

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) Nos. 208 and 209 of 2026

Reserved on: 02.04.2026

Date of Decision: 08.04.2026.

1. Cr.MP(M) No. 208 of 2026

Som Chand ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

2. Cr.MP(M) No. 209 of 2026

Neha Kumari ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

For the Petitioner(s) : Mr Desh Raj Thakur, Advocate, in both the petitions.

For the Respondents/State: Mr Prashant Sen, Deputy Advocate General, in both the petitions.

Rakesh Kainthla, Judge

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

The petitioners have filed the present petitions for seeking regular bail, in FIR No. 11 of 2025 dated 23.01.2025 registered at Police Station Majra, District Sirmaur, H.P., for the commission of offences punishable under Sections 103(1), 117(2), 126(2) and 115(2) read with Section 3(5) of Bhartiya Nyaya Sanhita (BNS), 2023. Since both the petitions have arisen out of the same FIR; therefore, they are being taken up together for disposal.

2. It has been asserted that, as per the prosecution, the informant Bhura Ram was going to his fields on 22.01.2025 at about 5:30 PM. The petitioner, Som Chand, nephew of Bhura Ram, started abusing him and his wife, Kalavati, without any reason. Bhura Ram objected, after which the petitioners, Som Chand and Neha, gave him beatings. The matter was reported to the police, who registered the FIR and investigated the matter. The injured person was taken to the hospital. He was treated at PGI Chandigarh till 06.02.2025 and was brought home as per the doctors' advice. However, his condition deteriorated, and he died on 15.02.2025 at Nahan hospital. The police arrested the petitioners. The police completed the investigation and filed a chargesheet before the Court. The Court framed the charges

against the petitioner on 17.07.2025. The statements of six witnesses out of 26 have been recorded. The petitioners are innocent, and they were falsely implicated. The record does not show that the petitioners had any knowledge that their act was likely to cause death. Dr Snigdha Bandal (PW2) found no external visible injury, abrasion, bruises, laceration, contusion or swelling in the body. This is contrary to the prosecution's version that injuries were caused with a stick, fists and kick blows. The pancreas is located deep inside the body, and a blow with considerable force is required to injure it. The petitioners do not have any criminal antecedents. They are permanent residents of Tehsil Paonta Sahib. The chargesheet has been filed before the Court, and no fruitful purpose would be served by detaining the petitioners in custody. Petitioner Neha had filed a bail petition, which was registered as Cr.MP (M) No. 774 of 2025 and was dismissed on 16.05.2025. The petitioners have two minor children aged 7 years and 5 years who have been deprived of the care, affection and supervision of their parents. Twelve months have elapsed since the petitioners' arrest. The prosecution has only examined six out of 26 witnesses. The petitioners would abide by the terms and conditions that the Court may impose. Hence, it

was prayed that the present petition be allowed and the petitioners be released on bail.

3. The petitions are opposed by filing a status report asserting that the informant had gone to his field on 22.1.2025 at about 5.30 PM. Som Chand started abusing him and his wife. The informant inquired as to why the petitioner, Som Chand, was abusing him. The petitioners, Neha and Som Chand, gave beatings to the informant. The informant sustained injuries. He was taken to the Civil Hospital, Paonta Sahib, from where he was taken to the PGI, Chandigarh. Kalawati made a statement that she had gone to her village, where Som Chand and his wife, Neha, arrived and accused him of damaging the dhol. Bhura Ram came to the field at 5.30 PM. Som Chand and Neha repeated their allegations regarding damage to the Dhol. Som Chand and Neha gave beatings to Bhura Ram. Neha pushed Bhura Ram to the ground, and Som Chand inflicted injuries upon him. Bhura Ram was taken to the hospital, from where he was taken to Nahan and ultimately to PGI, Chandigarh. As per the postmortem report, the cause of death was abdominal inflammation in the pancreas as a sequel to blunt trauma to the pancreas, leading to pancreatitis. As per the final opinion, no marks of injury were found at the time of

examination of the body, and the weapon of injury could not be commented upon. The chargesheet was filed before the Court on 14.05.2025. Statements of nine witnesses have been recorded, and the matter was listed on 31.03.2026 for recording the statements of prosecution witnesses. Hence, the status report.

4. I have heard Mr Desh Raj Thakur, learned counsel for the petitioners and Mr Prashant Sen, learned Deputy Advocate General for the respondents/State.

5. Mr Desh Raj Thakur, learned counsel for the petitioners, submitted that the petitioners are innocent and they were falsely implicated. The allegations in the FIR, even if taken to be true, do not constitute the commission of an offence punishable under Section 103(1) of BNS. The petitioners' minor children and the aged parents of the petitioner, Som Chand, require constant care, and there is no one to look after them. The prosecution has failed to complete the evidence within 12 months of the petitioners' arrest, which violates the petitioners' right to a speedy trial. Therefore, he prayed that the present petition be allowed and the petitioners be released on bail.

6. Mr Prashant Sen, learned Deputy Advocate General for the respondent/State, submitted that petitioner Neha Kumari 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 petitioners have failed to establish any change in the circumstances. Hence, the present petition is not maintainable. It is impermissible to look into the evidence recorded by the learned Trial Court while deciding the bail petition. 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 records carefully.

8. It is undisputed that petitioner Neha Kumari had filed a bail petition, which was registered as Cr.MP(M) No. 774 of 2025 and was dismissed by this Court on 16.05.2025. It was rightly submitted on behalf of a State that a subsequent bail petition only lies when there is a change in the circumstances. 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 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. It was submitted that the offence punishable under Section 101(3) of BNS is not made out. The Court had earlier held, while deciding the previous bail petition, that a *prima facie* case of the commission of an offence punishable under Section 103(1) of BNS is made out, and it is impermissible to review these findings while deciding the subsequent bail petition. 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 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.

14. Therefore, it is impermissible to record the findings that no case of the commission of an offence punishable under Section 103(1) of BNS.

15. It was submitted that there are various discrepancies in the statement of witnesses recorded by the learned Trial Court, the witnesses supported the defence version in their cross-examination, and the petitioners are 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.”

16. Similarly, it was held by this Court in *Suraj Singh v. State of H.P.*, 2022 SCC OnLine HP 268 that the Court exercising bail jurisdiction cannot appreciate the contradictions in the evidence.

It was observed:

10. Petitioner has placed reliance on the statements of witnesses already recorded by the learned Special Judge, in support of his argument to the effect that, from perusal of these statements, reasonable grounds can be entertained for concluding prima facie innocence of the petitioner. The arguments raised on behalf of the petitioner deserve to be rejected for the reason that this Court, while dealing with the bail application, will not appreciate the evidence being recorded during the trial. Undisputedly, only some of the witnesses out of the entire list of witnesses relied upon by the prosecution have been examined. In these circumstances, it is not prudent to form any opinion as to the innocence or guilt of the petitioner on the basis of such partial evidence.

17. Therefore, it is impermissible to grant bail because of the discrepancies in the statements of the prosecution’s witnesses.

18. The status report mentions that petitioners gave beatings to the deceased Bhura Ram. The post-mortem report

mentions the cause of death as inflammation in the pancreas as a sequel of blunt trauma to the pancreas, leading to pancreatitis. Therefore, the injuries sustained by the deceased were the proximate cause of the death. An injury caused to the abdomen, which houses vital parts like intestines, kidneys, spleen or pancreas, would *prima facie* show an intention to cause death, and the petitioners cannot claim that no offence punishable under Section 103(1) of the IPC was made out.

19. The learned Trial Court has charged the petitioners with the commission of an offence punishable under Section 103(1) of the BNS. The petitioners did not challenge this order, and it is doubtful that the bail Court can set aside the order framing charges by holding that no case for the commission of the charged offence is made out.

20. The offence punishable under Section 103(1) of the IPC is punishable with death or imprisonment for life. Thus, the punishment is severe. 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.

21. Therefore, the petitioners are not entitled to bail considering the severity of the punishment.

22. It was submitted that there is a delay in the progress of the trial, and the petitioners are entitled to bail on this consideration. This submission cannot be accepted. The status report shows that the statements of nine witnesses have been recorded, and there is no delay. 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 in a crime like murder. 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”

23. Therefore, the petitioners cannot be held entitled to bail because of the delay in the progress of the trial.

24. No other point was urged.

25. In view of the above, the petitioners are not entitled to bail. Hence, the present petitions fail, and they are dismissed.

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

(Rakesh Kainthla)
Judge

8th April, 2026
(Nikita)