

2026:PHHC:086208



206 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**CRM-M-28148-2026**  
**Date of Decision:29.05.2026**

Surender ...Petitioner

## Versus

State of Haryana ...Respondent

**CORAM: HON'BLE MS. JUSTICE AARADHNA SAWHNEY**

**Present:** Mr. Uday Pratap Singh, Advocate  
for the petitioner.

Mr. Birender Bikram Attrey, Addl. AG, Haryana.

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**AARADHNA SAWHNEY, J. (ORAL)**

1. Petitioner, an accused in case FIR No.258 dated 28.08.2025 registered against him, under Sections 65(1), 61(2) BNS and Sections 6 and 17 of the POCSO Act, 2012 and Sections 9, 10 & 11 of the Child Marriage Prohibition Act, at Police Station Bawani Khera, District Bhiwani, has filed the present petition for grant of bail under Section 483 of BNSS.

2. Relevant facts as emerging from documents on record be noticed hereinbelow:-

*“In the present case criminal proceedings were initiated on the complaint lodged by child victim ‘XX’ aged about 15 years, alleging therein that they are 05 siblings. She used to work in the fields of Surender (present petitioner). Her mother and father also used to reside in a room constructed on the fields. She alleged that during the harvesting season Surender (P) used to get wrong acts done by Shyam Babu with her, who was residing at Shyamabad. Her person was violated by Shyam Babu at least twice or thrice in the fields of Surender(P). A month prior to*

*lodging of the FIR, she had gone to take water from another field when she suddenly fell down. Her mother called doctor. She was examined and it was only then it came to the her notice and the family members that she was on the family way. Thereafter, her mother left work at village Rohat. On 25 of the present month, Rohit committed wrong acts with her in his fields. Primarily with this backdrop she requested the police authorities to initiate appropriate criminal proceedings against all those, who were involved in this heinous and immoral act”.*

3. Petitioner, who was specifically named in the FIR, was arrested on 03.01.2026. His application for grant of bail was dismissed by the Ld. ASJ, Fast Track Special Court, Bhiwani vide order dated 06.05.2026, aggrieved of which the present petition has been filed.

4. Learned counsel for the petitioner contends that petitioner aged about 60 years, with clean past antecedents, has been falsely implicated in the present case. A bare look at the FIR would reveal that the role attributed to the petitioner is that while victim along with her family members was staying at the fields owned by the petitioner, he(P) used to encourage accused Shyam Babu to commit wrong acts with victim; there being nothing that he (P) had ever violated her person. There are no allegation that petitioner himself violated the person of the victim.

It is further the contention of learned counsel that falsity of the case set up by the prosecution is further apparent from the fact that when the victim when she appeared in the witness-box as PW2, deposed that she is 18 years of age, as also that she used to meet one Rohit everyday and had developed physical intimacy with him. After she became pregnant, she married Rohit and decided to reside with him. She further went a step ahead and deposed that she was forced by the father of Rohit to file the complaint

levelling baseless allegations against those mentioned therein. After she was declared hostile by Ld. PP on the ground that she is suppressing truth and was allowed to be cross-examined, she clarified that though co-accused Shyam Babu used to reside in the fields of Surender i.e. petitioner but he never violated her person and in fact it was Rohit, who had raped her. It is further the submission of learned counsel that insofar as allegations u/s 9, 10 and 11 of the Child Marriage Prohibition Act are concerned, victim has herself clarified that petitioner was not present at the time of marriage with Rohit.

In the light of this testimony of the victim, which as per learned counsel has totally demolished the case of the prosecution, further incarceration of the petitioner, who has been in custody since 03.01.2026, would not serve any useful purpose as the possibility of completion of trial in the near future seems quite remote. Prayer for allowing the petition has been made.

5. *Per contra*, while opposing the request of grant of bail, learned State counsel submits that in the light of the seriousness and gravity of the offence, no lenient view deserves to be taken in favour of the petitioner, it can be presumed was well aware of each and every misdeed which had been committed with the minor victim against her will. In fact, he encouraged others to violate the person of the victim and thus, exploited the minor child. Prayer for dismissal has been made.

6. I have heard the learned counsel for the parties and with their able assistance, perused the record available on record.

7. It is settled that grant or refusal of bail is the discretion of the Court. Factors to be kept in mind while granting the concession of bail have been discussed by the Hon'ble Supreme Court in several cases. The essence being that while exercising powers under Section 439 Cr.P.C. (*Pari materia* to

Section 483 of BNSS), the Court has to take into consideration various parameters including the nature of the charge, evidence, seriousness and gravity of offence, punishments to be awarded to a person, if he is convicted, his past antecedents etc. Thus, there can be no straight jacket formula for exercising the discretion and each case has to be examined on its peculiar facts.

The Hon'ble Apex Court in *Sanjay Chandra versus Central Bureau of Investigation (2012)1 Supreme Court Cases 49*; held as under:-

*"14) In bail applications, generally, it has been laid down from the earliest times that the 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. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test.*

*In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."*

In view of the submissions advanced by learned counsel for the petitioner and considering that star-witness of victim has already been examined, but without commenting further on the merits of the case, lest it may prejudice the mind of trial Court, this Court is of the opinion that further detention of the petitioner would be violative of his rights under Article 21 of the Constitution of India, including right to speedy trial but would also be against the principle of “*Bail is a general rule and incarceration is an exception*” as held by Hon’ble Supreme Court in ***Dataram vs. State of Uttar Pradesh and another, 2018(2) R.C.R. (Criminal) 131.***

Resultantly, petitioner is granted the concession of bail subject to his furnishing bail/surety to the satisfaction of the learned Duty Magistrate/trial Court concerned. The petitioner shall abide by the following conditions:-

- (i) The petitioner shall not leave the country without prior permission the trial Court and shall deposit the passport in the trial Court.*
- (ii) The petitioner will not tamper with the evidence during the trial.*
- (iii) The petitioner will not pressurize/ intimidate the prosecution witnesses.*
- (iv) The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.*
- (v) The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.*
- (vi) The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.*
- (vii) The petitioner shall not in any manner misuse his liberty.*
- (viii) The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.*

*(ix) The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioner.*

Accordingly, the present petition is allowed and it is made clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

In view of the above, it is clarified that the observations made herein are limited for the purpose of present proceedings and would not be construed as an opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

**29.05.2026**  
*Parveen kumar*

**(AARADHNA SAWHNEY)**  
**JUDGE**

Whether speaking/reasoned :Yes/No  
Whether reportable :Yes/No