

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 2498 of 2025

Reserved on: 19.11.2025

Date of Decision: 25.11.2025.

Mohit Kumar

...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 Karan Kapoor, Advocate.

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

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No. 43 of 2025, dated 26.3.2025, registered at Police Station, Dhalli, District Shimla, H.P., for the commission of offences punishable under Sections 109, 126(2) and 115(2) read with 3(5) of Bhartiya Nyaya Sanhita, 2023 (BNS).

2. It has been asserted that, as per the prosecution, the informant Sanjeev Kumar made a complaint regarding the

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

beating. He was taken to CHC Mashobra from where he was referred to IGM. The accused met the police on the way to IGM, and they complained about the beatings given by complainant to them. They were also taken to IGM for their medical examination. The informant stated that he had visited his brother's room on March 25, 2025 where he found that the accused were consuming liquor in the room. The informant left the personal articles of Rajinder in his room and came out. The informant again went to the room of Rajinder for bringing them back, however, the accused objected. The informant called Rajinder and told him about this fact. The accused gave beatings to the informant. The police registered an FIR. The petitioner had earlier filed a bail petition, which was registered as Cr.MP(M) No. 1113 of 2025 and was dismissed by the Court on 21.6.2025. The petitioner has been in custody since 26.3.2025. The police have filed the charge sheet. They have cited 23 witnesses. No fruitful purpose would be served by detaining the petitioner in custody. The petitioner and informant are working as drivers in the same company. Notice under Section 35 of BNSS was served upon the petitioner, but no details of the time and place were mentioned in the notice. The petitioner's arrest is

illegal. Therefore, 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 informant made a complaint to the police stating that he went to his room on 25.03.2025 at about 6:00 pm to drop off the articles belonging to Rajinder. Sunil and Mohit were consuming liquor in the room. The informant left the articles in the room and came out. However, Rajinder called him and told him to keep the articles in his room. The informant went inside the room; however, Sunil and Mohit did not permit him to pick up the articles. The informant, called Rajinder and told him that he was not being allowed to take away the articles. Sunil and Mohit caught the informant by the neck and gave him beating. He shouted for help. Sanjay came to the spot and rescued him. The informant sustained injuries in the incident. The police registered the FIR. The informant was taken to IGMC, Shimla, from where he was referred to PGIMER, Chandigarh. A notice was served upon Sunil and Mohit to join the investigation; however, they did not abide by the terms and conditions of the notice and ran away from the spot. They were apprehended near Kalka and were brought to Shoghi, where they

were interrogated and arrested on 26.03.2025 at 5:35 pm. The informant/victim remained admitted in PGI, Chandigarh. He had sustained an injury to the head, which was dangerous to life. The challan was filed before the learned Chief Judicial Magistrate, Shimla, on 26.6.2025. FIR No. 210, dated 5.7.2015, FIR No. 146, dated 3.5.2015 and FIR No. 92/22 dated 19.9.2022 are registered against the petitioner. Hence, the status report.

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

5. Mr Karan Kapoor, learned counsel for the petitioner, submitted that the petitioner is innocent and that he was falsely implicated. Grounds of arrest were not communicated to him, and his arrest is illegal. A notice under Section 35 of BNSS was served upon him, but the date and time when the petitioner was supposed to appear before the police were not mentioned. The police have filed the charge sheet, and no fruitful purpose would be served by detaining the petitioner in custody. The petitioner would abide by the terms and conditions that the Court may

impose. 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 is involved in the commission of a heinous offence. He had also filed a bail petition earlier, which was dismissed by this Court. A subsequent bail petition lies only when there is a change in the circumstances. No change of circumstance has been established, and the petitioner is not entitled to bail. Hence, 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 is undisputed that the petitioner had earlier filed a bail petition, which was registered as Cr.MP(M) No. 1113 of 2025, and was dismissed on 21.06.2025. 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 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 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 a charge sheet has been filed, and this is a change in circumstance. This submission cannot be accepted. It was laid down by the Hon’ble Supreme Court in *Virupakshappa Gouda v. State of Karnataka*, (2017) 5 SCC 406: (2017) 2 SCC (Cri) 542: 2017 SCC OnLine SC 295 that the filing of a charge sheet does not amount to a change in circumstances. It was observed:

“12. On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the factum that when a charge sheet is filed, it amounts to a change of circumstance. Needless to say, the filing of the charge sheet does not in any manner lessen the allegations made

by the prosecution. On the contrary, filing of the charge sheet establishes that after due investigation, the investigating agency, having found materials, has placed the charge sheet for the trial of the accused persons.”

16. Thus, the petitioner cannot claim bail on the ground that the charge sheet has been filed.

17. It was submitted that the grounds of arrest were communicated to the petitioner, and his arrest is illegal. This submission cannot be accepted. It was laid down by the Hon’ble Supreme Court in *Mihir Rajesh Shah v. State of Maharashtra*, 2025 SCC OnLine SC 2356, that the communication of the grounds of the arrest in all the offences would apply prospectively from the date of the pronouncement of the judgment. It was observed:

“58. We are cognizant that there existed no consistent or binding requirement mandating the written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. *The ends of fairness and legal discipline, therefore, demand that this procedure, as affirmed above, shall govern arrests henceforth.*” (Emphasis supplied)

18. Therefore, the non-supply of grounds of arrest will not make any difference.

19. The status report shows that FIR Nos. 210, 146 and 92 are registered against the petitioner. The petitioner asserted in the bail petition that he was acquitted in two FIRs and bailed out in one FIR. Thus, the petitioner has criminal antecedents. This Court exhaustively dealt with the relevance of criminal antecedents in *Aminodin vs State of H.P. 2024: HHC: 6091* and held, after referring to various judgments, that a Judge must consider the criminal antecedents of the accused, the nature of offences and his general conduct while considering the bail petition. Bail should not be generally granted to an accused with criminal antecedents when there is a likelihood of the commission of the crime.

20. Hon'ble Supreme Court held in *State of Rajasthan v. Balchand, (1977) 4 SCC 308: 1977 SCC (Cri) 594: 1977 SCC OnLine SC 261* that the normal rule is bail and not jail except where the circumstances suggest creating trouble by repeating the offence. It was observed at page 308:

2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner

who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

21. It was held in *Gudikanti Narasimhulu v. High Court of A.P.*, (1978) 1 SCC 240: 1978 SCC (Cri) 115 that where the person seeking bail has criminal antecedents, he is not entitled to bail.

It was observed:

“9. Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. *It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.*” (emphasis supplied)

22. It was held in *V. Senthil Balaji v. Enforcement Directorate*, 2024 SCC OnLine SC 2626, that where the petitioner can become a threat to society because of her criminal antecedents, she should not be released on bail. It was observed:

“27.....An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary.”

23. Similarly, it was held in *Union of India v. Barakathullah*, 2024 SCC OnLine SC 1019, that where the persons were involved in the commission of similar offences, they should not be released on bail. It was observed: -

“20. ... So far as the respondents in the instant appeals are concerned, they are in custody for hardly one and a half years, apart from the fact that all the respondents are shown to have been involved in previous cases. There are about 8 to 9 previous cases shown in the chargesheet against the respondents, except accused Nos. 1, 4 and 6, who are shown to have been involved in two cases. Considering the nature and gravity of the alleged offences and considering their criminal antecedents, in our opinion High Court should not have taken a lenient view, more particularly when there was sufficient material to show their *prima facie* involvement in the alleged offences under the UAPA.”

24. It was laid down by the Hon'ble Supreme Court in *Pinki v. State of U.P.*, (2025) 7 SCC 314: 2025 SCC OnLine SC 781 that the liberty of a person has to be balanced with peace and harmony in society. Liberty cannot be elevated to such a high pedestal as would bring in anarchy or disorder in society. It was observed at page 384:

“65. We are absolutely conscious that the liberty of a person should not be lightly dealt with, for the deprivation of the liberty of a person has an immense impact on the mind. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of emptiness. Needless to emphasise, the

sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity that is wedded to the rule of law, an individual is expected to grow within the social restrictions sanctioned by law. Individual liberty is restricted by larger social interests, and its deprivation must have due sanction of law. In an orderly society, an individual is expected to live with dignity, having respect for the law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated, and such regulations, which are the source of law, subserve the social balance and function as a significant instrument for the protection of human rights and the security of the collective. This is because, fundamentally, laws are made for their obedience so that every member of the society lives peacefully in a society to achieve their individual as well as social interests. That is why Edmond Burke, while discussing liberty, opined, *“it is regulated freedom”*.

66. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal that it would bring in anarchy or disorder in society. The prospect of greater justice requires that law and order prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude, but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society, the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety that every well-

meaning person desires. Not for nothing, J. Oerter stated: *“Personal liberty is the right to act without interference within the limits of the law.”*

67. Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one, and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act. (See: *Ash Mohammad v. Shiv Raj Singh*, (2012) 9 SCC 446: (2012) 3 SCC (Cri) 1172.).

25. Therefore, the petitioner is not entitled to bail because of his criminal antecedents.

26. It was submitted that a notice under Section 35 of BNSS was served upon the petitioner, but the date and time were not disclosed to him. He could not have appeared before the police in the absence of the date and time, and the plea taken by the police that the petitioner had violated the conditions of notice is not correct. This plea was available to the petitioner at the time of filing of earlier petition, but was not taken and cannot be said to be a subsequent event.

27. Copy of the notice (Annexure P-2) shows that the police had not mentioned the date and time of the appearance, and this establishes the petitioner's plea that he could not have appeared before the police without the details of the date and

time. However, the status report shows that the petitioner was apprehended at Kalka and was arrested at Shoghi at 5.30 PM. This shows that the petitioner never intended to join the investigation, and that is why he was leaving the jurisdiction of the police station Dhalli. This corroborates the police version that the petitioner violated the terms and conditions of the notice served upon him.

28. It was submitted that the petitioner belongs to Haryana, and he was going to his home. Going home is not a crime for which the petitioner could be arrested. This submission will not help the petitioner. Notice was served on 26.3.2025, and the petitioner had left Shimla on the same day. This cannot be a mere coincidence. The petitioner was aware of the fact that he was required to undergo interrogation, and should not have left the jurisdiction of the police station Dhalli, at least without informing the police. The fact that he was found leaving Shimla shows that he had no intention to join the investigation; rather, he wanted to escape, and his conduct would not disentitle him from the concession of bail.

29. In view of the above, the petitioner is not entitled to bail; hence, the present petition fails, and it is dismissed.

30. The observations made hereinabove are regarding the disposal of this petition and will have no bearing whatsoever on the case's merits.

(Rakesh Kainthla)
Judge

25th November 2025
(Chander)