

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 782 of 2025

Reserved on: 04.06.2025

Date of Decision: 20.06.2025

Vipin Singh

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioner : Mr. Bhupender Pathania, Advocate.

For the Respondent : Mr. Lokender Kutlehria, Additional
Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No. 15 of 2023, dated 3.3.2023, registered at Police Station, Sainj, District Kullu, H.P. for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act').

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

2. It has been asserted that the petitioner is innocent, and he was falsely implicated. The petitioner has no role in the commission of a crime. He is a shopkeeper engaged in the hardware business. He receives money from different people, and the accused had also paid ₹ 5000/- to him. He underwent surgery for gallbladder stone on 03.11.20224. He has poor health. There is no evidence to connect the petitioner with the commission of a crime. He has been in judicial custody since 08.03.2023. His right to a speedy trial is being violated. He had earlier filed bail applications bearing Cr.MP(M) No. 2872 of 2023, Cr.MP(M) No. 176 of 2024, and Cr.MP(M) No. 2772 of 2024, which were dismissed by the Court. The petition bearing Cr.MP(M) No. 1488 of 2024 was withdrawn. The petitioner does not have any criminal history. He would abide by all 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 main accused, Sanju, was found in possession of a commercial quantity of charas. There is sufficient material to connect the petitioner with the commission of an offence punishable under Section 20(b)(ii)(c) read with Section 29 of the

ND&PS Act, and the rigours of Section 37 of the ND&PS Act apply to his case. He has failed to satisfy the twin conditions laid down under Section 37 of the ND&PS Act. Now the matter is listed before the learned Trial Court on 20.09.2025. Hence, the status report.

4. I have heard Mr. Bhupender Pathania, learned counsel for the petitioner and Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent-State.

5. Mr Bhupender Pathania, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. He has undergone surgery and requires constant care. The witnesses have turned hostile, and there are various discrepancies in the testimonies of the witnesses. Hence, 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 had abetted the possession of a commercial quantity of charas. His earlier bail petitions were dismissed, and there is no change

in the circumstances. Therefore, he prayed that the present petition.

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

8. It is undisputed that the petitioner had filed bail petitions, which were registered as Cr.MP(M) No. 2872 of 2023, Cr.MP(M) No. 176 of 2024, and Cr.MP(M) No. 2772 of 2024, and were dismissed by this Court. It was held in the *State of Maharashtra Vs. Captain Buddhikota Subha Rao (1989) Suppl. 2 SCC 605*, that once a bail application has been dismissed, a subsequent bail application can only be considered if there is a change of circumstances. It was observed:

“Once that application was rejected, there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact situation. And when we speak of change, we mean a substantial one, which has a direct impact on the earlier decision and not merely cosmetic changes, which are of little or no consequence. 'Between the two orders, there was a gap of only two days, and it is nobody's case that during these two days, drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed, reversing all earlier orders, including the one rendered by Puranik, J., only a couple of days before, in the absence of any substantial change in the fact situation. In such cases, it is necessary to act with restraint and circumspection so that

the process of the Court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order which had hitherto eluded him.

9. Similar is the judgment delivered in *State of M.P. v. Kajad*, (2001) 7 SCC 673, wherein it was observed: -

8. It has further to be noted that the factum of the rejection of his earlier bail application bearing Miscellaneous Case No. 2052 of 2000 on 5-6-2000 has not been denied by the respondent. It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances, the second application would be deemed to be seeking a review of the earlier judgment, which is not permissible under criminal law as has been held by this Court in *Hari Singh Mann v. Harbhajan Singh Bajwa* [(2001) 1 SCC 169: 2001 SCC (Cri) 113] and various other judgments.

10. Similarly, it was held in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav* (2004) 7 SCC 528 that where an earlier bail application has been rejected, the Court has to consider the rejection of the earlier bail application and then consider why the subsequent bail application should be allowed.

It was held:

“11. In regard to cases where earlier bail applications have been rejected, there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration, if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite

of such earlier rejection the subsequent bail application should be granted.”

11. A similar view was taken in *State of T.N. v. S.A. Raja*, (2005) 8 SCC 380, wherein it was observed:

9. When a learned Single Judge of the same court had denied bail to the respondent for certain reasons, and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of bail applications without there being any change of circumstances would lead to bad precedents.

12. This position was reiterated in *Prasad Shrikant Purohit v. State of Maharashtra* (2018) 11 SCC 458, wherein it was observed:

30. Before concluding, we must note that though an accused has a right to make successive applications for the grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds, which persuade it to take a view different from the one taken in the earlier applications.

13. It was held in *Ajay Rajaram Hinge v. State of Maharashtra*, 2023 SCC OnLine Bom 1551, that a successive bail application can be filed if there is a material change in the

circumstances, which means a change in the facts or the law. It was observed:

7. It needs to be noted that the right to file successive bail applications accrues to the applicant only on the existence of a material change in circumstances. The sine qua non for filing subsequent bail applications is a material change in circumstance. A material change in circumstances settled by law is a change in the fact situation or law which requires the earlier view to be interfered with or where the earlier finding has become obsolete. However, a change in circumstance has no bearing on the salutary principle of judicial propriety that successive bail application needs to be decided by the same Judge on the merits, if available at the place of sitting. There needs to be clarity between the power of a judge to consider the application and a person's right based on a material change in circumstances. A material change in circumstance creates in a person accused of an offence the right to file a fresh bail application. But the power to decide such subsequent application operates in a completely different sphere, unconnected with the facts of a case. Such power is based on the well-settled and judicially recognised principle that if successive bail applications on the same subject are permitted to be disposed of by different Judges, there would be conflicting orders, and the litigant would be pestering every Judge till he gets an order to his liking resulting in the credibility of the Court and the confidence of the other side being put in issue and there would be wastage of Court's time and that judicial discipline requires that such matter must be placed before the same Judge, if he is available, for orders. The satisfaction of material change in circumstances needs to be adjudicated by the same Judge who had earlier decided the application. Therefore, the same Judge needs to adjudicate whether there is a change in circumstance as claimed by the applicant, which entitles him to file a subsequent bail application."

14. Therefore, the present bail petition can only be considered based on the change in the circumstances, and it is not permissible to review the order passed by the Court.

15. It was submitted that prosecution witnesses have not supported the case. The owner of the SIM card stated that he is using it. Hence, the main evidence relied upon by the prosecution against the petitioner that he had made a call to the co-accused is not established. This submission will not help the petitioner. It was laid down by the Hon'ble Supreme Court in *X Vs. State of Rajasthan MANU/SC/1267/2024* that ordinarily, in serious offences Trial Court or the High Court should not entertain the bail application of the accused after the commencement of the trial and grant bail because of some discrepancy in the testimony. It was observed: -

“14. Ordinarily, in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court, be it the Trial Court or the High Court, should be loath in entertaining the bail application of the Accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or

there in the deposition and thereby testing the credibility of the victim.

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach its final conclusion, which may either result in the conviction of the Accused or acquittal of the Accused. The moment the High Court exercises its discretion in favour of the Accused and orders the release of the Accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event that the trial gets unduly delayed and that, too, for no fault on the part of the Accused, the Court may be justified in ordering his release on bail on the ground that the right of the Accused to have a speedy trial has been infringed.”

16. Therefore, it is impermissible for this Court to consider the statements of witnesses at this stage and to record the findings regarding the veracity of the prosecution's case.

17. In any case, prosecution is relying upon the WhatsApp calls and not the calls made through the SIM cards. Therefore, even if there is insufficient evidence regarding the SIM card, it will not take away the WhatsApp call made from the phone found in the possession of the petitioner. These calls were extracted in the FSL and, *prima facie*, their authenticity cannot be doubted.

18. It was submitted that there is a discrepancy in the colour of the bag found in possession of the prosecution, which makes the whole case of the prosecution suspect. The effect of the discrepancy is to be seen by the learned Trial Court after the trial and not by this Court when the evidence is yet to be led. Therefore, this submission cannot be used to claim bail.

19. It was submitted that there is a delay in the progress of the trial, and the petitioner is entitled to bail on this ground. This submission cannot be accepted. The status report shows that nine witnesses out of 26 witnesses cited by the prosecution have been examined. Four witnesses have been summoned for 20.09.2025. Examining nine witnesses within two years does not show that there is a delay in the progress of the trial, and the petitioner cannot be released on bail on the ground of delay.

20. In view of the above, the petitioner is not entitled to bail. Hence, the present petition fails, and the same is dismissed. However, the petitioner is at liberty to approach the Court in case the trial is not concluded within a reasonable time.

21. The observation made herein before shall remain confined to the disposal of the instant petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

20th June, 2025
(ravinder)