jibhi, car bearing No. HR-56C-2096, being driven by complainant, came from opposite side, wherein deceased Deepak Jha was found to be lying in unconscious condition. Police immediately took aforesaid person to Civil Hospital, Banjar, from where, deceased Deepak Jha was referred to Regional Hospital, Kullu. Since deceased at relevant time was not in a position to give statement, police recorded the statement of complainant under Section 173 of BNSS, wherein he alleged that on 06.01.2026 at 7:00 PM, deceased Deepak Jha booked his taxi, bearing No. HR-56C-2096, for going to Jibhi in Himachal Pradesh. He stated that at 9:00 a.m., he started from Chandigarh and reached Kullu at 5:00 PM and from there, he started at 6:30 PM and reached Jibhi at 9:00 PM. He alleged

that deceased Deepak had stayed in homestay, whereas he had slept in his vehicle. On 07.01.2026 at 9:00 AM, deceased Deepak Jha told him that he has to go to Gada Gusaini for bringing his wife and as such, he along with deceased Deepak Jha reached Gada Gusaini at 10:30 AM. He disclosed that while he was near his taxi at 11:00 AM, deceased Deepak Jha came there along with one lady and thereafter they went towards Jibhi, but when vehicle reached near Bahu, some persons standing on the road stopped his vehicle and pulled deceased Deepak Jha as well as lady out of the car and gave beatings to Deepak Jha. He alleged that lady was taken back by local persons to their village, whereas deceased Deepak Jha was made to sit in his car and thereafter, he made a telephonic call to the helpline. He alleged that when he reached Jibhi, two vehicles being driven by persons namely Sachin and Bittu came from behind and they forcibly took his vehicle back to Gada Gusaini and at 3:30 PM, deceased Deepak Jha was again given beatings. Deceased Deepak Jha was stated to be under the influence of liquor. He alleged that 12 to 15 persons gave beatings to Deepak Jha and he can recognize them. He alleged that again he took Deepak to Jibhi, where police met him and Deepak Jha was taken to the hospital. In the afore background, FIR detailed hereinabove came to be lodged against the ten persons, including one juvenile, who has already been enlarged on bail.

3. Present bail petitioners, who never came to be named by complainant at the time of lodging of FIR, have approached this court in the instant proceedings for grant of regular bail, on the ground that they have been falsely implicated.

4. Mr. Prashant Sharma, learned counsel for the petitioners, states that bare perusal of statement of the complainant recorded under Section 173 of BNSS, on the basis of which FIR came to be lodged, nowhere suggests that present bail petitioners had given beatings to Deepak Jha, rather, they came to be named in the FIR subsequently on the basis of statement made by one Sh. Teja Singh, who alleged that bail petitioners, after their having alighted from the HRTC bus at Dugga, also gave beatings to deceased Deepak Jha, but before the incident, deceased Deepak Jha was allegedly given beatings on two occasions by large number of people at Bahu and Gada Gusaini. Mr. Sharma states that though no cogent and convincing evidence has been adduced on record to demonstrate the involvement of the petitioners in the alleged incident, but even otherwise, there is no evidence to connect the bail petitioners with the injuries allegedly suffered by the deceased on his head. He states that bare perusal of postmortem report though reveals that multiple injuries were seen on the body of deceased Deepak Jha, but cause of death has been shown to be

injury on the head of the deceased Deepak Jha. He states that since before alleged arrival of deceased Deepak Jha at Dugga, he was given merciless beating by group of persons at two places, coupled with the fact that complainant, who claimed to be eyewitness, never named bail petitioners, they deserve to be enlarged on bail.

5. While fairly acknowledging factum with regard to filing of challan in the competent Court of law, Mr. Rajan Kahol, learned Additional Advocate General, stated that though nothing remains to be recovered from the bail-petitioners, but keeping in view the gravity of offence alleged to have been committed by them, they do not deserve any leniency and as such, their prayer for grant of regular bail deserves outright rejection. Mr. Kahol states that though at the time of making statement under Section 173 of BNSS, complainant Lovely did not mention the name of the petitioners, but once subsequently in investigation, one of the eyewitnesses disclosed that present bail petitioners had also given beatings to the deceased Deepak Jha at Dugga, no illegality can be said to have been committed by the investigating agency while naming bail petitioners in the alleged commission of offence. He states that though postmortem report reveals that deceased died on account of his having suffered injury on his head, but multiple injuries were also seen on the person of the deceased.

Mr. Kahol states that once persons named in the FIR were found to have given beatings to the deceased in the alleged incident, they all are equally responsible for his death and as such, cannot escape liability on the ground that injury, if any, caused on the head of the deceased was not caused by them. Mr. Kahol states that since bail petitioners are accused of heinous crime punishable under Sections 126(2), 115(2), 3(5) and 103(1) of BNS, coupled with the fact that statements of complainant as well as other material prosecution witnesses are yet to be recorded, it may not be in the interest of justice to enlarge them on bail because in that event they may not only flee from justice, but may tamper with the prosecution evidence.

6. Having heard learned counsel for the parties and perused material available on record, this court finds that deceased Deepak Jha, on the date of alleged incident, was allegedly given beatings at three different places. Firstly, he was given beatings at Bahu, where deceased had alighted from the taxi being driven by the complainant for bringing his so-called wife, but before he could leave Bahu, some persons stopped the vehicle and gave beatings to Deepak Jha and lady accompanying him was made to go back to her village. While complainant was taking Deepak Jha in injured condition to Jibhi, allegedly two persons, Sachin and Bittu, came from behind and took car of the complainant back to Gada Gusaini, where again

allegedly Deepak Jha was given beatings. After giving merciless beating to the deceased Deepak Jha, persons namely Sachin, Bittu, Tikam, Gopichand along with other co-accused gave beatings and made the complainant Lovely to take deceased Deepak Jha back to Jibhi, but before complainant could reach Jibhi, allegedly group of persons again stopped him at Dugga and started giving him beatings. While group of persons were giving beatings to deceased Deepak Jha at Dugga, present bail petitioners, Thakur Sen and Dimple, alighted from HRTC bus at Dugga and allegedly gave beatings to the deceased.

7. True it is that on account of injuries suffered by the deceased Deepak Jha in the alleged incident as detailed hereinabove, he died at Regional Hospital, Kullu and Postmortem report adduced on record also suggests that multiple injuries were noticed on the body of the deceased Deepak Jha, but cause of death was opined to be intracranial hemorrhage leading to compression of vital centers of brain caused by blunt force trauma. No poison/ethyl alcohol was detected in the blood and viscera of the deceased.

8. In nutshell, case of the petitioners, as has been highlighted in the grounds of bail petitions and further canvassed by Mr. Prashant Sharma, learned counsel for the petitioners, is that person, before whom all

three incidents of beatings happened, never named present bail petitioners, rather, he specifically named accused other than bail petitioners. Mr. Prashant states that it is only the statement of independent witness Teja Singh that bail petitioners, after their having alighted from HRTC bus at Dugga, also gave beatings to Deepak Jha, but such allegation never came to be corroborated by the complainant, who specifically named co-accused Sachin, Bittu and Gopichand.

9. If the statement of Teja Singh recorded under Section 183 BNSS is perused in its entirety, it suggests that third incident of alleged beatings happened at Dugga, where Teja Singh stopped the vehicle on the telephonic information shared by his brother-in-law Santosh Kumar, who disclosed that some unknown person has fled away with his niece in his car. As per Teja Singh, he, after having stopped vehicle, asked deceased Deepak Jha to leave while leaving behind lady brought by him from Gada Gusaini, but he refused to do the same and in the meantime, persons including Santosh Kumar came from behind and gave him beatings. While group of persons already present at Dugga were giving beatings to the deceased Deepak Jha, allegedly bail petitioners, who at relevant time were coming from Banjar, alighted from HRTC bus and they also gave beatings to the deceased.

10. It is ample clear from the statements of Teja Singh as well as other witnesses that present bail petitioners had no information with regard to incident, rather, they, after their having alighted from the bus at Dugga, went towards the vehicle where group of persons already present was giving beatings to deceased Deepak Jha.

11. Since before third alleged incident of beatings at Dugga, deceased Deepak Jha was already given merciless beatings on two occasions at Bahu and Gada Gusaini, as stated by the complainant Lovely Kumar, by the persons detailed hereinabove, coupled with the fact that cause of death of the deceased was opined to be intracranial hemorrhage leading to compression of vital center of brain, this court is persuaded to agree with learned counsel representing the petitioners that at present, there is no direct evidence adduced on record qua petitioners to connect them with the actual cause of death of the deceased.

12. No doubt, admittedly in the case at hand, large number of persons gave beatings to deceased Deepak Jha at three different places. There is no direct evidence that persons, who gave beatings to deceased Deepak Jha at three places, had some kind of meeting prior to the alleged date of incident.

13. Firstly, vehicle was stopped at Bahu by the family members of woman, who was being taken by the deceased Deepak Jha in the taxi being driven by the complainant. Persons, who gave beatings to Deepak Jha at Bahu and Gada Gusaini were named and identified by the complainant, and as such, at first instance, were named as accused in the FIR.

14. Second incident happened at Gada Gusaini at the house of the woman, who was being taken by the deceased Deepak Jha, where family members of woman gave beatings.

15. Third incident happened when Teja Singh stopped the vehicle at Dugga on the basis of telephonic call made by his brother-in-law Santosh. Admittedly, when Teja Singh signaled vehicle to stop at Dugga, present bail petitioners were not present, rather they at relevant time were traveling in HRTC bus coming from Banjar towards Dugga. Before petitioners' arrival at Dugga, group of persons came from Gada Gusaini and gave beatings to deceased Deepak Jha.

16. Teja Singh disclosed to the police that persons namely Dimple Kumar and Thakur Sen i.e. bail petitioners herein, who had alighted from HRTC bus at Dugga, also gave beatings, but there is nothing in his statement that what kind of beatings were given by them and whether injury, if any, was caused by them on the head of the deceased, which

ultimately became reason of the death of the deceased. This court is unable to find out anything in the record suggestive of the fact that after recording of statement of Teja Singh, effort, if any, was made by the investigating agency to get present bail petitioners identified from the complainant Lovely, who is an eyewitness and had named other co-accused, who had given beatings to the deceased Deepak Jha. Complainant, while giving his statement under Section 173 of BNSS, specifically stated that he can identify the persons, who gave beatings to the deceased, but record nowhere suggests that present bail petitioners were got identified from the complainant.

17. There is no evidence adduced on record that accused named in the FIR, who allegedly gave beatings had any prior meeting of mind and they, in furtherance of common intention to kill the deceased, gave beatings, rather deceased suffered injuries in three different incidents. Though in first-two incidents most of the accused can be said to be common, but admittedly in third incident, accused, who had given beatings in Gada Gusaini and Bahu, were not present at Dugga.

18. Vehicle at Dugga was stopped by Teja Singh that too on the askance of Santosh Kumar. Since present bail petitioners, prior to their having alighted from the HRTC bus at Dugga, had no intimation with

regard to alleged incident, as has been taken note hereinabove, it would be too premature to conclude complicity of the petitioners in the case at hand.

19. To accomplish Complicity, if any, of the petitioners, especially with regard to their knowledge of gathering persons at Dugga for giving beatings to Deepak Jha, there is no sufficient evidence available on record, rather such fact otherwise can be proved by prosecution by leading cogent evidence during the trial. Similarly, this court is persuaded to agree with learned counsel for petitioners that there is no direct evidence to connect the present bail petitioners with the injury suffered by the deceased, which ultimately became cause of his death.

20. No doubt, petitioners herein are accused of heinous crime punishable under Sections 126(2), 115(2), 3(5) and 103(1) of BNS, but such fact alone may not be sufficient to dissuade this court from considering bail petitions filed at the behest of the bail petitioners, for the reasons noticed hereinabove.

21. No doubt, gravity of offence alleged to have committed by the bail-petitioners is required to be taken into consideration, while considering the prayer, if any, made on his/her behalf for bail, but it is also settled that the gravity of offence cannot be sole criteria to decide the bail petitions, rather other competing factors are required to be taken into consideration.

Reliance in this regard is placed upon the judgment passed by this Court in **Jeet Ram** v. **State of H.P**., Latest HLJ 2003(HP) 23, wherein it has been held as under:-

> "7. As is the case of the prosecution, the only role attributed to the accused persons is that they caught hold of the deceased and their co-accused Savitri and Bimla pelted stones at him and thereafter Bhupender gave him the fatal blow with a 'Draft'. Prima facie it is difficult to believe that when a person is caught hold of by three persons two other persons are pelting stones at him, then such person and those persons who have caught hold of him will not sustain any injury. Therefore, the version regarding pelt ing of stones and holding of the deceased is prima facie clouded by suspicion as none of the accused persons who are alleged to have caught hold of the deceased while co- accused Savitri and Bimla were pelting stones at the deceased did not receive any injury whatsoever and no injury caused by the pelting of stones was found on the per son of the deceased. Mere catching hold of the deceased by the accused persons may not necessarily lead to the conclusion that they haw the common object of killing the deceased as the applicability of Section 149, IPC, In the facts of the ease, is a debatable question.
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> 8. In Thakar Singh v. State of Punjab, 1969 Cur LJ 810 (relied upon by the learned Counsel for the accused persons to substantiate his contention) wherein the case of the prosecution was that accused Niranjan Singh 10 caught hold of the deceased and fell him down and accused Thakar Singh throttled his neck, the Punjab and Haryana High Court held as under :
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> > "..... It is not a case in which it can be legitimately contended on behalf of the prosecution that there was any pre-planned common intention on the part of both Niranjan Singh and his father Thakar Singh in throttling the deceased. There could be no such intention on the part of Niranjan Singh even in executing his act of catching hold of the boy by the arms and throwing him down on the ground. The act of throttling by Thakar Singh followed per se and was independent of the act of throwing the boy down by Niranjan Singh. Thus, there is no community of intention in the act performed by Niranjan Singh and that executed by Thakar Singh. The two are distinct ones and one has nothing to do with the other. No intention on the part of Niranjan Singh

> from his act could be inferred in common with the intention of throttling by Thakar Singh, which followed later on. It is not a case in which it could be held that throwing down was committed by Niranjan Singh in furtherance of the common intention of throttling by Thakar Singh. Thus, the applicability of Section 34 of the Indian Penal Code is uncalled for. Niranjan Singh appellant could not be held vicariously liable by virtue of that Section. This is additional ground of his being entitled to acquittal."

9. In Jaspal Singh v. State of Haryana, 1986 (2) Recent CR 582 (2) wherein one of the accused caught hold of the deceased while armed with a stick but did not cause any injury to the deceased whereas his co-accused caused injuries to the deceased which resulted in his death, the Punjab and Haryana High Court granted bail to the accused who had only caught hold of the deceased while on the following premise :

> "Though the motive was with the petitioner and he caught hold of the deceased while armed with a stick, he did, not cause any injury to the deceased. Rather his co-accused did cause injuries to the deceased which resulted in his death. In this situation, applicability of Section 34 Indian Penal Code is a moot point. It would thus be apt that the petitioner gets the concession of bail."

10. In Kuldip Singh v. State of Punjab, 1994 (3) Rec Cri R 137 : (1994 Cri LJ 2201) (SC) where one of the accused inflicted the injury on the head of the injured with sharp edged weapon and the second accused gave 'Lathi' blow on his shoulder causing simple injury allegedly with the common intention of accused in an attempt to commit the murder of the injured, the Hon'ble Supreme Court held that the injury on the head of the injured was serious one and proved to be grievous, therefore, the offence under Section 307, I.P.C. is made out against Kuldip Singh who caused 11 such injury but in so far as the other co-accused is concerned, he inflicted only one blow on the shoulder with the 'Lathi' causing swelling, therefore, it could not be said that he shared the common intention along with the Kuldip Singh in attempt to commit the murder of the injured."

"12.There is no doubt that offence punishable under Section 302, I.P.C. is a grave offence for which the extreme penalty of death has been provided in law. However, the mere gravity of the offence and the severity of punishment is no ground for rejection of bail, while deciding the question of grant or refusal of the bail, other

> factors such as the nature of evidence, the part played by the accused in the commission of the 6f-fence and the likelihood of the accused absconding or, tampering with prosecution evidence has also to be taken into account".

22. Hon'ble Apex Court and this Hon'ble Court have held in a catena of judgments that one is deemed to be innocent, till the time, his/her guilt is proved in accordance with law. In the case at hand, guilt, if any, of the bail petitioner is yet to be proved in accordance with law, as such, this court sees no reason to let the bail petitioner incarcerate in jail, for an indefinite period, especially when, he is behind the bars.

23. Apprehension expressed by of learned Additional Advocate General that in the event of the bail petitioner being enlarged on bail, he may flee from justice, can be best met by putting the bail petitioner to stringent conditions.

24. Hon'ble Apex Court in Criminal Appeal No. 227/2018, **Dataram Singh vs. State of Uttar Pradesh & Anr** decided on 6.2.2018 has held that freedom of an individual cannot be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has been further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty.

25. Hon'ble Apex Court in **Sanjay Chandra versus Central Bureau of Investigation (2012)1 Supreme Court Cases 49** has held that gravity

alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative.

26. In **Manoranjana Sinh alias Gupta versus CBI, (2017) 5 SCC 218**, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of bail and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

27. The Apex Court in **Prasanta Kumar Sarkar versus Ashis Chatterjee and another (2010) 14 SCC 496**, has laid down various principles to be kept in mind, while deciding petition for bail viz. prima facie case, nature and gravity of accusation, punishment involved, apprehension of repetition of offence and witnesses being influenced.

28. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, bail-petitioners have carved out a case for grant of bail, accordingly, the petitions are allowed and the bail-petitioners are ordered to be enlarged on bail in aforesaid FIR, subject to their furnishing personal bonds in the sum of Rs. 2,00,000/- each, with two local sureties in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, with following conditions:

a. They shall make themselves available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;
b. They shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
c. They shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer; and
d. They shall not leave the territory of India without the prior permission of the Court.

29. It is clarified that if the petitioners misuse their liberty or violate any of the conditions imposed upon them, the investigating agency shall be free to move this Court for cancellation of the bail.

30. Any observations made hereinabove shall not be construed to be a reflection on the merits of the main case and shall remain confined to

the disposal of these applications alone. The bail petition stands disposed of accordingly.

31. The petitioners are permitted to produce copy of order downloaded from the High Court Website and the trial court shall not insist for certified copy of the order, however, it may verify the order from the High Court website or otherwise.

November 04, 2026 **(Sandeep Sharma),**
(sunil) **Judge**