



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 2202 of 2025

Reserved on : 14.11.2025

Date of Decision: 24.11.2025

Shankar Lal

...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 Lakshay Thakur, Advocate.

For the Respondent/State. : Mr Prashant Sen, Deputy Advocate General.

For the victim : Mr Hemant Thakur, Legal Aid Counsel.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in F.I.R. No. 24 of 2024, dated 05.12.2024, for committing offences punishable under Sections 64(2) M, 65(2), and 351(2) of the Bhartiya Nyaya Sanhita, 2023 (BNS) and Section 6 of the Protection of Children from Sexual Offences Act ('POCSO Act') at Women Police Station BCS, Shimla, H.P.

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



2. It has been asserted that the petitioner was arrested on 05.12.2024. The victim and her mother have been examined. The petitioner had filed the bail petition before this Court, which was registered as CrMP (M) No. 133 of 2025, however, the same was dismissed. The petitioner is innocent, and he was falsely implicated. The statements of the witnesses have been recorded, and no fruitful purpose would be served by detaining the petitioner in custody. The victim improved and contradicted her statement. There is a property dispute between the parental family of the informant and the family of the accused. The petitioner was falsely implicated due to enmity. The victim's medical examination did not find any evidence of sexual assault. The petitioner belongs to a respectable section of society. He would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

3. The petition is opposed by filing a status report asserting that the victim's mother made a complaint to the police stating that she had visited her parental home on 30.11.2024 with her children. The petitioner is her cousin. The victim had gone to the petitioner's house on 01.12.2024 and returned at 4:00 pm. She



appeared to be frightened. The informant enquired from the victim, but the victim did not reveal anything. The informant again made inquiries from the victim in the night, and the victim disclosed that the petitioner had raped her. The informant was shocked and asked the victim again. The victim reiterated her earlier statement. The victim is aged 7 years and her date of birth is 11.08.2018. The police registered the FIR. The victim was medically examined, and as per the report of the Medical Officer, the possibility of sexual assault could not be ruled out. The final opinion was reserved till the receipt of the report from FSL. The police arrested the petitioner, and as per the report of the Medical Officer, there was nothing to suggest that the petitioner was incapable of performing sexual intercourse. The victim disclosed that she had taken the photographs from the petitioner's mobile phone. These were sent to FSL, and as per the report, photographs and obscene data were found in the petitioner's mobile phone. The petitioner's photograph matched the photographs found on his mobile phone. Another report from FSL shows that no blood or semen was found in the articles collected by the police from the spot. The petitioner had committed a heinous crime. The police have filed the charge sheet against the petitioner. The prosecution

has cited 37 witnesses, out of whom 10 witnesses have been examined. The matter was listed on 25.09.2025; hence, the status report.

4. I have heard Mr Lakshay Thakur, learned counsel for the petitioner, Mr Prashant Sen, learned Deputy Advocate General, for the respondent/State, and Mr Hemant Thakur, learned Legal Aid Counsel for the victim.

5. Mr Lakshay Thakur, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated because of the land dispute between the petitioner and the victim's mother. The medical evidence did not corroborate the victim's version. There are material improvements and contradictions in the statement of the victim and her mother, which have made the prosecution's case highly suspect. The petitioner would abide by the terms and conditions which the Court may impose. Hence, he prayed that the present petition be allowed and the petitioner be released on bail. He relied upon the judgment of this Court in *Adil and others vs. State of H.P* 2025:HHC:28988 in support of his submission.



6. Mr Prashant Sen, learned Deputy Advocate General for the respondent/State, submitted that the petitioner had earlier filed a bail petition, which was dismissed by this Court. The petitioner had taken these pleas in the previous bail petition, and they were rejected by the Court. A subsequent bail petition only lies when there is change in circumstances. The petitioner has not asserted any change in the circumstances, and he is not entitled to bail. Therefore, he prayed that the present petition be dismissed.

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

8. It was specifically mentioned in the petition that the petitioner had earlier filed a bail petition before this Court, which was registered as CrMP(M) No. 133 of 2025 and was dismissed by this Court. It was held in *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 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 was 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 circumstances. 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 a 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 recognized 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 on the basis of the change in the circumstances, and it is not permissible to review the order passed by the Court.

15. It was submitted that there are contradictions and improvements in the statement of the victim and her mother. Therefore, the petitioner is entitled to bail. This submission is not acceptable. 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 to entertain 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 conclusion, which may either result in the conviction of the Accused or the 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 if 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. Similarly, it was held by this Court in *Suraj Singh v.*

State of H.P., 2022 SCC OnLine HP 268 that the Court exercises bail jurisdiction cannot appreciate the contradictions in the evidence.

It was observed:

“10. Petitioner has placed reliance on the statements of witnesses already recorded by the learned Special Judge, in support of his argument to the effect that, from perusal of these statements, reasonable grounds can be entertained for concluding prima facie innocence of the petitioner. The arguments raised on behalf of the petitioner deserve to be rejected for the reason that this Court, while dealing with the bail application, will not appreciate the evidence being recorded during the trial. Undisputedly, only some of the witnesses out of the entire list of witnesses relied upon by the prosecution have been examined. In these circumstances, it is not prudent to form any opinion as to

the innocence or guilt of the petitioner on the basis of such partial evidence.”

17. Therefore, the submission that there are inconsistencies or contradictions in the statements of the witnesses, which would justify the grounds of bail, is not acceptable. The judgment in *Aadil* (supra) will not help the petitioner because the offence involved was not penetrative sexual assault but only sexual harassment. Therefore, the judgment cited does not apply to the facts of the present case.

18. No other point was urged.

19. Consequently, the present petition fails, and it is dismissed.

20. 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.

24th November 2025
(Nikita)

(Rakesh Kainthla)
Judge