

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr.MP(M) No. 2390 of 2025****Reserved on: 03.11.2025****Date of Decision: 07.11.2025**

Dharam Chand

...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 Vinod Kumar, Advocate.

For the Respondent/State : Mr Ajit Sharma, Deputy
Advocate General.**Rakesh Kainthla, Judge**

The petitioner has filed the present petition for seeking regular bail in FIR No. 436/2022, dated 24.11.2022, registered for the commission of offences punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act'), registered at Police Station Kullu, District Kullu, 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 by the police near Baradha Pathla bifurcation, Sub Tehsil Jari, District Kullu, on 24.11.2022. The petitioner has been behind the bars for about 3 years. He belongs to a respectable family. He is innocent, and he was falsely implicated. There is a delay in the progress of the trial, and the petitioner is entitled to bail on this consideration. He had filed a bail petition before this Court, which was registered as Cr.MP(M) 1612/2024 and was dismissed on 27.09.2024. He again filed a bail petition, which was registered as Cr.MP(M) No. 114 of 2025 and was withdrawn on 30.01.2025. The petitioner would abide by the terms and conditions which the Court may impose. Hence, the petition.

3. The petition is opposed by filing a status report asserting that the police party was on patrolling duty on 24.11.2022. Secret information was received at 2:20 PM that the petitioner, Dharam Chand, was going to sell the charas to some person, and a huge quantity of charas could be recovered in case of his search. The police completed the formalities and apprehended the petitioner with the backpack. The search of the backpack was conducted in the presence of two independent witnesses. 3 kg 616 grams of charas were recovered from the

backpack. The police seized the charas and arrested the petitioner. As per the report of the analysis, the substance found in the petitioner's possession was an extract of cannabis and a sample of charas. The challan has been filed before the Court on 20.02.2023. The prosecution has cited 18 witnesses, out of whom 13 have been examined, and 5 witnesses are yet to be examined. The matter is now listed for recording the statements of the prosecution witnesses on 09.01.2026. Hence, the status report.

4. I have heard Mr Vinod Kumar, learned counsel for the petitioner, and Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State.

5. Mr Vinod Kumar, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The prosecution has failed to complete the evidence despite the lapse of three years, and the petitioner's right to a speedy trial is being violated. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the petitioner was found in possession of a commercial quantity of charas and the rigours of

Section 37 of the NDPS Act apply to the present case. The petitioner has failed to satisfy the twin conditions laid down under Section 37 of the NDPS Act. The trial is progressing normally, and 13 out of 18 witnesses cited by the prosecution have been examined. 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 record carefully.

8. The petitioner asserted in his petition that he had filed CrMP No. 1612 of 2024 and Cr.MPM No. 114 of 2025, which were disposed of on 27.09.2024 and 30.01.2025, respectively. It was held in *State of Maharashtra. Captain Buddhikota Subha Rao (1989) Suppl. 2 SCC 605*, that 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. 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.”

10. 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.

11. 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.

12. 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 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.”

13. Therefore, the present bail petition can only be considered based on the change in the circumstances, and it is impermissible to review the order passed by the Court.

14. It was submitted that the prosecution has failed to complete the evidence, and the statement of only one witness has been recorded since the disposal of the previous bail petition. This submission is not correct. The previous order shows that statements of seven witnesses had been recorded at the time of disposal of the previous bail petition, whereas the status report in the present case shows that the statements of 13 witnesses have been recorded. Therefore, it cannot be said that the trial is not progressing. A substantial number of witnesses have been examined, and only 5 witnesses are to be examined. Therefore, it cannot be said that the petitioner's right to a speedy trial is being violated. Further, the petitioner has only filed a copy of the order dated 23.09.2025. He has not filed the copies of other order sheets to show that the prosecution or the Court is at fault for the delay in the progress of the trial, and the delay is not attributable to the petitioner. Therefore, the petitioner cannot be held entitled to bail on the ground of delay.

15. No other point was urged.

16. In view of the above, the present petition fails, and it is dismissed.

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

(Rakesh Kainthla)
Judge

7th November 2025
(Nikita)