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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

102-1

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Akash @ Aakash

...Petitioner

V/s

State of Haryana

...Respondent

Date of decision: 24.03.2026**Date of Uploading : 24.03.2026****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Dr. Pankaj Nanhera, Senior Advocate with
Mr. Sachin Jangra, Advocate for the petitioner.
Ms. Mahima Yashpal Singla, Senior DAG Haryana.
Mr. Rajesh Lamba, Advocate for the complainant.

SUMEET GOEL, J. (Oral)

1. Present second petition has been filed under Section 439 of the Cr.P.C. seeking grant of regular bail to the petitioner in case bearing FIR No.15 dated 17.01.2022, registered for the offences punishable under Sections 302, 34, 201 of IPC and Section 25/54/59 of Arms Act at Police Station Tigaon, District Faridabad.

2. The petitioner had earlier applied for grant of regular bail before this Court which was dismissed as withdrawn on 07.07.2023. The relevant part of said order reads as under:-

“ After arguing for some time, when this Court was not inclined to accept the prayer, learned Senior Counsel on instructions wishes to withdraw the present petition “at this stage”.

Ordered accordingly.

Pending application(s), if any, shall also stand disposed off.”

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3. As per the prosecution version, the FIR in question came to be registered on the statement of the complainant namely Satnam, who alleged that on 06.12.2021, the present petitioner along with co-accused Sagar had visited the shop of his nephew namely Sonu and upon refusal to give clothes on credit, they assaulted him and snatched a sum of ₹3,500/-. In that regard, a prior FIR No. 249 dated 06.12.2021 registered under Sections 323, 379-B, 427, 506 and 34 IPC had already been registered against the petitioner and his co-accused. It has been further alleged that thereafter the accused persons persistently threatened the complainant party to withdraw the said case. It has been further alleged that on 16.01.2022, when the complainant along with his brother Kapil (since deceased), nephew Sonu and other relatives had gone to attend a marriage ceremony, the petitioner and co-accused Sagar reached the venue and extended threats to withdraw the earlier case. Upon refusal by the deceased Kapil, an altercation ensued, during which the petitioner allegedly caught hold of Sonu, while co-accused Sagar, at the instigation of the petitioner, fired a shot from a country-made pistol at the chest of Kapil. He was immediately taken to the hospital but succumbed to his injuries on the way. On these set of allegations, the FIR in question came to be registered. During the course of investigation, the accused were arrested and, as per the prosecution, made disclosure statements. The weapon of offence, i.e. a country-made pistol was recovered at the instance of co-accused Sagar and the motorcycle used in the commission of offence was recovered from the present petitioner.

4. Learned senior counsel for the petitioner has iterated that the petitioner has been falsely implicated into the FIR in question and no

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specific role has been attributed to the petitioner except an omnibus allegation of instigation. Learned senior counsel has further iterated that the petitioner has not inflicted any injury upon the deceased and the entire prosecution case rests solely on an allegation of instigation which is not supported by any cogent or reliable evidence. It has been further contended that there exists no motive whatsoever for the petitioner to commit the alleged offence. Furthermore, the FIR has been lodged after considerable delay and there are material inconsistencies and no 'Test Identification Parade' (TIP) has been conducted during investigation which rendered the prosecution story highly doubtful. Learned senior counsel has further submitted that the investigation has been completed and challan has already been presented before the competent Court of jurisdiction. According to learned counsel, the petitioner is stated to be in custody since 19.01.2022 and has undergone incarceration for a substantial period of time. Out of the 23 prosecution witnesses cited by the prosecution, only 07 witnesses have been examined till date which reflects that the trial is progressing at a snail's pace. Furthermore, in view of the large number of remaining witnesses, the conclusion of trial is likely to take a considerable amount of time and, therefore, no useful purpose would be served for continued incarceration of the petitioner. Moreover, there is no likelihood of absconding of the petitioner or tampering with the prosecution evidence. Learned counsel has further submitted that the earlier bail petition was dismissed as withdrawn with no adjudication on merits thereof and there has been a material change in circumstances on account of prolonged custody and delay in the trial. On

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the strength of these submissions, the grant of petition in hand is entreated for.

5. *Per contra*, learned State counsel has vehemently opposed the grant of bail to the petitioner by arguing that the petitioner has been specifically named in the FIR and his active participation in the commission of the crime has been clearly established from the material collected during investigation. Learned State counsel has iterated that the role attributed to the petitioner is not merely of presence but that he has played a crucial and active part by catching hold the brother of the deceased and instigating the co-accused to fire the fatal shot at the deceased. Learned State counsel has pointed out that the motorcycle used in fleeing from the spot was recovered at the instance of the petitioner, thereby further connecting him with the crime. It has been further submitted that the petitioner was arrested and during investigation, he made a disclosure statement admitting his involvement in the offence. Furthermore, the medical and postmortem evidence fully corroborate the prosecution version regarding the manner and cause of death. Learned State counsel has pointed out that the petitioner is involved in another criminal case of similar nature which reflects his criminal antecedents. It has been further contended that the allegations are supported by the statement of the complainant and other material collected during the course of investigation. In view of the seriousness of the offence, there is a strong likelihood that if released on bail, the petitioner may influence or intimidate the prosecution witnesses and thereby hamper the trial. Considering the gravity of the offence and the stage of trial, learned State counsel has prayed for the dismissal of the instant petition.



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6. Learned counsel appearing for the complainant has raised submissions in tandem with the learned State counsel and has contended that the petitioner is an active participant in the commission of a heinous offence resulting in the death of an innocent person. Learned counsel has iterated that the petitioner, along with the co-accused, has a prior dispute with the complainant party arising out of an earlier incident and has been continuously extending threats to withdraw the said case. According to learned counsel, in view of the seriousness of the allegations, the manner in which the offence has been committed and the role attributed to the petitioner, the petitioner does not deserve the concession of regular bail.

7. I have heard learned counsel for the rival parties and have perused the available record.

8. It would be apposite to refer herein to a judgment passed by this Court in ***Rafiq Khan vs. State of Haryana and another: 2024: PHHC:054064***; relevant whereof reads as under:-

9. *The paramount issue, in any plea for grant of regular bail, is the liberty of an individual. Indubitably, within our society and jurisprudence, liberty is a cherished foundational principle and has fundamental ascendancy over all other attributes of social order. Even within the framework of Constitution, this principle is made conspicuous, inter alia, in Article 21 of our Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. The Cr.P.C., 1973 is one such procedural law which permits curtailment of liberty of anti-social and anti-national elements. Yet, liberty of an individual, the accused, must not transgress the rights of another individual, the victim, in terms of right to dignified everyday life without any imminent fear or threat. Additionally, the rights of the collective of individuals viz. the State/Society at large, also cannot be neglected. Therefore, while countenancing the facts for considering the bail, the rights of the triad of accused, victim and the*



State (Society at large) ought to be entailed. Ergo, while considering a bail plea, the Court ought to take into account this core concept(s).

9.1 *An analytical perusal of Cr.P.C. explicates that this statute does not contain any provision relatable to maintainability or otherwise of second/successive bail petitions, including one(s) seeking regular bail. Once there is no statutory prohibition provided for in law, a Court is not logically empowered to import into it such prohibitions, especially in case of codified and legislated law. It is trite law that Courts ought not to read a provision in codified law which has not been specifically provided for by the legislature especially when such reading results into deprivation of rights. The bar contained in Section 362 of Cr.P.C. can, by no stretch of legal imagination, be said to be barring the filing of second/successive regular bail petition.*

9.2 *The Hon'ble Supreme Court in case of **Babu Singh** case (supra) has held that rejection of a bail petition does not, by itself, forbid a Court from considering another one, later in point of time. Similar is the ratio decidendi of the judgment of Hon'ble Supreme Court in **Kalyan Chandra Sarkar** (supra). Ergo, it can be safely inferred that the decision of a Court qua regular bail petition is essentially an interlocutory order and hence the postulation of res judicata does not apply to its realm.*

9.3 *The issue that next craves attention is as to what are the factors/parameters for consideration of second/successive regular bail petition(s).*

9.4. *The concordant legal position is that the essential pre-requisite for consideration of second/successive regular petition is the material/substantial change in circumstances and factors of alike nature. Indubitably, the further period of incarceration suffered by the petitioner-accused after rejection/withdrawal of first/earlier plea for bail, pace of trial, the witnesses turning hostile or not supporting prosecution case and changed medical condition(s) of accused would be pertinent factor(s). It goes without saying that these factors are only illustrative in nature and cannot by any means be said to be exhaustive.*

9.5 *No rigid or universal criterion can possibly be delineated to conclusively govern the exercise of judicial discretion, in determining, as to what would constitute as the above stated substantial change in circumstances. Factual flexibility, one additional or different fact, may cause a sea of difference. There is no gainsaying that each case has its own distinct and unique facts and, hence,*



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exercise of such judicial power is best left to the judicial discretion of a Court, in accordance with the settled norms of our jurisprudence.

10. As an epilogue to the above discussion, the following principles emerge:

I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).

V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”

9. The contentions raised by learned counsel are available to the petitioner at the time when the first petition for regular bail has been dismissed. Thus, as such no fresh substantial change in the circumstances has been brought forward which would indicate that the petitioner is entitled



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to maintain his second petition for grant of regular bail. For maintaining a second petition for bail, it is *sine-qua-non* to bring forth change in circumstances. However, since the first regular bail petition was dismissed as withdrawn and there was no adjudication on merits thereof, this Court deems it appropriate to decide the instant one on merits thereof as well.

10. The grant of bail falls within the discretionary domain of the Court; however, such discretion must be exercised in a judicious and principled manner, ensuring it aligns with established legal precedents and the interests of justice. While considering a bail application, the Court must evaluate factors such as the existence of *prima facie* evidence implicating the accused, the nature and gravity of the alleged offence and the severity of the likely sentence upon conviction. The Court must also assess the likelihood of the accused absconding or evading the due process of law, the probability of the offence being repeated and any reasonable apprehension of the accused tampering with evidence or influencing witnesses. Additionally, the character, antecedents, financial means, societal standing and overall conduct of the accused play a crucial role. Furthermore, the Court must weigh the potential danger of bail undermining the administration of justice or thwarting its due course. A profitable reference in this regard is made to the judgment passed by the Hon'ble Supreme Court titled as ***State through C.B.I. vs. Amaramani Tripathi, 2005 AIR Supreme Court 3490***, relevant whereof reads as under:

14. It is well settled that the matters to be considered in an application for bail are (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character,



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*behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see **Prahlad Singh Bhati v. NCT, Delhi, 2001(2) RCR (Criminal) 377 (SC) :2001(4) SCC 280 and Gurcharan Singh v. State (Delhi Administration), AIR 1978 Supreme Court 179**). While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in **Kalyan Chandra Sarkar v. Rajesh Ranjan, 2004(2) RCR (Criminal) 254 (SC) :2004(7) SCC 528** : "The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*

- a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- b. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- c. Prima facie satisfaction of the **court** in support of the charge. (see **Ram Govind Upadhyay v. Sudarshan Singh, 2002(2) RCR (Criminal) 250 (SC) : 2002(3) SCC 598 and Puran v. Ram Bilas, 2001(2) RCR (Criminal) 801 (SC) : 2001(6) SCC 338**."*

This Court also in specific terms held that :

*"the condition laid down under section 437(1)(i) is sine qua non for granting bail even under section 439 of the Code. In the impugned order it is noticed that the High **Court** has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the*



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accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.”

11. The factual matrix of the case, as emerging from the FIR, reflects that the incident in question has occurred on 16.01.2022 during a marriage function where the complainant party was present. As per the prosecution version, the petitioner along with co-accused reached the venue, extended the threats and upon refusal by the deceased - Kapil to withdraw the earlier case, an altercation ensued. In the course of the said occurrence, the co-accused allegedly fired a gunshot at the chest of the deceased which proved fatal. At this stage, the role attributed to the present petitioner cannot be said to be insignificant. As per the prosecution, the petitioner has not only accompanied the co-accused to the spot but also actively facilitated the commission of the offence by catching hold of a witness and instigating the co-accused to open fire. The allegations, thus, *prima facie* indicate participation coupled with the common intention. The investigation carried out by the prosecution has led to recovery of the weapon of offence at the instance of the co-accused and the motorcycle used in the commission of offence at the instance of the petitioner. The forensic report connects the recovered weapon with the fatal injury sustained by the deceased. The medical evidence in the form of postmortem report also supports the prosecution version regarding the cause of death. The petitioner is alleged to be a member of an unlawful assembly alongwith the main accused.

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12. The allegations leveled against the petitioner are grave and specific which clearly indicate his active participation in the commission of the crime. In the considered opinion of this Court the very magnitude and seriousness of the crime, disentitle the petitioner to the discretionary relief of bail. Moreover, the offence alleged is serious in nature, punishable with death or life imprisonment. The gravity of the offence and the manner in which it has been committed are relevant considerations while exercising discretion under Section 439 of Cr.P.C./483 of BNSS. In the considered opinion of this Court, at this stage, no accentuating circumstances have been made which may *prima facie* constitute a compelling ground for the grant of regular bail to the petitioner, especially in light of the gravity of the allegations and the evidence on record. It is also to be borne in mind that offences of this nature strike at the very root of public order and societal conscience. Granting bail in such cases would not only undermine the gravity of the offence but may also embolden the accused. Furthermore, the apprehension expressed by the State that the petitioner may influence the witnesses also cannot be said to be unfounded particularly when several material witnesses are yet to be examined. The mere fact of prolonged custody cannot, in itself, constitute a ground for bail in cases of such grave and heinous crime.

13. In view of the seriousness of the allegations coupled with the nature of evidence, this Court is of the considered opinion that the petitioner is not entitled to the concession of regular bail.

14. In view of the prevenient ratiocination, it is ordained thus:

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(i) The present petition is devoid of merits and is hereby dismissed.

(ii) Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.

(iii) Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

March 24, 2026

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No