

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. M.P.(M) No. 2973 of 2023

Reserved on: 15.12.2023

Decided on: 29.12.2023

Surinder Singh

.....Petitioner

Versus

State of Himachal Pradesh

.....Respondent

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ No

For the petitioner:

Mr. Sanjeev K. Suri, Advocate.

For the respondent:

**Mr. I. N. Mehta, Sr. Addl.
Advocate General with Mr. J.S.
Guleria and Mr. Rohit Sharma,
Deputy Advocate Generals.**

Satyen Vaidya, Judge

The petitioner has prayed for grant of bail under Section 439 Cr.P.C. in case FIR No. 110 of 2021, dated 22.12.2021, registered under Sections 302, 365, 201 read with Section 34 of IPC and Sections 25 and 27 of the Indian Arms Act, at Police Station Bangana, District Una, H.P.

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

2. The charge against petitioner is that during the intervening night of 16/17.12.2021 he committed murder of one Sunil Kumar by means of a gunshot.

3. The petitioner has prayed for grant of bail on the grounds that a substantial number of prosecution witnesses have already been examined and none of them have supported the prosecution case. The trial of the case has been delayed. The petitioner is in custody since 22.12.2021. No enmity or motive has been proved against petitioner for commission of offence.

4. The prayer for bail has been opposed on the ground that the petitioner is the prime accused in the matter. He is facing serious charge under Section 302 IPC. In case released on bail, the petitioner is likely to adversely affect the course of trial. 32 prosecution witnesses have already been examined and only 9 witnesses remained to be examined. It has also been submitted that the petitioner earlier also filed application for bail being Cr.MP(M) No. 1765 of 2023, which was rejected by this Court on 19.8.2023.

5. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

6. The perusal of order dated 19.8.2023 passed by this Court in Cr.MP(M) No. 1765 of 2023, reveal that the petitioner had made a prayer for grant of bail in the same case on earlier occasion also on the same grounds as raised in the instant petition. This court after taking into consideration all the attending facts and circumstances had declined the prayer of the petitioner.

7. It is trite law that successive regular bail application under Section 439 of Cr.P.C. can be maintained only if there are changed circumstances and such changed circumstances warrant the grant of bail. Reference can be made to a decision of Hon'ble Supreme Court in ***State of Himachal Pradesh vs. Kajad (2001) 7 SCC 673***. In the absence of the aforesaid conditions, the order granting bail by allowing successive bail application amounts to review of its order by a criminal Court, which is not permissible under criminal law.

8. In ***Lt. Col. Prasad Shrikant Purohit vs. State of Maharashtra, (2018) 11 SCC 458***, the Hon'ble Apex Court has held as under:-

“30. Before concluding, we must note that though an accused has a right to make successive applications for 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.”

9. This Court does not find any change in circumstances which may justify the maintainability of instant petition. Accordingly, the petition is dismissed.

10. Any observation made in this order shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.

29th December, 2023
GR)

(Satyen Vaidya)
Judge