

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MP(M) No. 1291 of 2026****Reserved on: 14.08.2026****Date of Decision: 17.08.2026.**

Arvind Kumar

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

*Coram**Hon'ble Mr Justice Rakesh Kainthla, Judge.**Whether approved for reporting?¹*

For the Petitioner : Mr N.K.Thakur, Senior
Advocate with Mr. Divya Raj
Singh, Advocate.

For the respondent/
State : Mr Ajit Sharma, Deputy
Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in F.I.R. No. 119 of 2025, dated 12.05.2025, registered for the commission of an offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'the NDPS Act') at Police Station Sadar Chamba, District Chamba, H.P.

2. It has been asserted that as per the prosecution, the police received secret information that the petitioner, Arvind

Kumar, was dealing in the sale of heroin. The police completed the formalities and joined Kanta Devi and Kuldeep Singh as independent witnesses. The police went to the shop of Arvind Kumar and searched it in the presence of the witnesses. The police found currency notes worth ₹2,29,000/- and 27.94 grams of heroin. These allegations are false. No recovery was made from the petitioner. The petitioner has remained in custody for about one year and two months. The prosecution has failed to complete the evidence. The petitioner had filed a bail petition earlier, which was registered as CrMP(M) No. 2329 of 2025 and was dismissed by the Court. The petitioner is the sole earner of the family. The matter is listed for recording the statements of prosecution witnesses on 14.09.2026 to 17.09.2026. No fruitful purpose would be served by detaining the petitioner in custody. Hence, 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 party was present at Gate on Chamba Jot Road on 12.05.2025 at about 4:35 P.M. when they received secret information that the petitioner Arvind was supplying heroin. The information was credible. It was reduced to writing and was sent

to the Additional Superintendent of Police. The police associated Kanta Devi and Kuldeep Singh and went to the shop of the petitioner. The police searched the shop and recovered a rexine bag containing one Aadhaar card, ₹2,29,000/- and a transparent polythene containing 27.94 grams of heroin. The police seized the currency notes and heroin and arrested the petitioner. The heroin was sent to the State Forensic Science Laboratory (SFSL), Junga, and as per the report, it indicated the presence of Diacetylmorphine (Heroin). The police filed a charge sheet before the Court on 09.07.2025. FIR No. 318/23, FIR No. 216/23, FIR No. 293/23, FIR No. 203/24 and FIR No. 217/24 are pending against the petitioner. The petitioner has criminal antecedents. He would influence the witnesses and indulge in the commission of similar crimes if released on bail. The prosecution has cited 19 witnesses, out of whom statements of 7 witnesses have been recorded and the matter is listed for recording the statements of witnesses on 14.09.2026, 15.09.2026 and 17.09.2026. Hence, the status report.

4. I have heard Mr N.K.Thakur, Senior Advocate, assisted by Mr Divya Raj Singh, learned counsel for the petitioner and Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State.

5. Mr N.K. Thakur, Senior Advocate assisted by Mr Divya Raj Singh, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The petitioner was arrested on 12.05.2025. More than one year and two months have elapsed since then. The prosecution has failed to complete the evidence and the petitioner has undergone a substantial part of the imprisonment that can be awarded to him. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail. He relied upon judgments of Hon;ble Supreme Court *Pinki vs. State of Uttar Pradesh and another* (2025) 7 Supreme Court Cases 314 and *Ayub Khan v. State of Rajasthan*, 2024 SCC OnLine SC 3763: 2024:INSC:994 in support of his submission.

6. Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State submitted that the petitioner has criminal antecedents and he would indulge in the commission of a similar offence in case of his release on bail. The petitioner 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 petitioner has failed to show any change in the circumstances, and he is not entitled to bail. Hence, 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 a bail petition which was registered as Cr.MP(M) No. 2329 of 2025 and was dismissed on 13.11.2025. It was held in *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 circumstance 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 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 recognized 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. Therefore, the present bail petition can only be considered based on the change in circumstances, and it is not permissible to review the order passed by the Court.

14. The status report mentions that the prosecution has cited 19 witnesses, out of whom only 7 witnesses have been examined and the matter is listed in September, 2026 for recording the statements of prosecution witnesses. The petitioner was found in possession of 27.94 grams of heroin. The Central Government has specified 250 grams of heroin as the commercial quantity, which means that a person possessing 250 grams of heroin can be sentenced to undergo imprisonment for 10 years.

Keeping in view the quantity of the heroin stated to have been recovered from the petitioner's possession, the petitioner has undergone a substantial part of the imprisonment that can be awarded to him, and his further detention is not justified.

15. It was submitted that the petitioner has criminal antecedents and he is not entitled to bail. This submission will not help the State. It was laid down by the Hon'ble Supreme Court in *Ayub Khan (supra)* that the criminal antecedents may not be a reason to deny bail to the accused in case of long incarceration. It was observed:

“10. The presence of the antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by him. In a given case, if the accused makes out a strong *prima facie* case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to deny bail. There may be a case where a Court can grant bail only on the grounds of long incarceration. The presence of antecedents may not be relevant in such a case. In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents.”

16. The judgment in *Pinki (supra)* deals with the parameters for granting the bail, however, these consideration do not apply to the present bail petition because it is a subsequent

bail petition and not the original petition, hence, the cited judgment will not assist the petitioner.

17. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail in the present F.I.R. 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.

18. 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.

19. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, District Jail Chamba, H.P. and the learned Trial Court by *FASTER* for necessary compliance.

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

Rakesh Kainthla)
Judge

17th August, 2026.
(Ravinder)

RAVINDER KUMAR

Digitally signed by RAVINDER KUMAR
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