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

112/222

CRM-M-41828-2025 (O&M)

Davinder Saini

...Petitioner

V/s

State of Punjab

...Respondent

Date of decision: 27.11.2025**Date of Uploading : 28.11.2025****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Geeteshwar Saini, Advocate for the petitioner.

Mr. Jaypreet Singh, DAG Punjab.

SUMEET GOEL, J. (Oral)**CRM-45535-2025**

This is an application under Section 528 of the BNSS for placing on record zimni orders documents in compliance of the order dated 31.10.2025 earlier passed by this Court.

For the reasons stated therein, the application in hand is allowed. The documents are taken on record as Annexure A-8. Registry to page-mark the paper-book accordingly.

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1. The present petition is the third attempt under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as 'the BNSS') for grant of regular bail to the petitioner in FIR No.188 dated 08.11.2018 registered under Sections 302, 307, 323, 148 and 149 of IPC and Section 25 of the Arms Act at Police Station Dinanagar, District Gurdaspur.

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2. The gravamen of the FIR in question pertains to an incident which occurred on 07.11.2018. The complainant namely Piara Singh, Lambardar, son of Swaran Singh, Jat aged about 65 years, resident of village Margala, alleged that on the alleged day of occurrence at about 08:45 PM, his nephew namely Sukhwinder Singh and his friends Rahul Kumar and Suraj Kumar were standing at Magrala Road Chungi, Dinanagar Chowk. It was further alleged that the complainant alongwith his brother Prem Singh were going to Dinanagar to buy household items for the Diwali festival. They were walking behind Sukhwinder Singh and the others. When they reached near DAV School, Dinanagar, the accused namely Davinder Saini (petitioner herein) armed with pistol, Kaka alias Gurpreet armed with pistol, Pankaj Saini, Bunty, Sajan and Ankush all empty handed alongwith one unknown person arrived on motorcycles and hurled abuses. They started abusing Sukhwinder Singh and his friends. Accused Davinder Saini and Kaka fired towards Sukhwinder Singh. As the complainant raised an alarm, all the accused fled on their motorcycles with their respective weapons. Some nearby people arranged a vehicle and the injured Sukhwinder Singh, Rahul Kumar and Suraj Kumar were taken to the Kotli Pathankot Hospital. There, the doctor declared Sukhwinder Singh dead. Injured Rahul Kumar was referred to Amritsar for further treatment and Suraj Kumar was taken by his brother Satish Kumar to Civil Hospital, Gurdaspur. During investigation, several accused were arrested. Weapons were recovered from co-accused Gurpreet @ Kaka and Jaspreet Singh @ Channa in separate cases both of whom disclosed their role in firing upon the victims. The petitioner had absconded and was declared a proclaimed



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offender on 28.01.2019. He was arrested on 07.09.2019 and supplementary challan was presented thereafter.

3. The petitioner had earlier applied for grant of regular bail before this Court which was dismissed on 13.05.2024. The relevant part of said order reads as under:-

“Having considered submissions of both the sides and having noticed the specific attribution to both the petitioners, who fired gun shots resulting into the death of Sukhwinder Singh @ Mukhwinder and the gravity of the offence, which entails punishment even up to death, and also the testimony of PWs – Piara Singh and Prem Singh made during trial, but without commenting anything further on the merits of the case, this Court is not inclined to grant the benefit of bail to any of these petitioners Gurpreet @ Kaka and Davinder Saini. As far as bail granted to co-accused Jaspreet Singh @ Channa and Bunty @ Sarabjit is concerned, their case is on entirely different footing as none of them are attributed to have given gun shot injuries to the deceased.”

Thereafter, the petitioner had again approached this Court for grant of regular bail which also stands dismissed on 13.01.2025, relevant whereof reads as under:

“Having noticed all the afore-said facts and circumstances, but without commenting anything on the merits of the case, this Court is not inclined to grant the benefit of bail to the petitioner. As such, bail petition is dismissed. However, having regard to the custody period of the petitioner, the trial Court is again directed to make every possible effort to expedite the trial by passing the effective orders as per law against the defaulting witnesses.”

The present petition i.e. the third petition for grant of regular bail has been preferred by the petitioner on and around 01.08.2025.

4. Learned counsel for the petitioner has iterated that the petitioner has been falsely implicated into the FIR in question due to his

earlier involvement in FIR No.53 dated 17.10.2018 arising out of a minor



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quarrel with the brother of the deceased. According to learned counsel, the name of the petitioner has been added in the present case merely out of enmity. Learned counsel has further iterated that the petitioner was not present at the spot on the day of incident and no recovery whatsoever has been effected from the petitioner whereas the alleged weapons were recovered only from co-accused in separate FIRs. Learned counsel has pointed out that the injured eye-witness Rahul Kumar, in his examination-in-chief dated 16.05.2023 failed to identify the petitioner or any assailants and PW-5 Satish Kumar has also not supported the prosecution version. It has been further submitted that the petitioner is in custody since 07.09.2019, almost five years and ten months and despite framing of charges in the year 2021 and 23 witnesses are still yet to be examined. Given that the trial is likely to take a long time to conclude, the learned counsel submits that no useful purpose would be served by keeping the petitioner in custody. To buttress his arguments, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court titled as ***Kamal Kishore vs. State of Punjab, 2025(1) Law Herald 850***, to contend that when the prosecution witnesses, including injured witnesses, fail to support the case of the prosecution and do not identify the accused during trial and when the trial is likely to take considerable time with several witnesses still unexamined, continued incarceration of the accused would serve no useful purpose. In this view of the matter, the grant of regular bail is entreated for.

5. *Per contra*, learned State counsel has vehemently opposed the grant of regular bail to the petitioner on account of the present petition being non-maintainable as it is the third petition for grant of regular bail as also on



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merits thereof. Learned State counsel further asserts that allegations raised against the petitioner are serious in nature. The petitioner is specifically named in the FIR as a prime accused armed with a pistol who fired at the deceased. The medical evidence clearly supports the prosecution version. Learned State counsel has emphasized that petitioner has absconded for several months and subsequently he was declared a proclaimed offender which demonstrates his intention to evade the process of law and such conduct disentitles him from any discretionary relief from this Court. Furthermore, it is submitted that although some witnesses have not supported the prosecution case, as many as 23 prosecution witnesses are still yet to be examined and the release of petitioner at this stage poses a serious risk of influencing witnesses and tampering with evidence. Considering the gravity of the offence, the petitioner does not deserve the concession of regular bail.

6. I have heard the learned counsel for the rival parties and have gone through the available records of the case.

7. 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, 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.”



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8. The contentions raised by learned counsel in the present petition were available to the petitioner at the time when the earalier petitions for the grant of regular bail were dismissed. Thus, as such no substantial change in the circumstances has been brought forward which would indicate that the petitioner is entitled to maintain his third petition for grant of regular bail. For maintaining a second/third petition for bail, it is *sine-qua-non* to bring forth change in circumstances. This fact assumes more importance when no undue delay in trial has been brought forth. The first and the second regular bail petition filed by the petitioner were dismissed on merits on 13.05.2024 and 13.01.2025 respectively, approximately 10 months have passed since the dismissal of the second petition.

8.1 Indubitably, the allegations made in the FIR against the petitioner are grave and specific. The incident in question pertains to 07.11.2018 wherein the complainant has specifically named the present petitioner as one of the principal assailants who arrived at the spot armed with a pistol and opened fire upon the victims causing the death of one Mukhwinder Singh. The allegations against the petitioner are not incidental or peripheral rather the petitioner has been attributed a direct and active role of firing gunshots. The medical opinion also supports the prosecution narrative as the cause of death has been opined as rupture of the aorta leading to massive hemorrhage and shock, sufficient to cause death in the ordinary course of nature which clearly indicates a fatal firearm injury. The plea of false implication of the petitioner cannot be looked into, in detail, at this stage, lest it may prejudice the trial. Furthermore, the argument of lack of



motive is not material at this stage as well since the allegations themselves disclose reckless and culpable conduct attracting serious penal consequences. In the considered opinion of this Court, the allegations against the petitioner are serious in nature and he is required to substantiate his defence by leading cogent evidence.

8.2. During the course of investigation, it is significant to note that the petitioner absconded and was declared a proclaimed offender on 28.01.2019. Such conduct, in the considered opinion of this Court, is a relevant factor while assessing whether the petitioner is entitled to discretionary relief of regular bail. The petitioner was subsequently arrested on 07.09.2019 and thereafter supplementary challan was filed. The record further reflects that weapons were recovered from co-acused Gurpreet @ Kaka and Jaspreet Singh @ Channa in separate cases but both of them have made disclosures implicating their participation in the alleged firing incident. The recovery of weapons and their alleged use in the present case lends credence to the prosecution case. The contention raised by learned counsel for the petitioner that injured witness Rahul Kumar did not identify the petitioner during his examination-in-chief and that PW-5 Satish Kumar has also not supported the prosecution case is not to be considered at this stage as the trial is still in progress and 23 prosecution witnesses remain to be examined. At this stage, the Court cannot record any conclusive finding on the credibility of the prosecution evidence nor can the partial hostility of some witnesses be taken as determinative factor of the innocence of the petitioner particularly when several witnesses are yet to be examined. The possibility of the petitioner, absconding from the process of law, influencing



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or intimating the remaining witnesses cannot be ruled out at this stage. As regards the reliance placed by the petitioner upon the judgment in ***Kamal Kishore*** case (supra), the facts of the said case are clearly distinguishable. In the abovementioned case, the accused was not assigned a specific role of firing and the witnesses had completely exonerated him at an advanced stage of trial. In the present case, the petitioner is named in the FIR itself as one of the prime accused and his role is supported by the statements and recovery from co-accused.

8.3. The Court is also unable to accept the argument of parity with co-accused who have been granted the concession of bail as the role attributed to the petitioner is distinct and grave involving direct use of firearm use leading to loss of a life. The grant of bail on parity is not a vested right and cannot be invoked where the role and circumstances differ materially. The grant of bail in such like matters, if exercised casually, would not only dilute the seriousness of the offence but also have a deleterious effect of encouraging similar conduct.

9. In view of the above circumstances, including the gravity of the allegations, the direct role assigned, the conduct of the petitioner in evading arrest, the recoveries supporting the prosecution case and the substantial number of witnesses yet to be examined, this Court is of the considered opinion that the petitioner does not deserve the concession of regular bail in the factual *milieu* of the case and is hereby dismissed.

10. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency



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as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.

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

(SUMEET GOEL)
JUDGE

November 27, 2025
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No