2026:HHC:49032

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 1253 of 2026

Date of Decision: 5.11.2026.

Sunil Pal .... Petitioner

Versus

State of HP & Anr. .... Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

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

For the Petitioner	:	M/s Gurdev Singh Thakur and Parveen Kumar, Advocates.
For Respondent No.1/State	:	Mr Ajit Sharma, Deputy Advocate General.
For Respondent No.2	:	Nemo.

***Rakesh Kainthla, Judge* (Oral)**

Mr Ajit Sharma, learned Deputy Advocate General, appears and waives service of notice on behalf of the respondent-State.

2. The petitioner has filed the present petition for setting aside the order dated 19.12.2025 passed by the learned Additional Chief Judicial Magistrate, Palampur, District Kangra,

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

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H.P. (hereinafter referred to as the 'learned Trial Court') in the complaint titled Baljeet Pathania vs. Sunil Pal, Case No. 136-III of 2022, whereby personal and surety bonds have been cancelled and forfeited to the State of H.P., and the petitioner has been ordered to be served by way of non-bailable warrants of arrest, as well as consequential and subsequent orders passed by the learned Trial Court.

3. The photocopies of the order sheet maintained by the learned Trial Court show that the learned Trial Court had taken cognisance on 26.04.2022. The notices were issued to the accused, and he was served for 01.12.2022. He failed to appear before the Court on the date fixed, and the learned Trial Court ordered the issuance of bailable warrants in the sum of ₹5,000/- with one surety in the like amount. The accused was again ordered to be summoned by way of bailable warrants of arrest in the sum of ₹10,000/- on 15.1.2023. The accused surrendered before the Court on 07.10.2023 and was ordered to be released on bail.

4. The statement of one witness was recorded on 30.09.2024. The matter was listed for recording the statement of

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the accused under Section 313 of the Code of Criminal Procedure (Cr.P.C.) on 28.10.2024, and the accused was absent; however, an application for exemption was filed, which was allowed. Subsequently, the accused failed to appear before the Court, and applications for exemption continued to be filed, which were allowed. The accused was absent on 22.04.2025, and the Court ordered the issuance of non-bailable warrants of arrest. The accused appeared before the Court on 12.08.2025, and he was admitted to bail. Subsequently, the matter was listed on different dates and finally on 19.12.2025, when the accused again absented, and the Court ordered the issuance of non-bailable warrants of arrest.

5. Being aggrieved by the order, the petitioner/accused has approached this Court seeking the cancellation of non-bailable warrants of arrest, asserting that the petitioner is employed in the Indian Army, and it was very difficult for him to appear before the Court. The petitioner has an apprehension of his arrest; therefore, it has been prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

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6. Mr Parveen Kumar, learned counsel for the petitioner, submitted that the petitioner could not appear before the Court because he belongs to the Indian Army. His daughter had appeared before the Court on 19.12.2025, but her attendance was not marked. The petitioner is ready to appear before the Court and join the proceedings. The non-bailable warrants should not have been issued in the first instance. Hence, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside. He relied upon ***Inder Mohan Goswami Vs. State of Uttranchal and others, Cr. Appeal No. 1392 of 2007 (Arising out of SLP (Criminal) No. 3658 of 2004, decided on 9.10.2007, Sahib Singh @ Saab Singh Vs. State of Punjab 2025 NCPHHC 106708, Pankaj Kumar Vs. State of Haryana 2025:PHHC:155299*** and ***Sarojani Vs. State of Haryana and another CRA-S-561-2022, decided on 5.4.2022*** in support of his submissions.

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

8. A perusal of the order sheets maintained by the learned Trial Court, noticed above, shows that the petitioner is a persistent defaulter. He had repeatedly absented himself from

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the Court, and his presence had to be secured by issuance of non-bailable warrants of arrest. It was laid down by the Hon'ble Supreme Court in ***Talab Haji Hussain v. Madhukar Purshottam Mondkar, 1958 SCC OnLine SC 81: 1958 SCR 1226: 1958 CRI LJ 701: 1958 SCJ 672: AIR 1958 SC 376*** that a person cannot compromise a fair trial by absenting from the Court and if he does so, his bail is to be cancelled, even in a bailable offence. It was observed:

> **"6.** Now, it is obvious that the primary object of criminal procedure is to ensure a fair trial of accused persons. Every criminal trial begins with the presumption of innocence in favour of the accused, and provisions of the Code are so framed that a criminal trial should begin with and be throughout governed by this essential presumption, but a fair trial has naturally two objects in view; it must be fair to the accused and must also be fair to the prosecution. The test of fairness in a criminal trial must be judged from this dual point of view. It is, therefore, of the utmost importance that, in a criminal trial, witnesses should be able to give evidence without any inducement or threat, either from the prosecution or the defence. A criminal trial must never be so conducted by the prosecution as it would lead to the conviction of an innocent person; similarly, the progress of a criminal trial must not be obstructed by the accused so as to lead to the acquittal of a really guilty offender. The acquittal of the innocent and the conviction of the guilty are the objects of a criminal trial, and so there can be no possible doubt that if any conduct on the part of an accused person is likely to obstruct a fair trial, there is occasion for the exercise of the inherent power of the High Courts to secure the ends of justice. There can be no more important requirement of the ends of justice than the uninterrupted progress of a fair trial, and it is for the

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> continuance of such a fair trial that the inherent powers of the High Courts are sought to be invoked by the prosecution in cases where it is alleged that accused persons, either by suborning or intimidating witnesses, are obstructing the smooth progress of a fair trial. *Similarly, if an accused person who is released on bail jumps bail and attempts to run to a foreign country to escape the trial, that again would be a case where the exercise of the inherent power would be justified in order to compel the accused to submit to a fair trial and not to escape its consequences by taking advantage of the fact that he has been released on bail and by absconding to another country. In other words, if the conduct of the accused person subsequent to his release on bail puts in jeopardy the progress of a fair trial itself and if there is no other remedy which can be effectively used against the accused person, in such a case, the inherent power of the High Court can be legitimately invoked*. In regard to non-bailable offences, there is no need to invoke such power because Section 497(5) specifically deals with such cases. The question which we have to decide in this case is whether the exercise of inherent power under Section 561-A against persons accused of bailable offences who have been released on bail is contrary to or inconsistent with the provisions of Section 496 of the Code of Criminal Procedure." (Emphasis supplied)

9. It was held by a Division Bench of the Calcutta High Court in ***Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318: 1924 Cri LJ 732: AIR 1924 Cal 476*** that the primary purpose of granting bail is to secure the presence of the accused during the Trial. It was observed:

> "It is indisputable that bail is not to be withheld merely as a punishment. The requirements as to bail are to secure the attendance of the accused at the trial: ***R. v. Rose [(1898) 18 Cox. 717***. 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

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trial: ***Re Robinson [(1854) 23 L.J.Q.B. 286: 2 W.R. 424.], R. v. Scaife [(1841) 9 Dowling P.C. 553: 5 Jurist 700.]***. The test is applied by reference to the following considerations:

> (*a*) The nature of the accusation: ***R. v. Barronet [(1852) 1 E. & B. 1: Dearsley 51.], R. v. Butler [(1861) 14 Cox. 530 : 8 L.R. (Ir.) 39.]*** ;
>
> (*b*) The nature of the evidence in support of the accusation: ***Re Robinson [(1854) 23 L.J.Q.B. 286: 2 W.R. 424.], R. v. Butler [(1861) 14 Cox. 530 : 8 L.R. (Ir.) 39.] , R. v. McCormick; [(1864) 17 Ir. C.L.R. 411.]***
>
> (*c*) The severity of the punishment which conviction will entail: ***Re Robinson [(1854) 23 L.J.Q.B. 286: 2 W.R. 424.]***, and this explains the reluctance of Courts to grant bail on charges of murder: ***Re Barthelemy [(1852) 1 B. & B. 8: Dearsley 60.], R. v. Andrews [(1844) 2 D. & L. 10: 13 L.J.M.C. 113.]***. In this connection, we may recall that in England, bail in treason or felony is discretionary in the High Court or Courts having jurisdiction to try the offence: ***R. v. McCartie [(1859) 11 Ir. C.L.R. 188, 192.]***, ***R. v. Platt [(1777) 1 Leach 157.]***; on the other hand, bail in misdemeanour is said to be of right at Common Law: ***R. v. Spilsbury [[1898] 2 Q.B. 615.]; R. v. Badger [(1843) 4 Q.B. 468, 472: D. & M. 375: 4 St. T.N.S. 1387.]; Re Frost [(1888) 4 T.L.R. 757.]; see also R. v. Crowe [(1829) 4 C. & P. 251.]; R. v. Beardmore [(1836) 7 C. & P. 497.] ; R. v. Osborn [(1837) 7 C. & P. 799.] King v. Fortier [(1902) 13 Quebec K.B. 251: 9 Canada Cr. Cas. 191: 1 Ann. Cas. 10]***. This distinction is reflected in sections 496 and 497 of the Criminal Procedure Code, which respectively deal with the grant of bail in cases of what are described in the phraseology of the Indian Legislature as bailable and non-bailable offences."

10. A similar view was taken by the Hon'ble Supreme Court in ***Sanjay Chandra v. CBI, (2012) 1 SCC 40: (2012) 1 SCC (Cri) 26: (2012) 2***

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SCC (L&S) 397: 2011 SCC OnLine SC 1502, wherein it was observed at page 52:

> "**21.** 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 a reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is 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."

11. In the present case, the petitioner/accused was admitted on bail on the condition that he would appear before the Trial Court on every date of hearing. He defaulted in adhering to this undertaking, and the learned Trial Court was justified in issuing non-bailable warrants of arrest to secure his presence.

12. It was submitted that the petitioner's daughter was present, but her attendance was not marked, and NBWs were ordered to be issued to secure the petitioner's presence. This submission will not help the petitioner. It was laid down by the Hon'ble Supreme Court in ***Central Bank of India v. Vrajlal Kapurchand Gandhi, (2003) 6 SCC 573: 2003 SCC OnLine SC 697*** that the statement of facts that transpired during the hearing is

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conclusive and cannot be challenged before another court. It was observed:

> "**11.** The rival contentions need careful consideration. There can be a quarrel with the proposition as submitted by Mr Nariman that if an order records something, a party cannot be permitted to plead to the contrary, especially in matters as to whether there was any concession regarding a point, or whether it was given up at the time of the hearing.
>
> **12.** The only course open to a party taking the stand that an order does not reflect the actual position is to move the High Court in line with what has been said in ***State of Maharashtra v. Ramdas Shrinivas Nayak [(1982) 2 SCC 463: 1982 SCC (Cri) 478***]. In recent decisions, i.e. ***Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111: 2002 AIR SCW 4939***] and ***Roop Kumar v. Mohan Thedani [(2003) 3 Scale 611: (2003) 6 SCC 595***], the view in the said case was reiterated. Statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated, and no one can contradict such statements by an affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to a party to contend before this Court to the contrary. This Court cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy and judicial decorum do not permit it. Matters of judicial record in that sense are unquestionable. However, the Court can pass appropriate orders if a party moves it, contending that the order has not correctly reflected happenings in court."

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13. This position was reiterated in ***Shankar K. Mandal v. State of Bihar*, *(2003) 9 SCC 519: 2003 SCC (L&S) 1145: 2003 SCC OnLine SC 554*,** wherein it was observed at page 524:

> "**11.** If really there was no concession, or a different stand was taken, the only course open to the appellant was to move the High Court in line with what has been said in ***State of Maharashtra v. Ramdas Shrinivas Nayak [(1982) 2 SCC 463: 1982 SCC (Cri) 478]***. In a recent decision, ***Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111: 2002 AIR SCW 4939]***, the view in the said case was reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the contrary."

14. In the present case, the petitioner's remedy is to approach the learned Trial Court for correction of the order, and it is impermissible for him to make such submission before this Court.

15. It was submitted that the petitioner belongs to the armed forces and it was difficult for him to attend the Court. This submission will not help the petitioner. The petitioner could have

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sought exemption from appearance in case of any difficulty, and it was impermissible for him to be absent from the Court.

16. The judgment in ***Inder Mohan*** (supra) deals with the issuance of summons when cognisance is taken, and does not apply to the facts of the present case. The judgments in ***Sahib Singh*** (supra), ***Pankaj Kumar*** (supra), and ***Sarojani*** (supra) turn on their own facts and do not take notice of the judgment of the Hon'ble Supreme Court in ***Talab Haji Hussain*** (supra) and cannot be followed.

17. The petitioner has invoked the extraordinary jurisdiction of this Court, which is to be exercised sparingly to prevent the abuse of the process of the Court. It was laid down by the Hon'ble Supreme Court of India in ***Didigam Bikshapathi v. State of A.P.*, *(2008) 2 SCC 403; (2008) 1 SCC (Cri) 434; 2007 SCC OnLine SC 1445*** that the High Court does not act as a Court of Appeal or Revision while exercising inherent jurisdiction, but exercises jurisdiction to do real and substantial justice in extraordinary situations. It was observed at page 405:

> **7.** "*6.* ... [Section 482] does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent

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jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for the proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section that merely recognises and preserves the inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do right and to undo a wrong in the course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for the advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent the promotion of justice. In the exercise of its powers, the court would be justified in quashing any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of the court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the [report], the court may

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examine the question of fact. When a [report] is sought to be quashed, it is permissible to look into the materials to assess what the [report] has alleged and whether any offence is made out, even if the allegations are accepted in toto.

7. In ***R.P. Kapur v. State of Punjab [AIR 1960 SC 866],*** this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR para 6)

> (*i*) where it manifestly appears that there is a legal bar against the institution or continuance, e.g. want of sanction;
>
> (*ii*) where the allegations in the first information report or complaint, taken at their face value and accepted in their entirety, do not constitute the offence alleged;
>
> (*iii*) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

8. In dealing with the last [category], it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether, on a reasonable appreciation of it, the accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it be an instrument in the hands of a private complainant to unleash a vendetta to harass any person needlessly. At the same time, the

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section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in ***State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335: 1992 SCC (Cri) 426]***. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)

> '*102.* (*1*) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a

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just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings, and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge.'

9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide, and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in the exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court, being the highest court of a State, should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court, and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage." [**Ed.**: ***State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89***, pp. 94-96, paras 6-9.]

(See ***State of Orissa v. Saroj Kumar Sahoo [(2005) 13 SCC 540: (2006) 2 SCC (Cri) 272***] and ***Minu Kumari v. State of Bihar [(2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937]***.)

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18. The present case does not disclose any abuse of the process of the Court, and it is not a fit case where the extraordinary jurisdiction remedy vested in the Court should be exercised.

19. Consequently, the present petition fails and is dismissed.

20. At this stage, learned counsel for the petitioner prays for a direction that if the petitioner appears before the learned Trial Court tomorrow, his bail application be considered. However, no direction is required to be passed because it is the jurisdiction vested in the learned Trial Court and is to be independently exercised by it, unfettered by any directions given by this Court. Therefore, this prayer cannot be accepted.

21. A copy of this order be sent to the learned Trial Court for information.

22. The observations made hereinabove are regarding the disposal of this petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

5th November, 2026
(Chander)

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