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

**Cr.MP(M) No. 1944 of 2026**
**Reserved on 05th November, 2026**
**Decided on 06th November, 2026**
**Uploaded on 06th November, 2026**

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**Nitesh Kumar @ Nishu** **…Petitioner**

**Versus**

**State of HP & Anr.** **…..Respondents**

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**Coram**

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

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**For the petitioner** : **Mr. Vivek Singh Attri, Advocate and Mr. Chander Shekhar Thakur, Advocate.**

**For the respondent/State** : **Mr. Rajpal Thakur, Additional Advocate General.**

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**Chirag Bhanu Singh, Judge**

The petitioner has preferred an application under Section 483 of Bharatiya Nagarik Suyraksha Sanhita, 2023 (for short "BNSS") seeking post-arrest bail in case FIR No. 34 of 2026, dated 13.12.2025 registered at Women Police Station, Nahan, District Sirmaur, HP, under Section 65(1) of the Bharatiya Nyaya Sanhita, 2023 (in short "BNS") and Section 6 of the Protection of Children from Sexual Offences Act, 2012

(hereinafter referred to as “the Act”).

2. The facts which emerge from the status report may be succinctly put thus; on 13.12.2025, the prosecutrix had got recorded her statement that she was her resident of Tehsil Rajgarh, District Sirmaur and aged about 14½ years and was studying in Class X. Her mother was working in a private company and living in a quarter at Nahan. On 11.12.2025, she had come to Nahan to meet her mother. She was in touch with one boy called Nishu through Instagram for the last 15-20 days. The said Nishu had called her to the Nahan bus stand. She had met him that day. He had again called her on phone and they had met at the bus stand. He had asked the prosecutrix to come to his room and he also expressed his intention to marry her. On the said pretext, he had sexually ravished her and thereafter left her midway. She had returned back to her mother's quarter. Thereafter, the said Nishu had refused to marry her. He had again asked her to come to his room. She had refused. On 13.12.2025, she had consumed two phenyl tablets and her sister had met her near Delhi gate, Nahan. She was feeling unwell and thus had been brought to the hospital.

3. On the basis of the same, the FIR had come to be

registered.

4. The petitioner had came to be arrested on 14.12.2025 and presently, he is in judicial custody.

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

6. The learned counsel for the petitioner has vehemently urged that the FIR apparently has come to be registered based on some misunderstanding and the victim had stated thus even before the learned trial Court. She had not objected to the bail being granted to the petitioner. However, learned counsel for the petitioner further contends that he has been falsely implicated. The challan stands filed and the matter has been listed for framing of charges on 02.12.2026. The petitioner is a young boy just about 21 years old and was a student. His incarceration would not advance the case of the prosecution in any manner. During the course of her medical examination, the prosecutrix had also named some another person, a juvenile, who was said to have sexual ravished her about two months ago in her native place. Because of the incarceration, his studies have been jeopardized. He had known the prosecutrix prior to the occurrence. The prosecutrix had tried to befriend her, as is clear

from the WhatsApp chat annexed along with the petition.

7. Learned Additional Advocate General on the other hand has urged that seeing to the age of the girl and keeping in view the fact that the accused has been charged under Section 6, the discretion of bail be not exercised in his favour. The learned Additional Advocate General would further contend that since the trial has already commenced and there is no undue delay in the trial, the bail petition should be dismissed.

8. Having heard the respective contentions, so made, it transpires from record that admittedly, the petitioner knew the prosecutrix prior to the offense. However, while the prosecutrix was being medically examined, she had specifically narrated the alleged history that one other boy named Rishabh, @ Rishu, had sexually ravished her in Nauradhar about two months ago. Over and apart, the prosecutrix herself while appearing before the learned trial Court had categorically deposed that she stood no objection if the petitioner is released on bail.

9. The prosecutrix had also appeared before this Court on 15.10.2026. She in unequivocal terms deposed before this Court that she does not intend to prosecute the lis and the complaint has been filed on a misconception of facts and the

petitioner was known to her for more than one year.

10. No doubt, the no objection by the prosecutrix may not completely override the gravity and seriousness of the charges under POCSO Act, but the Court cannot be oblivious of the fact that it is a relevant factor like prior criminal antecedents, prolonged custody, weak or contradictory statements of the prosecutrix etc.

11. No doubt, there is also a statutory presumption against the accused, as is clear from Section 29 of the POCSO Act. Admittedly, the accused has to still to prove to the contrary to rebut the said presumption, but the categorical stand of the prosecutrix, both before the learned trial Court and before this Court, clearly specifying that she does not intend to prosecute the lis and the complaint had been filed on a misconception of facts. It would at least show that the presumption cannot be read against the accused at least in the present case. Even otherwise, the material collected during investigation itself shows that the prosecutrix had herself named one Rishabh @ Rishu, who was stated to have sexually ravished her about two months ago at Nauradhar.

12. The charge-sheet having been filed and the petitioner,

who happens to be a student and that too a bonafide resident of the area itself, there are seemingly no chances of his fleeing from justice. The statement of the prosecutrix on the basis of which the FIR had come to be recorded also does not really inspire enough confidence. Keeping in view the antecedent circumstances discussed above, it at least cannot be made the sole basis to keep the petitioner behind bars. It is one rare case where even the statutory presumption against the accused also does not seem to be working, keeping in view the subsequent statements of the prosecutrix herself. The occurrence itself seems to be shrouded in doubt.

13. 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 tamper 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;*

14. 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.

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

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

**(Chirag Bhanu Singh)**
**Judge**

**06th November, 2026**
**(Ritu)**

SHAMSH TABREZ

Digitally signed by SHAMSH TABREZ
Date: 2026.11.06 14:21:53 +0530