

(2026) 03 SHI CK 0676

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 2448 Of 2025

Saurabh Patial @ Fandi

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 10-03-2026

Acts Referred:

Constitution Of India, 1950 — Article 21
Bharatiya Nyaya Sanhita, 2023 — Section 3(5), 109
Arms Act, 1959 — Section 25
Code Of Criminal Procedure, 1973 — Section 161, 162
Evidence Act, 1872 — Section 21, 24, 25

Citation : (2026) 03 SHI CK 0676

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : Rajiv Rai, Paresh Sharma, Jitender Sharma

Final Decision : Allowed

Judgement

Rakesh Kainthla, J

1. The petitioner has filed the present petition for seeking regular bail in FIR No. 58/2025, dated 14.03.2025, registered at Police Station Sadar, District Bilaspur, H.P., for the commission of an offence punishable under Section 109 read with Section 3(5) of Bharatiya Nyaya Sanhita (BNS), 2023 and Section 25 of the Arms Act.

2. It has been asserted that the petitioner was falsely implicated based on prior enmity with the injured. As per the prosecution, the injured and his son had hired the shooters to kill the petitioner. They shot at the petitioner, and he suffered a bullet injury. An FIR No. 160 of 2024 was registered at Police Station Sadar, District Bilaspur, H.P. Subsequently, the informant was also injured in a shootout. 7-8 FIRs have been registered against the petitioner because of the enmity and political rivalry. The police arrested the petitioner based on the surmises. There is no material to connect the petitioner to the commission of the

crime. Petitioner had filed a bail petition, which was dismissed by the learned Sessions Judge. The petitioner would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

3. The prosecution has filed multiple status reports. As per the latest status report, the police reached the hospital after learning about the shootout. Bambar Thakur was found admitted to the hospital. The Medical Officer certified that he was not fit to make the statement. The police recorded the statement of injured Vishal Chandel, who stated that he was present in the residence of Bambar Thakur on 14.03.2025. Bambar Thakur, Vishal Chandel and 3-4 persons were talking to each other in the courtyard. Four people came into the courtyard, and two of them shot at Bambar Thakur and the other persons. Bambar Thakur, Sanjeev Kumar and the informant Vishal sustained injuries in the incident. Police registered the FIR and investigated the matter. The medical examination of the injured showed that they had sustained injuries from a gunshot. The police checked the CCTV footage and call details record and suspected the involvement of Ritesh Sharma, Manjeet Singh Nadda and Rohit Kumar Rana. The police arrested them. They revealed the involvement of the present petitioner. The police associated the petitioner and interrogated him. The police also seized the petitioner's vehicle bearing registration No. HP-23E-1000. The call details record disclosed that Manjeet Singh Nadda and Rohit Kumar Rana had talked to each other before and after the incident. The location of the other shooters was found at Bilaspur. The petitioner had enmity with Bambar Thakur, and FIR No. 67 of 2024, dated 23.02.2024, was registered against him. Bambar Thakur had engaged the shooters who had shot at the petitioner. The petitioner had engaged the shooters to take revenge. The petitioner had made the arrangement for the stay of the shooters. He had provided the pistol and the cartridges to Aman. The petitioner was present at Rohtak on the date of the incident to mislead the police, and Kuldeep had gone to Haridwar after the incident. The petitioner was the main conspirator. Various FIRs have been registered against the petitioner. The petitioner would intimidate the witnesses if he were released on bail. The charge sheet was filed before the Court. The prosecution has cited 54 witnesses, and the matter is listed for consideration of the charge on 16.03.2026. Hence, the status report.

4. I have heard M/s Rajiv Rai and Paresh Sharma, learned counsel for the petitioner, and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

5. Mr Rajiv Rai, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. There is no material to connect the petitioner to the commission of the crime. The police have filed the chargesheet, and no fruitful purpose would be served by detaining the petitioner in custody. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Jitender Sharma, learned Additional Advocate General for the respondent/ State, submitted that the petitioner had arranged the money and the guns which were used during the shootout. He had enmity with Bambar Thakur and had arranged the shooters to take revenge for the earlier shootout. Learned Trial Court had rightly held that the petitioner cannot be allowed to indulge in the gangwar. He would indulge in the commission of a similar offence in case of his release on bail. Therefore, he prayed that the present petition be dismissed.

7. I have considerable thought to the submissions made at the bar and have gone through the records carefully.

8. The parameters for granting bail were considered by the Hon'ble Supreme Court in *Pinki v. State of U.P.*, (2025) 7 SCC 314: 2025 SCC OnLine SC 781, wherein it was observed at page 380:

(i) Broad principles for the grant of bail

56. In *Gudikanti Narasimhulu v. High Court of A.P.*, (1978) 1 SCC 240: 1978 SCC (Cri) 115, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of personal liberty of a person under trial, has laid down the key factors that should be considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)

"7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence is also pertinent. The punishment to which the party may be liable, if convicted or a conviction is confirmed, also bears upon the issue.

8. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. [Patrick Devlin, "The Criminal Prosecution in England" (Oxford University Press, London 1960) p. 75 — *Modern Law Review*, Vol. 81, Jan. 1968, p. 54.]

9. Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance." (emphasis supplied)

57. In *Prahlad Singh Bhati v. State (NCT of Delhi)*, (2001) 4 SCC 280: 2001 SCC (Cri) 674, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284-85, para 8)

"8. The jurisdiction to grant bail has to be exercised on the basis of well-settled

principles, having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge." (emphasis supplied)

58. This Court in *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598: 2002 SCC (Cri) 688, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

"3. Grant of bail, though being a discretionary order, but, however, calls for the exercise of such a discretion in a judicious manner and not as a matter of course. An order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts do always vary from case to case. While the placement of the accused in society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, the same should always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — the more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter." (emphasis supplied)

59. In *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

60. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765, this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under: (SCC p. 499, para 9)

"9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering 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 accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail." (emphasis supplied)

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62. One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is *Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (*Pappu Kumar v. State of Bihar*, 2021 SCC OnLine Pat 2856 and *Pappu Singh v. State of Bihar*, 2021 SCC OnLine Pat 2857) of the High Court granting bail to the accused, observed as follows: (*Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170]), SCC p. 511, para 35)

"35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record to enable a court to arrive at a prima facie conclusion. While considering an application for the grant of bail, a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused." (emphasis supplied)

9. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

10. The status report mentions that the petitioner was not present at Bilaspur on the date of the incident; rather, he was present at Rohtak. No recovery was effected from the petitioner. The police are relying upon the statements made by the co-accused to implicate the petitioner. It was laid down by the Hon'ble Supreme Court in *Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547: (2020) 2 SCC (Cri) 361: 2019 SCC OnLine SC 588 that a statement made by a co-accused during the investigation is hit by Section 162 of Cr.P.C. and cannot be used as a piece of evidence. It was also held that the confession made by the co-accused is inadmissible under Section 25 of the Indian Evidence Act. It was observed at page 568: -

44. Such a person, viz., the person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned, and the statement is taken by the police officer. A confession that is made to a police officer would be inadmissible, having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act, would also be inadmissible. A confession, unless it fulfils the test laid down in *Pakala Narayana Swami* [*Pakala Narayana Swami v. King Emperor*, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66: AIR 1939 PC 47] and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains an admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC."

11. Similarly, it was held in *Surinder Kumar Khanna vs Intelligence Officer Directorate of Revenue Intelligence* 2018 (8) SCC 271 that a confession made by a co-accused cannot be taken as a substantive piece of evidence against another co-accused and can only be utilised to lend assurance to the other evidence. The Hon'ble Supreme Court subsequently held in *Tofan Singh Versus State of Tamil Nadu* 2021 (4) SCC 1 that a confession made to a police officer during the investigation is hit by Section 25 of the Indian Evidence Act and is not saved by the provisions of Section 67 of the NDPS Act. Therefore, no advantage can be derived by the prosecution from the confessional statement made by the co-accused implicating the petitioner, and it is impermissible to detain the petitioner in custody based on the statement made by the co-accused.

12. The police have not collected any other material to connect the petitioner to the commission of crime; hence, the petitioner's detention is not justified.

13. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail, subject to his furnishing bail bonds in the sum of ₹ 1,00,000/- with one surety in the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following conditions: -

(I) The petitioner will not intimidate the witnesses, nor will he influence any

evidence in any manner whatsoever.

(II) The petitioner shall attend the trial on each and every hearing and will not seek unnecessary adjournments.

(III) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the SHO concerned, the Police Station concerned and the Trial Court.

(IV) The petitioner will surrender his passport, if any, to the Court; and

(V) The petitioner will furnish his mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

14. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

15. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, Model Central Jail Kanda, District Shimla, H.P. and the learned Trial Court by FASTER.

16. The observations made hereinabove are regarding the disposal of this petition and will have no bearing, whatsoever, on the case's merits.