

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr.M.P.(M) No. 1933 of 2025****Reserved on: 12.09.2025****Decided on: 19.09.2025**

Bhutto Ram**.....Petitioner.****Versus****State of Himachal Pradesh****..... Respondent**

Coram**The Hon'ble Mr. Justice Rakesh Kainthla, Judge.*****Whether approved for reporting?¹ Yes*****For the Petitioner : M/s Kshitij Sharma, Prashant
Sharma and Shobhit Sharma,
Advocates.****For the Respondent : Mr. Lokender Kutlehria, Additional
Advocate General.**

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in F.I.R. No.23/2025, dated 24.01.2025,

¹ Whether the reporters of the local papers may be allowed to see the Judgment?Yes.

registered at Police Station, Sadar Solan, District Solan for the commission of offences punishable under Sections 103(1) and 238 read with Section 3(5) of Bhartiya Nyaya Sanhita, 2023 (BNS) and Sections 25 & 27 of the Arms Act. It has been asserted that, as per the prosecution, the deceased Som Dutt alias Sonu was found missing on 21.01.2025. The police registered the F.I.R. and investigated the matter. They found that Sonu, Bhutto (petitioner) and Ajay had gone to the forest carrying guns. Subsequently, Sonu's dead body was found. The police arrested the petitioner on 24.01.2025. The police filed the charge-sheet on 20.04.2025 and supplementary charge-sheet on 01.06.2025. The petitioner is the only earning member of the family, and his family is facing hardship because of his detention. The petitioner was discharging his duties at the pump house located in the forest. The prosecution has cited thirty-eight witnesses, and their examination will take some time. No blood was detected on the petitioner's clothes. No recovery was effected from him. The petitioner is being implicated based on the call details, which are insufficient to connect him with the commission of crime. The petitioner did not know the deceased, who was residing in a different village. The status report/charge-sheet also does not disclose any enmity between

the parties. The petitioner would abide by the terms and conditions which the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

2. The petition is opposed by filing a status report asserting that deceased Som Dutt alias Sonu had gone to the 'jungle' on 21.01.2025 with a gun of his neighbour Krishan Singh. He did not return. His phone was found to be switched off. The petitioner and another person were also seen going to the 'jungle' carrying a gun. The police registered the FIR and interrogated Bhutto and Sandeep Kumar alias Ajay Kumar alais Aju. Ajay Kumar disclosed a cave where the head of the dead body was severed, and the rest of the body was put on fire. Sandeep Kumar alias Ajay Kumar also produced one SBBL, which was seized by the police. He also got recovered a gun concealed in the cow dung. The place where the head was burnt and buried was also identified. A partially burnt dead body without the head was recovered by the police. As per the report, the cause of death was hemorrhage and shock secondary to ante-mortem multiple penetrating gunshot wounds to the chest and head region caused by a smooth weapon. Post-mortem decapitation of the head was also found. The quantity

of alcohol in the blood of the deceased was found to be 85.82 mg %. The police recovered various other articles.

3. The investigation revealed that the petitioner is posted as a pump operator in a pump installed in the 'jungle'. He and Sandeep went to the 'jungle'. Sandeep had a gun. Som Dutt had also gone to the same 'jungle' earlier, armed with a gun. He had also consumed liquor. The petitioner and Sandeep were searching for a wild animal. Sandeep had concealed himself in the bushes. Petitioner and Sandeep mistook him for a wild fowl. Sandeep shot at the bushes where Som Dutt had hidden himself, and Som Dutt died. The petitioner and Sandeep took the dead body, severed its head with a 'darat' and burnt the body. They took the head to another place where it was burnt and buried. The gun residues were found in the gun recovered by the police. The petitioner had called his friend Sandeep Kumar to the 'jungle' for hunting. They were searching for the wild animal. They shot at Som Dutt, who had concealed himself in the bushes mistakenly. Bhutto Ram had accompanied Sandeep. The police filed a charge sheet before the Court. Matter is listed for consideration of charge on 21.08.2025.

4. I have heard Mr. Kshitij Sharma, Mr. Prashant Sharma and Mr. Shobhit Sharma, learned counsel for the petitioner and Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent-State.

5. Mr. Kshitij Sharma, learned counsel for the petitioner, submitted that the petitioner is innocent and that he was falsely implicated. Even if the case of the prosecution is accepted to be correct, it will not fall within the purview of Section 103 but Section 106 of the BNS. The case is similar to illustration (c) of Section 100 of the BNS. As per the prosecution, the petitioner and co-accused had decapitated the dead body and burnt it. The charge sheet was filed against them for an offence punishable under Section 238 of the BNS, which is bailable. The Court should not be swayed by the gruesome nature of the crime while deciding the bail petition. He prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent-State, submitted that the petitioner and co-accused had killed the deceased. They severed his head and burnt the body and the head at different places.

The gruesome nature of the crime will disentitle the petitioner from the concession of bail. Hence, 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 *Ajwar v. Waseem (2024) 10 SCC 768: 2024 SCC OnLine SC 974*, wherein it was observed at page 783: -

“Relevant parameters for granting bail

26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [Refer: *Chaman Lal v. State of U.P.* [*Chaman Lal v. State of U.P.*, (2004) 7 SCC 525: 2004 SCC (Cri) 1974]; *Kalyan Chandra Sarkar v. Rajesh Ranjan* [*Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977]; *Masroor v. State of U.P.* [*Masroor v. State of U.P.*, (2009) 14 SCC 286 : (2010)

1 SCC (Cri) 1368]; *Prasanta Kumar Sarkar v. Ashis Chatterjee* [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765]; *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527]; *Anil Kumar Yadav v. State (NCT of Delhi)* [*Anil Kumar Yadav v. State (NCT of Delhi)*, (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425]; *Mahipal v. Rajesh Kumar* [*Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558].]

9. The Hon'ble Supreme Court cautioned the Courts against the superficial examination of the bail consideration in *Shabeen Ahmad v. State of U.P.*, (2025) 4 SCC 172: 2025 SCC OnLine SC 479, and it was observed at page 177:

“18. A superficial application of bail parameters not only undermines the gravity of the offence itself but also risks weakening public faith in the judiciary's resolve to combat the menace of dowry deaths. It is this very perception of justice, both within and outside the courtroom, that courts must safeguard, lest we risk normalising a crime that continues to claim numerous innocent lives.”

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

11. As per the prosecution, the petitioner and Sandeep had gone to the 'jungle' for hunting. The deceased had also gone to the 'jungle' for hunting. He had concealed himself in the bushes. The petitioner and co-accused thought that a wild fowl was behind the bushes. The co-accused shot towards the bushes, causing the death of Som Dutt. A similar situation is

provided in illustration (c) to Section 299 of the Indian Penal Code (IPC) and Section 100 of the BNS, which reads as under: -

“(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A, not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.”

12. The framers of the Indian Penal Code assigned the reasons for incorporating these provisions in the report prepared by them, which was published subsequently with the title “*A Penal Code prepared by The Indian Law Commissioners, and published by command of The Governor General of India in Council, Calcutta: 1837*”. They stated in Note N that the provisions enacted by them differs from the rule of English Law because Sir William Blackstone says that “if one intends to do another felony, and undesignedly kills a man, this is murder.” However, framers did not agree with the principle of English Law and observed that if an act is innocent, the person cannot be punished because it leads to bad consequences and if a person causes death by negligence or rashness without intending to cause death, he should be liable to punishment for the offence which he was engaged in committing. They observed at page 58:

“It will be admitted that, when an act is in itself innocent, to punish the person who does it because bad consequences which no human wisdom could have foreseen have followed from it would be in the highest degree barbarous and absurd.

When a person engaged in the commission of an offence causes death by rashness, or negligence, but without either intending to cause death, or thinking it likely that he shall cause death, we propose that he shall be liable to the punishment of the offence which he was engaged in committing, super-added to the ordinary punishment of culpable involuntary homicide.

The arguments and illustrations which we have employed for the purpose of shewing that the involuntary causing of death without either rashness or negligence ought, under no circumstances, to be punished at all will, with some modifications which will readily suggest themselves, serve to shew that the involuntary causing of death by rashness or negligence though always punishable, ought under no circumstances to be punished as murder.”

13. Therefore, the framers provided that a person shooting at another without knowing about his presence and believing him to be a wild fowl can be held liable for his negligence in omitting to take care that a person was concealing himself behind the bushes, but cannot be held liable for murder because the hunter never intended to kill a man but a wild animal.

14. In the present case, the prosecution specifically asserted in the status report that the co-accused had shot at the bushes, believing that there was a wild fowl. Thus, they did not

intend to cause the death of Som Dutt and cannot be *prima facie* held liable for the commission of an offence punishable under Section 103 of BNS, but would be liable for the commission of an offence punishable under Section 106 of the BNS, which is bailable in nature.

15. The petitioner and co-accused decapitated the head of the dead body. They tried to burn the dead body and its head. The autopsy report specifically mentions that decapitation was *postmortem* and not *antemortem*. Hence, the police filed the charge-sheet for the commission of an offence punishable under Section 238 of the BNS. The legislature, in its wisdom, has made this offence bailable, even if an attempt is made to destroy the evidence in an offence punishable with capital punishment. Therefore, there is a force in the submission of Mr. Kshitij Sharma, learned counsel for the petitioner, that the gruesome nature of the act and disapproval of the Court will have to give way to the wisdom of the legislature, which decided to make it bailable.

16. Thus, *prima facie*, there is insufficient material to conclude that the accused has committed a non-bailable offence justifying his further detention.

17. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail subject to his furnishing personal bonds in the sum of ₹1,00,000/- with one surety of the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following terms and conditions: -

- (I) The petitioner will not intimidate the witnesses, nor will he influence any evidence in any manner whatsoever;
- (II) The petitioner shall attend the trial on each and every hearing and will not seek unnecessary adjournments;
- (III) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the SHO concerned, the Police Station concerned and the Trial Court;
- (IV) The petitioner will surrender his passport, if any, to the Court; and
- (V) The petitioner will furnish his mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/ Court within five days from the date of the change.

18. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

19. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, District Jail, Solan and the learned Trial Court by FASTER.

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

19 September 2025.

(yogesh)

(Rakesh Kainthla)

Judge