

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. MP (M) No. 2794 of 2025****Reserved on: 16.01.2026****Date of Decision: 23.01.2026**

Ravi @ Mirgi**...Petitioner****Versus****State of Himachal Pradesh****...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Vacation Judge.******Whether approved for reporting?¹*****For the Petitioner : Mr Ajay Sipahiya,
Advocate.****For the Respondent/State : Ms Swati Draik, Deputy
Advocate General.**

Rakesh Kainthla, Vacation Judge

The petitioner has filed the present petition for seeking regular bail in F.I.R. No. 20 of 2024, dated 02.03.2024, registered at Police Station Barsar, District Hamirpur, H.P., for the commission of offences punishable under Sections 302, 394 and 201 read with Section 34 of the Indian Penal Code (IPC).

2. It has been asserted that the petitioner was arrested on 03.03.2024. He has been in judicial custody since 07.03.2024.

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



The police have filed the charge-sheet before the Court, and the matter was listed for prosecution evidence on 19.01.2026. The charge sheet mentions that co-accused Raghav @ Radhey had assaulted the deceased Dinesh Kumar. The role attributed to the petitioner is that he had telephoned some persons to play cards. He was present in the room with the co-accused and the deceased, and he remained with the co-accused Raghav @ Radhey after the incident. No overt act of assault was attributed to the petitioner. The important prosecution witnesses have been examined. Bail is the rule, and the jail is the exception, and the petitioner is entitled to bail on this consideration. None of the family members of the petitioner had any knowledge of the incident. Shiv Kumar (PW-2) was not present on the spot at the time of the incident. Gorakh Ram (PW-3) deposed about the discovery of the dead body. Jagdish (PW-5) and Vikas Kumar (PW-6) have denied the incriminating portion of their earlier statements. The petitioner cooperated with the police during the investigation. The petitioner would abide by the terms and conditions that the Court may impose. 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 police received an intimation that a person was lying unconscious on the upper floor of the boot shop in Mehre Bazaar. The police went to the spot to verify the information and found the dead body of Dinesh on the spot. A post-mortem examination of the dead body was conducted. Nobody suspected any foul play, and the police conducted the proceedings under Section 174 of Cr.P.C. Subsequently, the brother of the deceased filed an application before the police stating that Kamlesh had told him that Dinesh was not picking up the mobile phone. He found afterwards that Dinesh had died. He conducted the inquiry and found that Shiv Kumar, Dilkhush and Arjun were present with Dinesh. The death of Dinesh was not natural, and it appeared that all of them had killed Dinesh. They were also found missing after the incident. The police investigated the matter and found that the petitioner Ravi had called Raghav, Dinesh, Jagdish and Vikas to play cards. They went to Shiv's room. Radhey, Arjun and Arun also joined them at 8:50 pm. Arun left for his home. Arjun and Raghav went to Shiv Kumar's room. Dilkhush also reached the room. They played cards till 10:15/10:30 pm. An interruption was caused by Radhey



and Vikas, who were asked to leave the room. Ravi, Dinesh and Jagdish left the room, whereas Arjun, Arun, Dinesh and Dilkhush remained in the room. Radhey left the room. Jagdish accompanied his cousin Vinod. Ravi, Dinesh, Jagdish and Vinod returned to the room. Dilkhush went to the washroom, and Raghav waited for him. Dinesh, Ravi, Jagdish, Arun and Arjun started playing cards. Raghav entered the room armed with a glass bottle. Vinod left the room. Raghav demanded money from Dinesh and hit him with a glass bottle. Dinesh ran away from the room, but Raghav caught him and brought him inside the room, where he gave him beatings with a stick. He also removed ₹ 500 - ₹ 600 from Dinesh. Arjun, Arun, Vikas and Jagdish left the room. Jagdish returned after some time and saw Dinesh lying on the floor. Raghav and Ravi @ Mirgi were inside the room. Ravi asked Jagdish to dispose of the body, but Jagdish declined. Petitioner and Raghav threatened Jagdish. Petitioner also threatened Vikas. Raghav and Ravi were involved in the commission of a crime. The Police filed a charge-sheet in the Court against the petitioner for the commission of an offence punishable under Section 302 read with Section 34 of the IPC. The matter was listed before the learned Additional Sessions



Judge, Hamirpur. The petitioner would influence the witnesses in case of his release on bail. He is involved in the commission of a heinous offence. Hence, it was prayed that the present petition be dismissed.

4. I have heard Mr Ajay Sipahiya, learned counsel for the petitioner and Ms Swati Draik, learned Dy. Advocate General for the respondent/State.

5. Mr Ajay Sipahiya, learned counsel for the petitioner, submitted that the petitioner is innocent and that he was falsely implicated in the case. Even if the allegations in the status report are taken to be correct, they do not show the involvement of the petitioner in the commission of the crime. He had called the co-accused, deceased and other persons to play cards, which cannot amount to the commission of any offence. He was not present at the time of the commission of the crime, and his act of threatening the witnesses after the crime does not show his involvement in the commission of an offence punishable under Section 302 of the IPC; therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Ms Swati Draik, learned Dy. Advocate General for the respondent/State submitted that the petitioner had earlier filed



a bail petition before this Court, which was dismissed by the Court. Subsequent bail application only lies when there is a change in the circumstances. The petitioner has failed to establish any change in the circumstances; therefore, she 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. The petitioner had earlier filed a bail petition, which was registered as CrMP (M) no. 1761 of 2024 and was dismissed on 3.10.2024. The petitioner failed to mention the filing and dismissal of the earlier bail petition in the present petition; rather, he averred in para 13 of the petition that no similar bail petition has been filed before this Court, the Hon'ble Supreme Court of India or any other Court. Thus, he has withheld the material fact from the Court, and he is not entitled to bail on this consideration alone

9. It was held in the *State of Maharashtra. 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.”

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 that 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. The Court had earlier held in the bail petition filed by the petitioner that there was sufficient material on record to show his involvement in the murder. This finding cannot be challenged in the present bail petition, because the Court deciding the subsequent bail petition does not sit in appeal over its earlier order and can only consider the change in the circumstances. It was laid down by the Hon'ble Supreme Court in *State of M.P. v. Kajad*, (2001) 7 SCC 673: 2001 SCC (Cri) 1520: 2001 SCC OnLine SC 1070 that it is impermissible to review the earlier order of bail in the subsequent bail petition, and the Court can only consider the change in circumstances. It was observed at page 676:

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 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.

16. Therefore, it is impermissible to hold that the material on record is not sufficient to connect the petitioner to the commission of a crime in the present petition.

17. It was submitted that the witnesses cited by the prosecution have not supported the prosecution's case, and the petitioner is entitled to bail. 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 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.”

18. It was submitted that the petitioner’s right to a speedy trial is being violated because the prosecution has failed to complete the evidence after the lapse of more than one and a half years from the date of the incident. This submission will not help the petitioner. The petitioner has not filed the copies of the order sheets to demonstrate that the delay is not attributable to him but is attributable to the prosecution or the Court. Further, the petitioner is involved in the heinous offence of murder. It was laid down by the Hon’ble Supreme Court in *Anil Kumar Yadav v. State (NCT of Delhi)*, (2018) 12 SCC 129: (2018) 3 SCC (Cri) 425: 2017 SCC OnLine SC 1363 that the period of incarceration would not by itself entitle a person to bail. It was observed at page 141:



“24. As pointed out earlier, one of the grounds for the grant of bail to the appellant Anil Kumar Yadav by the Sessions Court was that he was in custody for more than one year. In crimes like murder, the mere fact that the accused was in custody for more than one year may not be a relevant consideration. In *Gobarbhai Naranbhai Singala v. State of Gujarat*, (2008) 3 SCC 7775:(2008) 2 SCC (Cri) 743], it was observed that the period of incarceration by itself would not entitle the accused to be enlarged on bail. The same was reiterated in *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598: 2002 SCC (Cri) 688”

19. Therefore, the petitioner cannot seek bail on the ground of delay in the progress of the trial.

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

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

(Rakesh Kainthla)
Vacation Judge

23rd January, 2026
(Gaurav Rawat)