



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No.447 of 2025

Decided on : 13.10.2025

Kapil Dev

...Petitioner

Versus

State of H.P.

...Respondent

Coram

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

Whether approved for reporting?¹ yes

For the petitioner : Mr. G.R. Palsra, Advocate.

For the respondent : Mr. Varun Chandel, Addl. A.G.

Virender Singh, Judge (oral).

Petitioner Kapil Dev has filed the present petition, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as 'BNSS'), challenging the order dated 26.4.2025, passed by the Court of learned Chief Judicial Magistrate, Mandi, District Mandi, H.P. (hereinafter referred to as 'the trial Court') in application filed under Section 311 Cr. P.C., titled as, 'State of H.P. versus Kapil Dev'.

2. Vide order dated 26.4.2025, the learned trial Court has dismissed the application of the petitioner, filed under Section 311 Cr. P.C.

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

3. For the sake of convenience, parties to the present lis, are referred to, in the same manner, in which, they are referred to, by the learned trial Court.

4. Brief facts, leading to filing of the present petition, before this Court, as emerge from the record, are as under:

Perusal of the record shows that the Police of Police Station, Balh has filed the charge sheet against the accused, under Section 173 (2) Cr. P.C., for the commission of offences, punishable under Sections 435 and 506 IPC, upon which, the learned trial Court has taken the cognizance and the accused has been charge-sheeted, for the commission of offences, punishable under Sections 435 and 506 IPC, vide order dated 16.12.2021. The charges, so framed against the accused, were put to him, to which, he pleaded not guilty and claimed to be tried. Consequently, the prosecution has been directed to adduce evidence and it examined, as many as, 13 witnesses. After closure of evidence, entire incriminating evidence, appearing against the accused, was put to him, in his statement, recorded under Section 313 Cr. P.C., on 6.1.2024.

4.1 In his statement, recorded under Section 313 Cr. P.C., when a question was put to him whether he want to lead evidence in defence, he replied in negative. Thereafter, the matter was adjourned for arguments, on various dates.

4.2 On 4.9.2024, accused has moved application, under Section 311 Cr. P.C. As per the averments made in the application, the applicant has pleaded that he has not committed the offence, as alleged, as on the day of occurrence, he was performing his duties at Chopal and in order to probabilize/prove the said defence, accused prayed that he may be permitted to produce the documents, i.e. the attendance certificate, and to examine the Principal of the school, where he is working, in order to prove the said document.

5. The said application has been contested by the respondent-State by pleading that sufficient opportunities have already been granted to the accused to lead defence evidence and despite that, he could not lead any evidence in defence.

6. The learned trial Court, vide order dated 26.4.2025, has dismissed the application, mainly on the

ground that the document, sought to be produced, was not produced, at an earlier stage, nor witnesses have been confronted with regard to said document, in order to probabilize the defence of the accused that he was not present on the spot, on the day of occurrence.

7. Another ground, which the learned trial Court has given for dismissal of the application, is to counter the probable/proposed defence of the accused, by holding that complainant in her testimony has deposed that accused owns a car and he can easily reach Mandi in less time, as taken, while travelling through public transport.

8. The said findings have been assailed by the accused, before this Court, mainly on the ground that the learned trial Court has adopted a hyper-technical approach, while dismissing the application.

9. Mr. G.R. Palsra, Advocate, appearing for the accused has submitted that accused has every right to prove/probabilize his defence and the said right has wrongly been snatched by the learned trial, by dismissing his application under Section 311 Cr.P.C.

10. Another ground upon which the order of the learned trial Court has been assailed, is that the probable

defence of the accused has been countered by the learned trial Court by giving the reasons, which are pre-mature, while dismissing the application, under Section 311 Cr. P.C.

11. On the basis of above facts, a prayer has been made to allow the present petition and to set aside the order dated 26.4.2025, passed by the learned trial Court.

12. Per contra, Mr. Varun Chandel, learned Addl. A.G. has opposed the prayer, so made, on the ground that application sans merit, as nothing has been mentioned in the application, explaining as to why the same has been filed at a belated stage, as statement of the accused, was recorded, way back, on 6.1.2024, whereas, the application has been moved on 4.9.2024.

13. Apart from this, it has also been highlighted by the learned Addl. A.G. that when the statement of accused was recorded under Section 313 Cr. P.C., the trial Court had given opportunity to him to lead evidence in defence, by putting a specific question, to which, he replied in negative.

14. On the basis of above facts, it has been argued by the learned Addl. A.G. that at this belated stage, the

accused cannot be permitted to re-open the case and prayed that the present petition be dismissed.

15. Heard.

16. Perusal of the record shows that after statement of the accused was recorded, under Section 313 Cr. P.C., by the learned trial Court, the case remained pending for arguments, on twelve occasions, however, the application has not been moved, and the same has been moved on 4.9.2024. Alongwith the application, the information, which has been obtained by the accused, under the Right to Information Act, which was supplied to him, on 25.7.2024, has also been annexed. As per the record, the accused has moved application, under the provisions of Right to Information Act only on 8.7.2024.

17. The accused, in his statement, under Section 313 Cr. P.C., has specifically stated that he does not want to lead any evidence, in defence.

18. In such situation, the first and foremost question, which arises for determination, before this Court, is about the fact as to whether after making a statement, under Section 313 Cr. P.C., in which, the accused has not

expressed his willingness to lead evidence in defence, the application under Section 311 Cr. P.C., is maintainable?

19. The prosecution has to stand upon its legs and no benefit can be derived from the weakness of the defence of the accused. The accused has golden right to remain silent, as well as, to prove/probabilize his defence by leading defence evidence, or from the evidence led by the prosecution.

20. Admittedly, the accused acted in a negligent manner, by not leading defence evidence, when, an opportunity was given to him to do so, and thereafter, he remained silent, for a considerable long time. However, on the said ground of negligence, whether the right of the accused to prove/probabilize his defence, can be snatched away? The answer is in negative, as the accused has every right to prove/probabilize his defence by leading cogent and convincing evidence, or on the basis of cross-examination of the prosecution witnesses, by the accused.

21. Admittedly, the case has not been decided as yet, and the learned trial Court, while deciding the application, under Section 311 Cr. P.C., has discussed the evidentiary value of the probable defence of the accused,

which is not permissible, under the law, as merits of the case, at this stage, cannot be discussed by the learned trial Court.

22. Considering all these facts, the present petition is allowed and the order dated 26.4.2025 passed by the learned trial Court, is ordered to be set aside, subject to costs of Rs. 20,000/-, to be deposited with the Member Secretary, District Legal Services Authority, Mandi, H.P.

23. Accused is directed to appear, before the learned trial Court, on 3.11.2025.

24. The accused is directed to submit the application for summoning the defence witnesses, within a period of seven days from today. In the eventuality of steps being taken, within the prescribed period, the learned trial Court would be at liberty to take even coercive steps to ensure the presence of DWs, so summoned.

25. With these observations, the present petition is disposed of, so also the pending application(s), if any.

26. Sent down the records.

(Virender Singh)
Judge

October 13, 2025
(kalpana)