

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 2280 of 2025

Reserved on: 22.09.2025

Date of Decision: 06.10.2025.

Sandeep Kumar

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

For the Petitioner : M/s Ajay Sipahiya, Pankaj Chauhan
& Tarun Mehta, Advocates.

For the Respondent/State: Mr Ajit Shamra, Deputy Advocate
General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No. 23 of 2025, dated 24.01.2025, registered at Police Station Sadar, Solan, District Solan (HP), for the commission of offences punishable under Sections 103(1), and 238 read with Section 3(5) of Bharatiya Nyaya Sanhita, 2023

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

(hereinafter referred as BNS) and Sections 25 and 27 of the Arms Act, 1959.

2. It has been asserted that the petitioner was arrested on 24.01.2025. The investigation is complete and the charge sheet has been filed before the Court. The matter is listed for consideration on charge on 10.10.2025. The prosecution has cited 38 witnesses, and the conclusion of the trial is likely to take some time. As per the prosecution, the deceased, Som Dutt alias Sonu, was found missing on 21.01.2025. The police found after the investigation that Sonu, Bhutto and Sandeep Kumar @ Ajay (the present petitioner) had gone to the forest carrying guns. Subsequently, Sonu's dead body was found. The police arrested the petitioner on 24.01.2025. The grounds of arrest were not supplied to the petitioner. The deceased was armed with a gun and had consumed liquor. The possibility of the deceased shooting himself cannot be ruled out. There is no direct witness to the incident. The petitioner is a permanent resident of District Solan, and there is no chance of his absconding. The investigation is complete, and the petitioner cannot tamper with the evidence. The petitioner would abide by the terms and

conditions which the Court may impose. Hence, the present petition.

3. The petition is opposed by filing a status report asserting that the 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 the petitioner. The petitioner disclosed a cave where the head of the dead body was severed, and the rest of the body was set on fire. He 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 haemorrhage 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.

4. The investigation revealed that Bhutto is posted as a pump operator in a pump installed in the 'jungle'. He and the petitioner went to the 'jungle'. Petitioner 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 Bhutto were searching for a wild animal. The deceased had concealed himself in the bushes. Petitioner and Bhutto mistook him for a wild fowl. Petitioner shot at the bushes where Som Dutt had hidden himself, and Som Dutt died. The petitioner and Bhutto 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. Bhutto had called the present petitioner 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. Petitioner had accompanied Bhutto. The police filed a charge sheet before the Court. Matter is listed for consideration of the charge on 10.10.2025.

6. I have heard M/s Ajay Sipahiya, Pankaj Chauhan & Tarun Mehta, learned counsel for the petitioner and Mr Ajit

Sharma, learned Deputy Advocate General, for the respondent/State.

7. Mr Ajay Sipahiya, learned counsel for the petitioner, submitted that the petitioner is innocent and that he was falsely implicated. The allegations in the FIR, even if taken to be correct, do not satisfy the ingredients of Section 103 of BNS and Sections 25 & 27 of the Arms Act. He relied upon the judgment of this Court in *Bhutto Ram vs. State of HP*, 2025:HHC:32543 and the judgment of the Hon'ble Supreme Court in *Surinder Singh vs. State, Criminal Appeal No. 2273 of 2010, decided on 26.11.2021*, in support of his submission.

8. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the petitioner and the co-accused had killed the deceased. They severed his head and burnt the body and head at different places. The act committed by them is diabolical, reprehensible and gruesome, which would disentitle the petitioner from the concession of bail. Hence, he prayed that the present petition be dismissed.

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

10. The parameters for granting bail were considered by the Hon'ble Supreme Court in *Pinki v. State of U.P.*, (2025) 7 SCC 314: 2025 SCC OnLine SC 781, wherein it was observed at page 380: -

(i) Broad principles for the grant of bail

56. In *Gudikanti Narasimhulu v. High Court of A.P.*, (1978) 1 SCC 240: 1978 SCC (Cri) 115, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of personal liberty of a person under trial, has laid down the key factors that should be considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)

“7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence is also pertinent. The punishment to which the party may be liable, if convicted or a conviction is confirmed, also bears upon the issue.

8. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. [Patrick Devlin, “The Criminal Prosecution in England” (Oxford University Press, London 1960) p. 75 — Modern Law Review, Vol. 81, Jan. 1968, p. 54.]

9. Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of

society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.” (emphasis supplied)

57. In *Prahlad Singh Bhati v. State (NCT of Delhi)*, (2001) 4 SCC 280: 2001 SCC (Cri) 674, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284–85, para 8)

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles, having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge.” (emphasis supplied)

58. This Court in *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598: 2002 SCC (Cri) 688, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

“3. Grant of bail, though being a discretionary order, calls for exercise of such a discretion in a judicious manner and not as a matter of course. An order for bail bereft of any

cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts do always vary from case to case. While the placement of the accused in society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, and the same should always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — the more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.” (emphasis supplied)

59. In *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

60. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765, this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under: (SCC p. 499, para 9)

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.” (emphasis supplied)

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62. One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is *Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (*Pappu Kumar v. State of Bihar*, 2021 SCC OnLine Pat 2856 and *Pappu Singh v. State of Bihar*, 2021 SCC OnLine Pat 2857) of the High Court granting bail to the accused, observed as follows: (*Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170], SCC p. 511, para 35)

“35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a court to arrive at a *prima facie* conclusion. While considering an application for the grant of bail, a *prima facie* conclusion must be supported by reasons and must be arrived at after having

regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.” (emphasis supplied)

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

12. As per the prosecution, the petitioner and Bhutto 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 the co-accused thought that a wild fowl was behind the bushes. The petitioner fired a 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.”

13. The framers of the Indian Penal Code assigned the reasons for incorporating these provisions in their report, 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.”

14. Therefore, the framers provided that a person hunting 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.

15. In the present case, the prosecution specifically asserted in the status report that the petitioner had shot at the bushes, believing that there was a wild fowl. Thus, he 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 BNS, which is bailable in nature.

16. 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 Ajay Sipahiya, 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.

17. The police have also added Sections 25 and 27 of the Arms Act. The status report specifically mentions that the petitioner had a licensed gun with him. Therefore, *prima facie*, the provisions of Sections 25 and 27 of the Arms Act would not be attracted. It was laid down by the Hon'ble Supreme Court in *Surinder Singh v. State (UT of Chandigarh)*, (2021) 20 SCC 24: 2021 SCC OnLine SC 1135 that the accused possessing a licensed weapon cannot be held liable for the commission of an offence punishable under Section 27 of the Arms Act even if it is used for an unlawful purpose. It was observed at page 35: -

“31. True it is that prior to the amendment of Section 27 of the Arms Act, vide Arms (Amendment) Act, 1988, the said provision penalised the use of any arms and ammunition for any “unlawful purpose”. However, post its

amendment, Section 27 of the Arms Act is strictly confined to violation of conditions mentioned either under Section 5 or 7 of the Arms Act and the “unlawful purpose” of using arms and ammunition is no longer an inseparable component of the delinquency.

32. The appellant was admittedly a police official at the time of the incident, and the arms and ammunition used for the commission of the offence were placed in his possession under the sanction accorded by the competent authority. The appellant, being in authorised possession of the weapon, cannot be said to have used an unlicensed weapon, as prohibited under Section 5 of the Arms Act. It appears that the trial court was swayed by irrelevant considerations such as illegal use of the weapon, and lost track of the objective of the statute, which has been enacted to provide a licensing/regulatory regime, to enable law-abiding citizens to carry arms, and also to prohibit the possession, acquisition, manufacture, etc. of certain categories of firearms, unless authorised by the Central Government. In other words, illegal use of a licensed or sanctioned weapon per se does not constitute an offence under Section 27, without proving the misdemeanour under Section 5 or 7 of the Arms Act. At best, it could be a “misconduct” under the service rules, the determination of which was not the subject of the trial.”

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

19 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.

20. 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.

21. 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.

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

06th October, 2025
(Anurag)

(Rakesh Kainthla)
Judge