

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. MP(M) No.1843 of 2026****Reserved on: 30.09.2026****Decided on: 06.10.2026**

Arnav Saviraj Chauhan

.... Petitioner

Versus

State of HP

.... Respondent

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*Coram**Hon'ble Mr Justice Rakesh Kainthla, Judge.**Whether approved for reporting?<sup>1</sup> No.*For the Petitioner : Mr N.S. Chandel, Senior Advocate,  
with Mr Ankit Dhiman, Advocate.For the Respondent/State : Mr P.K. Nadda, Additional Advocate  
General.

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*Rakesh Kainthla, Judge*

The petitioner has filed the present petition seeking regular bail in FIR No. 204 of 2025, dated 22.09.2025, registered for the commission of offences punishable under Sections 20, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act

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

(hereinafter referred to as 'the NDPS Act') at Police Station Sundernagar, District Mandi, H.P.

2. It has been asserted that as per the prosecution, the police had intercepted a black Honda City car bearing registration No. UP-16AX-2143 coming from Mandi and found Divyansh Patel driver, Nakul Mittal, Arnav Chauhan (the present petitioner), Saksham Bharti and Rohit Kumar travelling in it. The police searched the vehicle and recovered 1 laptop bag containing 1 kg 174 grams of Charas. The police seized the Charas and arrested the occupants. The prosecution revealed that Kasin Kashyap and Ayansh Srivastav were the principal financiers of the purchase. Kasin had transferred ₹50,000/- through Google Pay and Ayansh had transferred ₹14,200/- via UPI to Rewat Ram. The police arrested Rewat Ram. A mobile phone belonging to co-accused Kasin Kashyap was also found in the laptop bag. The police have filed the charge sheet before the Court, and no fruitful purpose would be served by detaining the petitioner in custody. The petitioner had filed a bail petition before this Court, which was registered as Cr. M.P. (M )No. 293 of 2026 and was dismissed on 30.03.2026. The circumstances have changed. The petitioner is not the owner of the vehicle. Nothing was recovered from his

possession. There is no material to connect the petitioner to the recovered charas. The petitioner is not the contributor, beneficiary, or participant in the transaction. The bag belonged to Kasin Kashyap and the petitioner does not have any connection to it. The allegation against the petitioner is false. The twin conditions as laid down under Section 37 of the NDPS Act are satisfied because there are reasonable grounds to believe that the petitioner is not guilty, as he has neither purchased nor financed the possession of the contraband, and there is no material to show that he is likely to commit the offence if released on bail. The prosecution has cited 49 witnesses, and the trial is likely to take a considerable time. The grounds of arrest were not communicated to the petitioner. The co-accused Kasin Kashyap and Nakul Mittal have been released on bail. The petitioner is a student aged about 20 years pursuing his 5-year BA.LLB course from Shoolini University. The petitioner was unable to appear in the examination and attend classes because of his incarceration. The petitioner does not have any criminal antecedents. 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 had set up a nakka at Pungh four-lane and were checking the vehicles on 22.09.2025. They intercepted a vehicle bearing registration No. UP-16AX-2143. The driver and occupants of the vehicle got frightened after seeing the police. The police associated Kuldeep Kumar and Mukesh Kumar as independent witnesses. The police inquired about the names of the occupants of the vehicle. The driver identified himself as Divyansh Patel. The person sitting beside him identified himself as Nakul Mittal, and the persons sitting in the rear seat identified themselves as Arnav Chauhan (present petitioner), Saksham Bharti and Rohit Kumar. The police searched the vehicle and recovered a carry bag containing 1 kg 174 grams of charas. The police seized the charas and arrested the occupants of the vehicle. The charas was sent to SFSL, Junga, and as per the report of analysis, it was confirmed to be a sample of charas. The occupants revealed during interrogation that they had handed over ₹5000/- each to Kasin Kashyap, who had also accompanied the accused on his motorcycle. They identified the room where

they had stayed in Kullu. The petitioner had gone to Kullu from Solan to purchase Charas on 21.09.2025, but had stayed in a hotel at 9 miles Pandoh, with his friends Nakul Mittal, Rohit Kumar and Aditya Kumar. Divyansh Patel, Nakul Mittal, Saksham Bharti, Rohit Kumar and the petitioner revealed during their interrogation that they had handed over ₹5000/- each to Kasin Kashyap to purchase the charas. The petitioner waited for his friends at Pandoh. He boarded a vehicle bearing registration no. UP-16AX-2143. The Police completed the investigation and filed the charge sheet before the Court of the learned Special Judge, Mandi, on 17.01.2026. The matter was listed before the learned trial Court on 30.09.2026 for recording the statements of the witnesses. Hence, the status report.

4. I have heard Mr N.S. Chandel, learned Senior Advocate, assisted by Mr Ankit Dhiman, learned counsel for the petitioner and Mr P.K. Nadda, learned Additional Advocate General, for the respondent/ State.

5. Mr N.S. Chandel, learned Senior Advocate, submitted that the petitioner is innocent and he was falsely implicated. The police have joined Kuldeep Kumar as a witness in the present

case, and he was also joined in 6 other FIRs, which show that he is a stock witness. The whole of the prosecution case becomes suspect because of his involvement. The petitioner is a student whose future has been spoiled by his incarceration. He would abide by the terms and conditions that the Court may impose. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr PK Nadda, learned Additional Advocate General, for the respondent/state, submitted that the petitioner has to satisfy the Court that there are reasonable grounds to believe that he is not guilty of the commission of an offence. Mere suspicion is not equivalent to reasonable belief. The petitioner had earlier filed the bail petition, and the Court had concluded that there was sufficient material to connect the petitioner to the commission of the crime. A subsequent bail petition only lies when there is a change in the circumstances. The petitioner has failed to show any change in the circumstances, and the present petition is not maintainable. 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 the petitioner had earlier filed two bail petitions, which were registered as Cr. M.P.(M) No. 293 of 2026 and Cr. M.P. (M) No. 1098 of 2026, and were dismissed by this Court on 30.03.2026 and 14.07.2026, respectively. It was rightly submitted on behalf of the State that a subsequent bail petition lies only 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 that requires the earlier view to be interfered with or where the earlier finding has become obsolete. However, a change in circumstances has no bearing on the salutary principle of judicial propriety that successive bail applications need 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 circumstances 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 the 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 circumstances as claimed by the applicant, which entitles him to file a subsequent bail application.”

13. It was submitted that one of the witnesses, namely, Kuldeep, in the present case was also associated in F.I.R. No. 195 of 2025, dated 12.09.2025, F.I.R. No. 223 of 2025, dated 10.10.2025, F.I.R. No. 244 of 2025, dated 08.11.2025, F.I.R. No. 15 of 2026, 20.01.2026, F.I.R. No. 70 of 2026, dated 28.03.2026 and F.I.R. No. 89 of 2026, dated 18.04.2026, which shows that he is a stock witness and his association will make the prosecution case highly suspect. This submission will not help the petitioner. It was held by this Court while deciding the earlier petition that there is prima facie sufficient material to conclude that the petitioner was in possession of the commercial quantity of

Charas and rigours of Section 37 of the NDPS Act apply to the present case. Therefore, he is required to satisfy the Court that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. It was laid down by the Hon'ble Supreme Court in *State of Kerala Versus Rajesh*, AIR 2020 SC 721, that the reasonable grounds mean something more than prima facie grounds and substantial and probable cause for believing that the accused is not guilty of the alleged offence. It was observed

“21. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case at hand, the High Court seems to have completely overlooked the underlying object of Section 37 that, in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

14. A similar view was taken in *Union of India v. Mohd. Nawaz Khan*, (2021) 10 SCC 100: (2021) 3 SCC (Cri) 721: 2021 SCC OnLine SC 1237, wherein it was observed at page 110:

22. The standard prescribed for the grant of bail is “reasonable grounds to believe” that the person is *not* guilty of the offence. Interpreting the standard of “reasonable grounds to believe”, a two-judge Bench of this Court in *Shiv Shanker Kesari* [*Union of*

**India v. Shiv Shanker Kesari, (2007) 7 SCC 798: (2007) 3 SCC (Cri) 505],** held that: (SCC pp. 801-02, paras 7-8 & 10-11)

“7. The expression used in Section 37(1)(b)(ii) is “reasonable grounds”. The expression means something more than *prima facie* grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged, and this reasonable belief contemplated, in turn, points to the existence of such facts and circumstances as are sufficient in themselves to justify the recording of satisfaction that the accused is not guilty of the offence charged.

8. The word “reasonable” has in law the *prima facie* meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word “reasonable”.

‘7. ... Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word “reasonable”. Reason varies in its conclusions according to the idiosyncrasies of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.’

[See *MCD v. Jagan Nath Ashok Kumar* [*MCD v. Jagan Nath Ashok Kumar*, (1987) 4 SCC 497], SCC p. 504, para 7 and *Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.* [*Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.*, (1989) 1 SCC 532] ]

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10. The word “reasonable” signifies “in accordance with reason”. In the ultimate analysis, it is a question of fact whether a particular act is reasonable or not, which depends on the circumstances in a given situation. (See *Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd.* [*Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd.* (2003) 6 SCC 315]

15. This view was reiterated in *State of Meghalaya v. Lalrintluanga Sailo*, 2024 SCC OnLine SC 1751, and it was observed:-

6....In the decision in *Collector of Customs, New Delhi v. Ahmadalieva Nodira* (2004) 3 SCC 549, the three-judge bench of this Court considered the provisions under Section 37(1)(b) as well as 37(1)(b)(ii) of the NDPS Act, with regard to the expression "reasonable grounds" used therein. This Court held that it means something more than the *prima facie* grounds and that it contemplates substantial and probable causes for believing that the accused is not guilty of the alleged offence. Furthermore, it was held that the reasonable belief contemplated in the provision would require the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

As relates to the twin conditions under Section 37(1)(b)(ii) of the NDPS Act, viz., that, firstly, there are reasonable grounds for believing that the accused is not guilty of such offence and, secondly, he is not likely to commit any offence while on bail, it was held therein that they are cumulative and not alternative. Satisfaction of the existence of those twin conditions had to be based on the 'reasonable grounds', as referred to above.

16. Therefore, reasonable grounds cannot be equated to mere suspicion, but have to be more than *prima facie* material.

17. The petitioner has filed a copy of the statement made by Kuldeep (PW-1) before the learned trial Court, which shows that he has not supported the prosecution case. Therefore, even if he is treated to be a stock witness, as has been contended on the petitioner's behalf, he has not deposed against the petitioner,

and no prejudice has been caused to him. The status report mentions that the proceedings were video-graphed. Hence, there is other material to connect the petitioner to the commission of the crime after excluding the statement of Kuldeep and mere association of Kuldeep in more than one case will not mean that there are reasonable grounds to believe that the petitioner is not guilty of the commission of the offence.

18. It was submitted that the grounds of arrest were not communicated to the petitioner and his constitutional right was violated. This submission is only stated to be rejected. Hon'ble Supreme Court held in *Mihir Rajesh Shah v. State of Maharashtra*, 2025 SCC OnLine SC 2356, that the communication of the grounds of arrest in all the offences would apply prospectively from the date of the pronouncement of the judgment. It was observed:

“58. We are cognizant that there existed no consistent or binding requirement mandating the written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. *The ends of fairness and legal discipline, therefore, demand that this procedure, as affirmed above, shall govern arrests henceforth.*” (Emphasis supplied)

19. This judgment was followed by a co-ordinate bench of this Court in *Kabir Khan vs State* 2025:HHC:39246, wherein it was observed:

“7. In light of the fact that in the said judgment, Hon’ble Supreme Court has been pleased to clearly hold that as previously there existed no consistent or binding requirements mandating written communication of the grounds of arrest for all the offences, the ends of fairness and legal discipline, therefore, demand that this procedure as affirmed shall govern arrests henceforth, this means that the Hon’ble Supreme Court has been pleased to make directions issued therein prospective.”

20. It was held in *State of Meghalaya v. Sonam Raghuvanshi*, 2026 SCC OnLine SC 1392 that the requirement of providing grounds of arrest is prospective. It was observed:

9. Law is quite settled that serving of the grounds of arrest is mandatory. This has been introduced as a judge-made law *vide* a judgment of this Court in the case of *Mihir Rajesh Shah* (supra). That is the precise reason why this Court was pleased to hold that though such a procedure is not contemplated, nonetheless, it is so required in order to give effect to Article 22(1) of the Constitution of India. For the said reason, the decision was made to apply prospectively. Admittedly, in the case on hand, the respondent was arrested on 9-6-2025, much before the date of pronouncement of *Mihir Rajesh Shah* (supra).

21. This Court held in *Arvind Kumar @Chahna vs. State of HP, CrMP (M) no. 2329 of 2025, decided on 13.11.2025*, that the requirement of providing the grounds of arrest is prospective.

This judgment was unsuccessfully assailed in *Arvind Kumar @Chahna vs. State of HP, SLP (Criminal) No. 797 of 2026*. In the present case, the petitioner was arrested before the pronouncement of the judgment in *Mihir Rajesh* (supra), and the petitioner cannot get bail because the grounds of arrest were not communicated to him.

22. It was laid down by the Hon'ble Supreme Court in *State of Meghalaya v. Sonam Raghuvanshi, 2026 SCC OnLine SC 1392* that when no plea regarding grounds of arrest was taken at the earliest, and no prejudice is shown, the accused is not entitled to bail. It was observed:

10. Apart from the fact that the respondent was conspicuously absent and, thus, could not be traced after the occurrence, the law does not restrain the prosecuting agency from re-arresting a person. In other words, non-compliance with the service of grounds of arrest to an accused and consequent enlargement on bail will not act as a fetter to re-arrest the said accused for the purpose of investigation.

11. We find that the respondent is not entitled to bail, both on merits and on the grounds discussed by both the Courts. There is a fundamental difference between non-service of grounds of arrest and non-furnishing of adequate reasons thereunder. While the first category might vitiate the arrest, in the second category, one has to see the prejudice caused to the accused. In the facts of the instant case, it is not as if the respondent was not served with the grounds of arrest. Hence, the case of the

respondent falls within the second category discussed above. The respondent has also not taken the said plea at the earliest point of time, having done so only in her 4th Bail Application before the trial court.

12. With respect to the contention of the learned Senior Counsel for the respondent that there is no waiver of the right guaranteed under Article 22(1) of the Constitution of India and, therefore, the stage at which a plea touching upon fundamental rights is raised would not matter, we would only clarify that when an accused person files a bail application, the stage might become irrelevant. However, when the accused person warranted a finding on merits on the earlier occasions, it is not open for him/her to go back and raise the plea on the issue pertaining to the grounds of arrest thereafter.

13. As recorded earlier, the respondent has expressed her satisfaction on the reasons behind her arrest before the learned Judicial Magistrate. The relevant documents were, indeed, served on the respondent. Therefore, we are not inclined to go into the issue as to whether the case involves a voluntary surrender by the respondent or arrest by the appellant, followed by production before the Court. Suffice it to state that both the Courts below have committed an error in enlarging the respondent on bail, on the basis of the judgments rendered by this Court.

23. In the present case, the plea was not taken at the earliest, and no prejudice has been shown, and the petitioner is not entitled to bail because of non-communication of grounds of arrest.

24. It was submitted that the petitioner is innocent and there is no material to connect him to the commission of the crime. The recovery of the mobile phone of the co-accused Kasin

in the bag shows that he was the owner of the bag. Reference was also made to the statements of independent witnesses, who have not supported the prosecution case, to contend that no case is made out against the petitioner. This submission will not help the petitioner. It was laid down by the Delhi High Court in *Dineet v. State (NCT of Delhi)*, 2025 SCC OnLine Del 8603, that it is impermissible for the bail Court to appreciate the evidence recorded during the trial and grant bail on the ground that the independent witness has not supported the prosecution's case. It was observed:

“17. Addressing Mr Mahajan's submissions, it is pertinent to note that nearly the entirety of the petitioner's case rests upon the assumption that this Court may enter into witness testimonies and evidence to determine contradictions and the hostility of witnesses at the stage of bail.

18. However, it is trite that the same is not within the power of this Court at the stage of bail, as laid down in *Satish Jaggi v. State of Chhattisgarh* (2007) 11 SCC 195 : (2008) 1 SCC (Cri) 660, paragraphs 11 and 12 of which merit reproduction:

“11. On the aforesaid reasoning, the learned Chief Justice thought it fit to grant bail. Mr A.K. Ganguli, learned Senior Counsel appearing on behalf of the appellant complainant, Mr Amarendra Sharan, learned ASG appearing on behalf of CBI and Mr Rajiv Dutta, learned Senior Counsel appearing on behalf of the State of Chhattisgarh strenuously contended that having regard to the observations and findings

of the learned Chief Justice as recorded above, it clearly shows that the learned Chief Justice, while granting bail to the accused, virtually decided the case on merit, which amounts to acquitting the accused of the criminal charge levelled against him without trial. Per contra, Mr Vivek Tankha, learned Senior Counsel, contended that now the evidence is closed, so there is no question of the accused tampering with the prosecution witnesses or fleeing from justice. He further contended that now the arguments in the case have finally started, and the arguments of the prosecution are over, and only the defence is to give its reply. He, accordingly, contended that the bail granted by the learned Chief Justice need not be disturbed.

12. Normally, if the offence is non-bailable, bail can also be granted if the facts and circumstances so demand. We have already observed that in granting bail in a non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of society were not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress, and if such findings are allowed to stand, it would seriously prejudice the prosecution's case. At the stage of granting bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of the credibility and reliability of the witnesses put up by the prosecution. The

question of credibility and reliability of prosecution witnesses can only be tested during the trial.”

19. By virtue of the aforementioned paragraphs from the Hon'ble Supreme Court's decision in *Satish Jaggi*, it is evinced that this Court, at the stage of Bail, cannot look into the allegations of PW2 being a witness who has turned hostile, nor apply its mind to alleged contradictions in his statement under Section 161 of the CrPC when compared with his testimony in Court, as the same would amount to appreciation of the evidentiary value of his statement and testimony, and this is an exercise that is only to be conducted during the course of trial.

20. The same has been relied upon by the Hon'ble Supreme Court in the judgment of *State of Karnataka v. Sri Darshan*, 2025 SCC OnLine SC 1702, with the following paragraphs of this decision reproduced for ready reference:

*“20.2.5. Further, such an approach of the High Court is contrary to the judicial precedents of this Court, including Satish Jaggi v. State of Chhattisgarh (supra), Kanwar Singh Meena v. State of Rajasthan<sup>4</sup>, wherein it was held that courts, while considering bail, should not assess the credibility of witnesses, as this function squarely lies within the domain of the trial Court. Thus, the impugned order of the High Court violates this principle by commenting on the delay in the witness statements and imputing a lack of credibility at this stage” (emphasis supplied)*

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“20.3.6. In the present case, the High Court also proceeded to analyse and discount the credibility of certain prosecution witnesses and forensic material. It observed contradictions in the eyewitness statements concerning the overt acts of the accused (para 26). It expressed doubts about the prosecution's explanation for the delay in recording the statements of CW. 76 and CW. 91 (para 27). It questioned the timing of the

doctor's supplementary opinion and weighed its evidentiary worth (para 31). *As already pointed out, the credibility or reliability of witnesses is a matter for the trial Court to determine after full-fledged cross-examination. It is a trite law that statements recorded under section 161 Cr. P.C. are not substantive, and their evidentiary value can only be determined after cross-examination during trial. Any opinion rendered at the bail stage risks prejudging the outcome of the trial and must be avoided. Thus, the court's assessment of these aspects amounts to a premature appreciation of the probative value of prosecution evidence.*" (emphasis supplied)

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"24. On a cumulative analysis, it is evident that the order of the High Court suffers from serious legal infirmities. The order fails to record any special or cogent reasons for granting bail in a case involving charges under Sections 302, 120B, and 34 IPC. Instead, it reflects a mechanical exercise of discretion, marked by significant omissions of legally relevant facts. Moreover, the High Court undertook an extensive examination of witness statements at the pre-trial stage, highlighting alleged contradictions and delays - issues that are inherently matters for the trial Court to assess through cross-examination. The trial Court alone is the appropriate forum to evaluate the credibility and reliability of witnesses. Granting bail in such a serious case, without adequate consideration of the nature and gravity of the offence, the accused's role, and the tangible risk of interference with the trial, amounts to a perverse and wholly unwarranted exercise of discretion. The well-founded allegations of witness intimidation, coupled with compelling forensic and circumstantial evidence, further reinforce the necessity for cancellation of bail. Consequently, the liberty granted under the impugned order poses a real and imminent threat to the fair administration of justice and risks derailing the trial process. In light of these

circumstances, this Court is satisfied that the present case calls for the exercise of its extraordinary jurisdiction under Section 439(2) Cr. P.C.” (emphasis supplied)

21. Drawing inspiration from the judgment in *Darshan*, the hostility of a witness cannot be interpreted as an automatic declaration of the prosecution's case as unconvincing, and thereby, in essence, result in the conduct of a mini-trial at the stage of bail and return findings upon the *ex facie* merit of the accused's innocence/guilt.

25. 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, the 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.”

26. 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 based on such partial evidence.

27. The Court had earlier found that there was sufficient material to prima facie conclude that the petitioner was involved

in the commission of the crime. The findings recorded by the Court cannot be reviewed by this Court while exercising the jurisdiction to grant a 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. Successive bail applications are indeed 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.

28 It was submitted that the prosecution has failed to complete the evidence and there is no likelihood of the early conclusion of the trial. This submission cannot be accepted. The petitioner himself has filed the copies of the statements of 4 witnesses. The matter was listed before the learned trial Court on 30.09.2026 as per the status report. The examination of 4 witnesses within one year does not show any delay in the

progress of the trial, justifying the release of the petitioner on bail.

29. No other point was urged.

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

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

**( Rakesh Kainthla )**  
**Judge**

06<sup>th</sup> October, 2026  
(ravinder)