

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. MP (M) No. 2939 of 2025****Reserved on: 16.1.2026****Date of Decision: 23.1.2026.**

Kushal Singh alias Kushal Samrat**...Petitioner****Versus****State of Himachal Pradesh****...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Vacation Judge.******Whether approved for reporting?¹ No***

For the Petitioner : Mr Peeyush Verma, Senior Advocate, with Mr Kush Sharma, Advocate.

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

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in F.I.R. No. 5 of 2025, dated 27.1.2025, registered at Police Station, Rohru, District Shimla, H.P., for the commission of offences punishable under Sections 109, 118(1), 126(2) and 115(2) of Bhartiya Nyaya Sanhita, 2023 (BNS).

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

2. It has been asserted that, according to the prosecution, the petitioner Kushal Singh, informant Rajiv, Yashwant, Bal Krishan and Vicky Sharma were consuming liquor at Butthli. An altercation occurred between them, and the petitioner inflicted a knife blow to the informant's stomach and his right-hand thumb. These allegations are false. The petitioner has also filed a complaint against Rajiv and Yashwant, and an FIR No. 7 of 2025, dated 28.1.2025, was registered against them. The petitioner had earlier filed a regular bail petition before this Court, which was dismissed. The petitioner is innocent and was not involved in the commission of any offence. The petitioner is suffering from various ailments and he requires regular medical check-ups. The police have completed the investigation and filed the charge sheet before the Court. No fruitful purpose would be served by detaining the petitioner in custody. Hence, the petition.

3. The petition is opposed by filing a status report asserting that the informant Rajiv, Yashwant, Balkrishan, Vicky, and the petitioner were consuming liquor on 26.01.2025 at 9:30 p.m. The petitioner abused the informant, which led to an altercation. The informant tried to leave the spot, but the

petitioner stopped him and inflicted a blow on his stomach with a knife. The petitioner again inflicted a blow, which the informant tried to stop with his hand. He suffered an injury on his right thumb. The informant was taken to the Hospital, and an intimation was given to the police. The police conducted the investigation and seized the blood-stained soil from the spot. As per the report of the analysis, the DNA in the soil matched the DNA of the informant's blood. The petitioner was arrested, and he made a disclosure statement leading to the discovery of the knife. As per the report of the Medical Officer, the knife produced by the petitioner could have caused the injuries sustained by the informant. The injuries were dangerous to life. The charge sheet was filed before the Court on 28.6.2025. Hence, the status report.

4. I have heard Mr Peeyush Verma, learned Senior Counsel, assisted by Mr Kush Sharma, learned counsel for the petitioner and Mr Prashant Sen, learned Deputy Advocate General, for the respondent-State.

5. Mr Peeyush Verma, learned Senior Counsel for the petitioner, submitted that the petitioner is innocent and that he

was falsely implicated. The petitioner had also registered an FIR against the informant and another person. The petitioner's version that he had acted in self-defence is highly probable. The police have filed a charge sheet before the Court. No fruitful purpose would be served by detaining the petitioner in custody. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

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. A subsequent bail petition only lies when there is a change in the circumstances. The petitioner has not pleaded any change in the circumstance and he 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. 1635 of 2025 and was dismissed on 29.7.2025. 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.

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 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.”

13. 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.

14. The Court held in the earlier petition that there was sufficient material on record to *prima facie*, connect the petitioner to the commission of an offence punishable under Section 109 of BNS, and the registration of the FIR at the instance of the petitioner would not, *prima facie*, establish the plea taken by the petitioner that he had acted in the right of his private defence. Both these circumstances have not changed.

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 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 fact 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. It was submitted that the plea taken by the petitioner that he had acted in the right of his private defence is highly probable. This plea has already been found to be not established by the Court in the earlier petition and cannot be adjudicated afresh in the present case. 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 on 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.

17. Therefore, it is impermissible to review the earlier order passed by this Court.

18. The burden of proving that the case of the accused comes within the exception lies upon him, as per Section 108 of Bharatiya Sakshya Adhiniyam, 2023. Thus, the proof of the exception is a matter for trial and cannot be adjudicated merely on the basis of an FIR registered after the registration of the present FIR.

19. The petitioner is *prima facie* involved in the commission of the offence under Section 109 of BNS, which is punishable with imprisonment for life. It was laid down by the Hon'ble Supreme Court in *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.*, (1978) 1 SCC 240: 1978 SCC (Cri) 115: 1977 SCC OnLine SC 327 that when the punishment is severe, the person is not entitled to bail. It was observed at page 244:

“6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage, and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be



liberated, to take judgment and serve a sentence in the event of the Court punishing him with imprisonment. In this perspective, the relevance of considerations is regulated by their nexus with the likely absence of the applicant for fear of a severe sentence, if such be plausible in the case. As Erle. J. indicated that when the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment for it assigned by law is of extreme severity, the Court may reasonably presume, some evidence warranting, that no amount of bail would secure the presence of the convict at the stage of judgment, should he be enlarged. [*Mod. Law Rev. p. 50 ibid., 1852 I E & B 1*] Lord Campbell, C.J., concurred in this approach in that case, and Coleridge J. set down the order of priorities as follows: [*Mod. Law Rev. ibid., pp. 50-51*]

“I do not think that an accused party is detained in custody because of his guilt, but because there are sufficient probable grounds for the charge against him as to make it proper that he should be tried, and because the detention is necessary to ensure his appearance at trial It is a very important element in considering whether the party, if admitted to bail, would appear to take his trial; and I think that in coming to a determination on that point three elements will generally be found the most important: the charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted. In the present case, the charge is that of wilful murder; the evidence contains an admission by the prisoners of the truth of the charge, and the punishment of the offence is, by law, death.”

7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

20. Considering the nature of the offence and the severity of the punishment, the petitioner is not entitled to bail.

21. It was submitted that there is a delay in the progress of the trial, and the petitioner is entitled to bail on this consideration. This submission cannot be accepted. The petitioner has not filed the copies of the order sheets to demonstrate that the delay is not attributable to him. In any case, 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”

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

23. No other point was urged.

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

25. The observations made here-in-above 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
(Chander)