2025:HHC:19540

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. : 798 of 2025
Reserved on : 5th June, 2025
Decided on : 24th June, 2025

Sahil Sharma ...Applicant

Versus

State of Himachal Pradesh & Another ...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1] ***Yes***

For the applicant : Applicant in person with Mr. Ashok Sharma, Senior Advocate, assisted by Ms. Anubhuti Sharma, Advocate.

For the respondent : Mr. Tejasvi Sharma, Additional Advocate General, with Mr. Rohit Sharma, Deputy Advocate General, assisted by ASI Nikhil Kumar, Women Police Station, Chamba, District Chamba.

Respondent No.2, in person with Ms. Kritika Sharma & Mr. Gaurav Kumar, Advocates.

Virender Singh, Judge

Applicant Sahil Sharma, apprehending his arrest, in case FIR No.14 of 2025, dated 05.04.2025, registered, under Section 376 of the Indian Penal Code

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

(hereinafter referred to as 'the IPC'), and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act'), has filed the present application, under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), with a prayer to direct the Police/Investigating Officer of Women Police Station Chamba, District Chamba, H.P., to release him on bail, in the event of his arrest.

2. The relief, as claimed in the application, has been sought on the ground that the entire case against the applicant is false and fabricated.

3. It is the further case of the applicant that the complainant had developed intimacy with the applicant in the year 2023, when, he had gone to Chamba, in connection with health issues of his father.

4. According to the applicant, he is ordinarily resident of Mumbai and working in a private Company at Mumbai.

5. It is the case of the applicant that the complainant met him, for the first time, in the year 2023 and she had disclosed her age as 22 years.

6. It is the specific case of the applicant that the so called incident of December, 2021, has been concocted with an ulterior motive to bring the case within the ambit of POCSO Act.

7. The applicant has given certain undertakings, for which, he is ready to abide by, in case, any direction is issued under Section 482 BNSS to the I.O.,/Police.

8. On the basis of the above facts, a prayer has been made to allow the application as prayed for.

9. When put to notice, the police has filed the status report, disclosing therein, that on 05.04.2025, the complainant, aged about 20 years, appeared before the police of Women Police Station, Chamba, disclosing therein, that she is resident of village 'X'. According to her, she had developed relationship with applicant Sahil Sharma.

9.1. Said Sahil Sharma, according to the complainant, on the pretext of marrying her, had developed physical relations with her. The relations were firstly made in the month of December, 2021, in 'Y' Hotel, which is situated near bus stand 'Z'.

9.2. According to the complainant, her age at that time was 17 years, as she has mentioned her date of birth in the complaint as 7.7.2005.

9.3. It is the further case of the police that according to the complainant, thereafter, they used to meet each other oftenly and in the month of March 2024, they again met in the same Hotel, where the victim had again discussed with the applicant about their marriage. Again, on the pretext of marriage, the applicant had developed physical relations with her.

9.4. As per the status report, on 21.03.2025, applicant Sahil Sharma and the victim met at Hotel 'A' at Chandigarh. They stayed there from 21st March 2025 to 27th March, 2025, for seven days, where applicant made physical relations with her.

9.5. At Chandigarh also, Sahil Sharma, had assured the complainant to marry her. From 2023, applicant is stated to have assured her to solemnize marriage. From the month of August, 2023, the applicant and complainant were planning to solemnize their marriage on 3.4.2025.

9.6. On 01.4.2025, the complainant and the applicant had discussed this issue and applicant had discussed the matter with the family members of the victim. However, according to her, on 2.4.2025, his mobile phone was found to be switched off. Despite best efforts to contact him, she could not contact him, nor he has made any call to her. As such, she has prayed that action be taken against the applicant.

9.7. On the basis of the above facts, the police registered the FIR, in question and criminal machinery swung into motion.

10. During investigation, on 5.4.2025, the complainant was medico-legally examined at Hospital 'X' and her statement, as well as, that of her mother was recorded, under Section 180 of the BNSS. On 7.4.2025, victim was produced before the Court of learned Judicial Magistrate First Class, Chamba, where her statement under Section 183 of the BNSS, was recorded.

11. On 7.4.2025, the complainant had identified room No.201 of Hotel 'Y' and from the spot, bed sheet and billow cover were taken into possession. Videography and

photography of the spot was conducted. Statements of the witnesses under Section 180 of BNSS were recorded.

12. Lastly, a stand has been taken that in the year 2021, when the applicant had allegedly made physical relations with the victim on the pretext of marriage, at that time, she was about 17 years and 4 months. As such, a prayer has been made to dismiss the application.

13. On the basis of the stand so taken, interim protection was given to the applicant and the matter was adjourned for 30.04.2025.

14. On 30.04.2025, the police filed the supplementary status report, according to which, as per the stand taken by the victim in her statement under Section 180 of BNSS, applicant had developed physical relations with her at Hotel 'Z' at Chandigarh. As such, on 13.04.2025, the victim, in the custody of her mother had identified the said place at Chandigarh.

15. A photocopy of the relevant register was obtained, along with photocopies of the Aadhar Card, submitted by the victim and applicant for obtaining the room on rent. As per the photocopy of the visitor's register,

in the Aadhar Card, submitted for obtaining the room on rent, at Chandigarh, victim's date of birth was found to be 6.6.2005.

16. On 21.04.2025, birth certificate of the victim, along with photocopy of relevant register, was obtained. Victim has also produced the photocopies of the matriculation examination certificate, Aadhar Card, and per those documents, the date of birth of the victim was found to be 7.7.2005. However, as per the Aadhar Card, submitted for obtaining the room on rent at Chandigarh, her date of birth was found to be 6.6.2005.

17. It has further been mentioned in the status report that accused Sahil Sharma (applicant), during investigation also disclosed that on 6.7.2024, the victim, through e-mail, has forwarded a copy of the Aadhar Card, containing year of her birth as 2001. Hence, a prayer has been made to dismiss the application.

18. In view of the request made by the Investigating Officer, the applicant was directed to join the investigation on 1.5.2025, at 4.00 p.m. and the matter was adjourned to 15.5.2025.

19. On 15.5.2025, when the victim appeared, along with her counsel, in this case, then, she was ordered to be impleaded in the present case as party-respondent No.2.

20. On 15.05.2025, status report has been filed, according to which, the victim was found to be the member of Scheduled Caste community, whereas, the accused is from general category. As such, provisions of Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the SC&ST Act'), were added, in this case, and investigation was thereafter entrusted to Additional Superintendent of Police on 8.5.2025.

21. In the status report, another apprehension has been put forth that in case, the application is allowed, in that eventuality, the applicant may coerce the witnesses and there are chances that he may destroy the evidence against him. As such, a prayer has been made to dismiss the application. On that day, the matter was adjourned to 22.5.2025.

22. On 22.5.2025, supplementary status report was filed and the matter was adjourned for 29.5.2025.

23. In this case, victim-respondent No.2, has also filed objections, in which, she has taken a stand that she and the applicant met, for the first time, in the year 2021 and they were in romantic relationship with each other. According to her, at the relevant time, she was about 17 years of age and the applicant has disclosed his age as 26 years. She has categorically denied the claim of the applicant that he met with respondent No.2-victim, in the year 2023.

24. According to the complainant, physical relations were made by the applicant on the pretext of solemnizing marriage with her. She has asserted that the applicant frequently took her to 'X' Hotel, owned by his friend at 'Z'. He also took her to Chandigarh on various occasions, where, they engaged in physical intimacy. Their relationship was in the knowledge of their family.

25. The complainant has further asserted the fact that applicant is in the habit of consuming alcohol and he used to utter derogatory and casteist remarks against the victim as 'Chamar' and 'Churi'. However, the victim was

allegedly affectionate towards him, as such, she has not objected to such remarks.

26. It is the further case of the complainant that in the month of April, 2025, the applicant had made a proposal to the victim to solemnize marriage with her, upon which, both of them had mutually agreed to solemnize the marriage, on 3.4.2025. The applicant allegedly suggested a Court marriage in Dalhousie, expressing his intent to keep the marriage confidential due to opposition from his family. He also assured the victim that he would disclose the factum of marriage to his family after 5-6 months. However, on 2.4.2025, when the victim attempted to contact the applicant, he failed to respond. As such, the applicant has violated the promise and abandoned the complainant.

27. Not only this, according to the victim, the applicant has fabricated the copy of Aadhar Card of the victim, altering the year of birth from 2005 to 2001. It is her further case that the sister of the applicant had offered monetary compensation to her to withdraw the complaint and not only this, his brother had alleged false allegations

that the victim is demanding Rs.45,00,000/- to settle the matter. Highlighting the fact that the police have added Section 3(2)(v) of the SC & ST Act, as such, a prayer has been made that the present application is not maintainable. Along with the objections, printout of the social media App, have also been annexed.

28. On the basis of the above facts, Shri Tejasvi Sharma, learned Additional Advocate General, Ms. Kritika Sharma and Mr. Gaurav Kumar, Advocates have prayed that the present application with the addition of Section 3(2)(v) of SC&ST Act, has become non-maintainable, as such, a prayer has been made to dismiss the application, being not maintainable.

29. Perusal of the record reveals that on 9.5.2025, after receiving the caste certificate of victim, as well as of the applicant, Police has added Section 3(2)(v) of SC & ST Act and thereafter, the investigation was handed over to Additional Superintendent of Police.

30. Perusal of the record also shows that on 6.5.2025, the victim has made a supplementary statement, disclosing therein, that her family belongs to a scheduled

caste community, whereas, applicant Sahil Sharma is from Pandit family (general category). Applicant is stated to be knowing the fact that the victim is from scheduled caste community. Initially, the applicant has alleged that he does not believe in castism and when child victim has allegedly persuaded him to have a discussion about their marriage with his family members, upon which, he disclosed that his family members will not accept the marriage. As such, he has persuaded her to solemnize Court marriage on 3.4.2025 and according to her, applicant assured her that he will disclose this fact to his family members.

31. Later on, the complainant has however, got recorded that on 2.4.2025, when, she called the applicant, his mobile phone was found switched off and according to her, applicant Sahil Sharma, is putting off marriage with her, on account of the fact that she belongs to Scheduled Caste community. Lastly, she has disclosed that the applicant was having evil design, in his mind and getting the said evil design, fulfilled, on the pretext of marriage, sexually exploited her.

32. In the FIR, Section 3 (2)(v) of the SC&ST Act has not been mentioned, nor, the same has been mentioned in the status reports, which have been filed from time to time i.e. on 8.4.2025, and 30.4.2024. The provisions of Section 3(2)(v) of the SC&ST Act have been added only on 7.5.2025 and thereafter, the investigation of the case has been entrusted to Additional Superintendent of Police, Chamba.

33. The statement of the victim was recorded on 06.05.2025, in which, she has alleged that she was allegedly raped by the applicant on the ground that she belongs to scheduled caste community. Admittedly, in the FIR, which was registered on the complaint of the complainant-victim, who is not an illiterate person, but, an educated girl, as well as, in the initial two status reports, filed in this Court, there is no reference with regard to the provisions of SC&ST Act, what to talk about the fulfillment of necessary ingredients to constitute the said offence.

34. At the time of deciding the question of granting the relief to the person, who is approaching the Court under Section 482 of the BNSS, only the allegations

mentioned in the FIR have to be evaluated in order to find out, by taking the allegations at their face value.

35. In the FIR, the complainant has not even whispered about her caste, nor alleged that she was allegedly raped on the pretext of being member of Scheduled Caste community.

36. The Hon'ble Supreme Court in ***Shajan Skaria*** versus ***State of Kerala & Another, 2024 SCC OnLine SC 2249***, has held that if the complaint does not make out a prima facie case for the applicability of the provisions of SC&ST Act, the Court would not be precluded from granting pre-arrest bail to the accused persons. The Hon'ble Supreme Court has also held that if necessary ingredients to constitute the offence under the SC&ST Act, are not made out upon the reading of the complaint, no case can be said to exist prima facie. Relevant paragraphs 35 to 39, 47 and 48 of the judgment, are reproduced as under:-

> *"35. Thus, the decision in Prathvi Raj Chauhan (supra) makes it abundantly clear that even while upholding the validity of Section 18-A of the Act, 1989, this Court observed that if the complaint does not make out a prima facie case for applicability of the provisions of the Act, 1989*

then the bar created by Sections 18 and 18-A(i) shall not apply and thus the court would not be precluded from granting pre-arrest bail to the accused persons.

36. Justice Ravindra Bhat, in his concurring judgment, observed that while considering any application seeking pre-arrest bail in connection with an offence alleged to have been committed under the provisions of the Act, 1989, the courts should balance two interests – On one hand they should ensure that the power is not exercised akin to the jurisdiction under Section 438 of the CrPC while on the other hand they should ensure that the power is used sparingly in exceptional cases where no prima facie offence is made out as shown in the FIR or the complaint. It was observed that in cases where no prima facie materials exist in a complaint which would warrant the arrest of the accused, the court would have the inherent power to direct a pre-arrest bail.

37. The applicability of Section 438 of the CrPC to cases registered under the Act, 1989 was also dealt with by a two-Judge Bench of this Court in Vilas Pandurang Pawar and Another v. State of Maharashtra and Others reported in (2012) 8 SCC 795. The specific issue framed and answered by this Court was whether an accused charged with various offences under the IPC along with offences under the Act, 1989 would be entitled for an anticipatory bail under Section 438 of CrPC.

38. It was observed by this Court that although Section 18 of the Act, 1989 creates a bar for invoking Section 438 of the CrPC yet the courts are entrusted with a duty to verify the averments in the complaint and to find out whether an offence under the Act, 1989 is prima facie made out or not. It was further observed that while considering the application for anticipatory bail, the scope for appreciation of evidence and other material is limited and the courts are not expected to undertake an intricate evidentiary

inquiry of the materials on record. The relevant observations are reproduced hereinbelow:

> *"9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.*
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> *10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence."*
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> *(Emphasis supplied)*

39. A three-Judge Bench of this Court in Rahna Jalal v. State of Kerala reported in (2021) 1 SCC 733 while discussing in the context of Section 7 of the Muslim Women (Protection of Rights on

Marriage) Act, 2019, elaborated on the requirement of the existence of a prima facie case under Section 18 of the Act, 1989 for the bar of anticipatory bail to become applicable, as follows:

> *"25. Thus, even in the context of legislation, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, where a bar is interposed by the provisions of Section 18 and Sub-section (2) of Section 18-A on the application of Section 438 of the CrPC, this Court has held that the bar will not apply where the complaint does not make out "a prima facie case" for the applicability of the provisions of the Act. A statutory exclusion of the right to access remedies for bail is construed strictly, for a purpose. Excluding access to bail as a remedy, impinges upon human liberty. Hence, the decision in Chauhan (supra) held that the exclusion will not be attracted where the complaint does not prima facie indicate a case attracting the applicability of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989."*
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> *(Emphasis supplied)*

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47. Prima facie is a Latin term that translates to "at first sight" or "based on first impression". The expression "where no prima facie materials exist warranting arrest in a complaint or FIR" should be understood as "when based on first impression, no offence is made out as shown in the FIR or the complaint". This means that when the necessary ingredients to constitute the offence under the Act, 1989 are not made out upon the reading of the complaint, no case can be said to exist prima facie.

48. As a sequitur, if the necessary ingredients to constitute the offence under the Act, 1989 are not

> *disclosed on the prima facie reading of the allegations levelled in the complaint or FIR, then in such circumstances, as per the consistent exposition by various decisions of this Court, the bar of Section 18 would not apply and the courts would not be absolutely precluded from granting pre-arrest bail to the accused persons."*

37. Judging the facts and circumstances of the present case, in the light of the above decision of the Hon'ble Apex Court, in the complaint, on the basis of which, the FIR, in question, has been registered, there is no reference with regard to the provisions of SC&ST Act, nor the same has been mentioned in the status reports, which have been filed by the Police, in this case, on 8.4.2025 and 30.04.2025. The provisions of Section 3(2)(v) of the SC & ST Act, were added only on 7.5.2025, on the basis of the caste certificates of the complainant and applicant, which was obtained by the I.O. Thereafter, the supplementary statement of the complainant was recorded under Section 180 of the BNSS.

38. As stated above, in the FIR, in question, there is no reference with regard to the fact that the victim was allegedly raped on the ground that she belongs to scheduled caste community. If there is no reference with

regard to ingredients of the SC&ST Act, in that eventuality, the bar as created by Section 18 of the SC&ST Act, does not come in the way of this Court to grant relief to the applicant.

39. The Hon'ble Supreme Court in ***Dr. Subhash Kashinath Mahajan*** *versus* ***State of Maharashtra & Another, (2018) 6 Supreme Court Cases, 454***, has held that if no prima facie case is made out, then the relief of anticipatory bail can be granted in cases under the Atrocities Act. Relevant paragraph 79.2 of the judgment is reproduced as under:-

> *"79.2. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D Suthar and Dr. N.T. Desai and clarify the judgments of this Court in Balothia and Manju Devi."*

40. Similar view has again been reiterated by the Hon'ble Supreme Court in ***Prithvi Raj Chauhan*** *versus* ***Union of India and Others, 2020 (4) Supreme Court Cases 727***. Relevant paragraphs 11, 31 to 33 of the judgment are reproduced as under:-

11. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.

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31. These facts, in my opinion ought to be kept in mind by courts which have to try and deal with offences under the Act. It is important to keep oneself reminded that while sometimes (perhaps mostly in urban areas) false accusations are made, those are not necessarily reflective of the prevailing and wide spread social prejudices against members of these oppressed classes. Significantly, the amendment of 2016, in the expanded definition of 'atrocity', also lists pernicious practices (under Section 3) including forcing the eating of inedible matter, dumping of excreta near the homes or in the neighbourhood of members of such communities and several other forms of humiliation, which members of such scheduled caste communities are subjected to. All these considerations far outweigh the petitioners' concern that innocent individuals would be subjected to what are described as arbitrary processes of investigation and legal proceedings, without adequate safeguards. The right to a trial with all attendant safeguards are available to those accused of committing offences under the Act; they remain unchanged by the enactment of the amendment.

32. As far as the provision of Section 18-A and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.

> *33. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.*

41. This view has again been followed by the Hon'ble Supreme Court in ***Union of India*** *versus* ***State of Maharashtra and Others, 2020 (4) Supreme Court Cases 761***. Relevant paragraphs 57 & 63 of the judgment are reproduced as under:-

> *57. The guidelines in paras 79.3 and 79.4 appear to have been issued in view of the provisions contained in Section 18 of the Act of 1989; whereas adequate safeguards have been provided by a purposive interpretation by this Court in the case of State of M.P. v. R.K. Balothia, (1995) 3 SCC 221. The consistent view of this Court that if prima facie case has not been made out attracting the provisions of SC/ST Act of 1989, in that case, the bar created under section 18 on the grant of anticipatory bail is not attracted. Thus, misuse*

> *of the provisions of the Act is intended to be taken care of by the decision above. In Kartar Singh (supra), a Constitution Bench of this Court has laid down that taking away the said right of anticipatory bail would not amount to a violation of Article 21 of the Constitution of India. Thus, prima facie it appears that in the case of misuse of provisions, adequate safeguards are provided in the decision mentioned above.*
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> *xxx xxx xxx*
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> *63. By the guidelines issued, the anomalous situation may crop up in several cases. In case the appointing authority forms a view that as there is no prima facie case the incumbent is not to be arrested, several complications may arise. For the arrest of an offender, maybe a public servant, it is not the provision of the general law of Cr.PC that permission of the appointing authority is necessary. No such statutory protection provided to a public servant in the matter of arrest under the IPC and the Cr.PC as such it would be discriminatory to impose such rider in the cases under the Act of 1989. Only in the case of discharge of official duties, some offence appears to have been committed, in that case, sanction to prosecute may be required and not otherwise. In case the act is outside the purview of the official discharge of duty, no such sanction is required."*

42. The complainant has not bothered to mention the material facts in the complaint that she has been raped by the applicant on the ground that she belongs to scheduled caste community nor any reference with regard to her caste has been made in the FIR. The same has been

mentioned only on 7.5.2025, when her supplementary statement, under Section 180 of the BNSS was recorded.

43. In the factual background, the material question, which arises for determination before this Court is whether the said statement can be said to be the part of the FIR, or not, in which, the present application for anticipatory bail, under Section 482 of the BNSS has been made.

44. Hon'ble Supreme Court in ***Allarakha Habib Memon & Others*** *versus* ***State of Gujarat, (2024) 9 Supreme Court Cases 546,*** has held that even the FIR, which is prepared after reaching the spot, after due deliberations, consultations and discussion, cannot be treated as FIR and it would be treated as a statement made during the investigation of a case and is hit by Section 162 Cr.PC. Relevant paragraph 28 of the judgment, is reproduced, as under:-

> *28. This Court in the case of State of A.P. v. Punati Ramulu and Others held that when the police officer does not deliberately record the FIR on receipt of information about cognizable offence and the FIR is prepared after reaching the spot after due deliberations, consultations and discussion, such a complaint cannot be treated as FIR and it would be a statement*

made during the investigation of a case and is hit by Section 162 CrPC. The relevant paras of the judgment in this regard are reproduced hereinbelow: -

> *"5. According to the evidence of PW 22, Circle Inspector, he had received information of the incident from police constable No. 1278, who was on 'bandobast' duty. On receiving the information of the occurrence, PW 22 left for the village of occurrence and started the investigation in the case. Before proceeding to the village to take up the investigation, it is conceded by PW 2 in his evidence, that he made no entry in the daily diary or record in the general diary about the information that had been given to him by constable 1278, who was the first person to give information to him on the basis of which he had proceeded to the spot and taken up the investigation in hand. It was only when PW 1 returned from 1994 Supp (1) SCC 590 the police station along with the written complaint to the village that the same was registered by the Circle Inspector, PW 22, during the investigation of the case at about 12.30 noon, as the FIR, Ex. P-1. In our opinion, the complaint, Ex. P-1, could not be treated as the FIR in the case as it certainly would be a statement made during the investigation of a case and hit by Section 162 CrPC. As a matter of fact the High Court recorded a categorical finding to the effect that Ex. P-1 had not been prepared at Narasaraopet and that it had "been brought into existence at Pamaidipadu itself, after due deliberation". Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared*

> *the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues. Though we agree that mere relationship of the witnesses PW 3 and PW 4, the children of the deceased or of PW 1 and PW 2 who are also related to the deceased, by itself is not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the Court on its guard to scrutinise the evidence more carefully, we find that in this case when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case."*
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> *(emphasis supplied)*

45. Judging the facts and circumstances of the present case, in the light of the decision of the Hon'ble Supreme Court in ***Allarakha Habib Memon'***s case (supra), the statement of the victim, has been recorded, in this case, on 06.05.2025, under Section 180 of BNSS (161 Cr.PC) and as per the provisions of Section 162 Cr.PC, the same cannot be used for any other purpose except for the

same, which have been mentioned in Section 181 of the BNSS (Section 162 Cr.PC). Provisions of Section 181 of the BNSS (Section 162 Cr.PC) are reproduced, as under:-

> *181.* ***Statements to police and use thereof.–***
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> *(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*
>
> *Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 148 of the Bharatiya Sakshya Adhiniyam, 2023; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.*
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> *(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (a) of section 26 of the Bharatiya Sakshya Adhiniyam, 2023; or to affect the provisions of the proviso to sub-section (2) of section 23 of that Adhiniyam.*
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> *Explanation.-An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which*

> *such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."*

46. Once, it has been held that the said statement cannot be treated as part of the FIR, then, to the considered opinion of this Court, there is no legal hesitation for this Court to entertain the present application. As such, mere addition of Section 3(2)(v) of the SC&ST Act, does not take away the powers of this Court to grant relief, under Section 482 of the BNSS, as, from bare reading of the FIR, no case is made out, under Section 3(2)(v) of the SC&ST Act.

47. The view of this Court is being guided by the decision of a three Judge Bench of the Hon'ble Supreme Court in ***V.K. Mishra & Another*** *versus* ***State of Uttarakhand & Another, (2015) 9 Supreme Court Cases 588***. Relevant paragraphs 15 to 19, of the judgment, are reproduced, as under:-

> *15. Section 161 Cr.P.C. titled "Examination of witnesses by police" provides for oral examination of a person by any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under*

Section 161 Cr.P.C can be used at any trial are indicated in Section 162 Cr.P.C. Section 162 Cr.P.C. reads as under:

162. Statements to police not to be signed–Use of statements in evidence.–(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

16. Section 162 Cr.P.C. bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162 (1) Cr.P.C. The statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:- (i) of contradicting such witness by an accused under Section 145 of Evidence Act;

(ii) the contradiction of such witness also by the prosecution but with the leave of the Court and (iii) the re-examination of the witness if necessary.

17. Court cannot suo moto make use of statements to police not proved and ask question with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 Cr.P.C. "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. Statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of Evidence Act that is by drawing attention to the parts intended for contradiction.

18. Section 145 of the Evidence Act reads as under:

145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and

relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court

> *cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction."*

48. Similar view has also been taken by the Hon'ble Supreme Court in ***Parvat Singh & Others versus State of Madhya Pradesh, (2020) 4 Supreme Court Cases 33***. Relevant paragraphs 13.1 & 13.2 of the judgment, are reproduced, as under:-

> *13.1. It is required to be noted that it was a black night (Amavasya) at the time of incident. It was a dark night as the incident has happened between 4-5 a.m. PW8 in her statement recorded under Section 161 Cr.P.C. has stated that she has seen all the accused in the light of the torch. She has stated that Bal Kishan – original accused no.1 was having an axe and other four were armed with lathis. She had also stated in her statement under Section 161 Cr.P.C. that Bal Kishan – original accused no.1 gave the axe blow on the neck of the deceased due to the enmity and earlier dispute and other accused were telling to run away immediately and thereafter all the five accused ran away from behind the cattle shed/house. She stated that she had identified all the accused in the light of the torch and also by voice. According to her after she shouted, other persons came. However, there is material improvement in her deposition before the Court. In her deposition, she has stated that accused Santosh and Rakesh caught hold of Bal Kishan – deceased. In her deposition, she has also stated that there was a chimney light in the cattle shed. She has also stated in her deposition that the accused ran away from the nearby agricultural field of*

sugarcane. Therefore, the deposition of PW8 is full of material contradictions and improvements so far as original accused Nos. 2 to 5 is concerned. It is required to be noted that no other independent witness even named by PW8 has supported the case of the prosecution. Though, according to PW8, she identified the accused in the light of the torch, there is no recovery of torch. There is material improvement so far as the chimney light is concerned. In her deposition, she has not stated anything that the appellants – original accused nos. 2 to 5 were having the lathis, though she has stated this in her statement under Section 161 Cr.P.C. The High Court has observed relying upon her statement recorded under Section 161 Cr.P.C. that the appellants herein – accused nos. 2 to 5 were having lathis. However, as per the settled preposition of law a statement recorded under Section 161 Cr.P.C. is inadmissible in evidence and cannot be relied upon or used to convict the accused. As per the settled proposition of law, the statement recorded under Section 161 Cr.P.C. can be used only to prove the contradictions and/or omissions. Therefore, as such, the High Court has erred in relying upon the statement of PW8 recorded under Section 161 Cr.P.C. while observing that the appellants were having the lathis.

14.2 As observed hereinabove in her statement under Section 161 Cr.P.C., she has never stated that accused Santosh and Rakesh caught hold of Bal Kishan, but stated that the appellants herein told to run away as other persons have woken. In the facts and circumstances of the case, there are material contradictions, omissions and/or improvements so far as the appellants herein – original accused nos. 2 to 5 are concerned and therefore we are of the opinion that it is not safe to convict the appellants on the evidence of the sole witness of PW8. The benefit of material contradictions, omissions and improvements must go in favour

> *of the appellants herein. Therefore, as such the appellants are entitled to be given benefit of doubt. 14.3 Now, so far as the submission on behalf of the State that relying upon the deposition of PW8, the original accused no.1 was convicted and his conviction has been confirmed upto this Court and therefore to dismiss the present appeal qua other accused is concerned from the evidence on record and having observed hereinabove the case of the appellants – original accused nos. 2 to 5, is distinguishable on facts. There are material contradictions and omissions so far as the appellants – original accused nos. 2 to 5 are concerned. So far as the original accused no 1 is concerned, PW8 is consistent in her statement under Section 161 Cr.P.C. as well as in her deposition before the Court. There was a recovery of axe used in commission of the offence by accused no.1 at the instance of accused no.1. Under the circumstances, the case of the original accused nos. 2 to 5 is clearly distinguishable to that of original accused no.1.*

49. Considering the fact that the investigation, in the present case, is complete and the applicant has joined the investigation, this Court is of the view that the dismissal of the application would be nothing, but pre-trial punishment, which is prohibited under the law, as the presumption of innocence is available to the applicant until proven guilty.

50. At the time of deciding the bail application, detailed discussion of the evidence, so collected, by the

prosecution or about the defence, which has been taken, by the applicant, should be avoided, as, it would cause prejudice to the case of the prosecution, as well as, to that of the accused.

51. In the objections filed by respondent No.2-complainant, a specific stand has been taken that she and applicant were in romantic relationship and it would be proved during trial, whether the physical intimacy between the applicant and complainant was on the pretext of marriage or the same was a consensual relationship.

52. It would also be proved during trial, whether the complainant and the applicant had crossed the sacred line, in the year 2021, when the complainant has not attained the age of majority, as different dates of birth of the complainant have been mentioned in the visitor's register of the hotel, where they had allegedly stayed for considerable long time.

53. Considering all these facts, the interim order dated 08.04.2025, passed by this Court, is hereby made absolute. Therefore, it is ordered that the applicant be released on bail, in the event of his arrest, in case FIR

No.14 of 2025, dated 05.04.2025, registered, under Section 376 of the IPC, and Section 4 of the POCSO Act, with Women Police Station Chamba, District Chamba, H.P., on his furnishing personal bond, in the sum of ₹50,000/-, with one surety of the like amount, to the satisfaction of the Investigating Officer.

54. This order, however, shall be subject to the following conditions :-

a) That the applicant will join the investigation of the case, as and when, called for, by the Investigating Officer, in accordance with law;

b) That the applicant will not leave India, without prior permission of the Court;

c) That the applicant will not, directly or indirectly, make any inducement, threat or promise to any person, acquainted with the facts of the case, so as to dissuade him/her from disclosing such facts to the Investigating Officer or the Court; and

d) That the applicant shall regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so seek exemption from appearance by filing appropriate application.

55. Any of 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, to the disposal of the present application.

56. The applicant is directed to move regular bail application, when charge sheet will be filed in the Competent Court of Law.

57. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions, is found violated by the applicant.

58. Record be returned to the quarter concerned.

(Virender Singh)
Judge

June 24, 2025 *(ps)*