

.IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MP(M) No. 1694 of 2026****Reserved on: 23.9.2026****Decided on: 28.9.2026****Rohit****.... Petitioner****Versus****State of HP****.... Respondent*****Coram******Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.***

For the Petitioner : Mr N.K. Thakur, Senior Advocate, with Mr Karan Veer Singh, Advocate.

For the Respondent/State : Mr Pawan Kumar Nadda, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 152 of 2023, dated 06.09.2023, registered at Police Station Kangra, for the commission of offences punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) and Section 25 of the Arms Act.

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

2. It has been asserted that, as per the prosecution, ASI Hakam Singh found one abandoned yellow and orange carry bag on 06.09.2023 at about 2:10 PM. He checked the bag and found Alprazolam tablets. He associated Som Raj and Akash and searched the carry bag. He found 10 boxes of Alprazolam tablets, each containing seven strips, three country-made pistols, two knives, one magazine, four live cartridges, seventeen live rounds (8 mm), eighteen live rounds (7.65 mm), and six live rounds (.32). The police registered the FIR and investigated the matter. The police arrested one Vinay Bhandari on 19.09.2023, and recovered two pistols, magazines, and live cartridges from his house. Vinay Bhandari revealed that he had handed over the carry bag to Rohit Kumar, the present petitioner. The police arrested the present petitioner. The allegations against the petitioner are false. There is no material to connect the petitioner to the commission of the crime. The petitioner has remained in custody for about three years, and the trial has not concluded. 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 ASI Hakam Singh and other police officials were on

patrolling duty on 06.09.2023. ASI Hakam Singh went to a bowri near Shiv Temple for drinking water. He found a carry bag in which the tablets of Alprazolam were visible. He associated Som Raj and Akash Bahari and searched the carry bag. He found 5,250 tablets of Alprazolam, three country-made pistols, one knife, one magazine, and cartridges. He seized them. An FIR was registered. The police arrested Vinay Bhandari based on secret information and recovered two pistols and live cartridges. He revealed during interrogation that he had handed over three country-made pistols, two knives, and live cartridges to Rohit, alias Chhotu, for concealment. The police checked the CCTV footage and the call detail records. They found that the petitioner and the co-accused were in touch with each other. The police arrested the petitioner. He revealed during interrogation that he could show the place where he had kept the pistols, knives, and cartridges. The case property was sent to the SFSL, and as per the report of the analysis, the tablets were found to contain Alprazolam, the pistols were found to be working, and the cartridges were live cartridges that could be used. The police filed the charge sheet before the court on 24.01.2025. The statements of six witnesses have been recorded, and the matter is listed

before the learned Trial Court on 25.09.2026. The petitioner would indulge in the commission of a similar offence in case of his release on bail. Hence, the status report.

4. I have heard Mr N.K. Thakur, learned Senior Advocate, assisted by Mr Karanveer Singh, learned counsel for the petitioner, and Mr Pawan Kumar Nadda, learned Additional Advocate General, for the respondent-State.

5. Mr N.K. Thakur, learned Senior Advocate for the petitioner/accused, submitted that there is no material to connect the petitioner with the commission of the crime. The police have filed the charge sheet before the Court, and the petitioner's custodial interrogation is not required. The petitioner will abide by the terms and conditions that the Court may impose. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Pawan Kumar Nadda, learned Additional Advocate General for the respondent-State, submitted that the petitioner and the co-accused were seen together in the CCTV footage. The petitioner had made a disclosure statement showing the place where he had concealed the pistols and the live cartridges. These

circumstances *prima facie* connect the petitioner to the commission of the crime. The crime is heinous, and the petitioner should not be released on bail. 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 record 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 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)*

XXXXXXX

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. Hon’ble Supreme Court held in *State of Rajasthan v. Balchand*, (1977) 4 SCC 308: 1977 SCC (Cri) 594: 1977 SCC OnLine SC 261 that the normal rule is bail and not jail, except where the gravity of the crime or the heinousness of the offence suggests otherwise. It was observed at page 308:

2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner

who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of bail. So also, the heinousness of the crime....”

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

11. The status report shows that the police have relied upon the statement made by the co-accused, Vinay Bhandari, that he had handed over the pistols, knives, and live cartridges to the present 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 an accused during the investigation is hit by Section 162 of Cr.P.C. and Section 25 of the Indian Evidence Act and cannot be used as a piece of evidence. 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 eyes 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.”

12. 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.

13. The police have also relied upon the call detail records and the fact that the petitioner and the co-accused were seen together in the CCTV footage. It was laid down by this Court in *Saina Devi vs State of Himachal Pradesh 2022 Law Suit (HP) 211*

that where the police have no material except the call detail record and the disclosure statement of the co-accused, the petitioner cannot be kept in custody. It was observed: -

“[16] In the facts of the instant case, the prosecution, for implicating the petitioner, relies upon firstly the confessional statement made by accused Dabe Ram and secondly the CDR details of calls exchanged between the petitioner and the wife of co-accused Dabe Ram. Taking into consideration the evidence with respect to the availability of CDR details involving the phone number of the petitioner and the mobile phone number of the wife of co-accused Dabe Ram, this Court had considered the existence of a prima facie case against the petitioner and had rejected the bail application as not satisfying the conditions of Section 37 of the NDPS Act.

[17] Since the existence of CDR details of the accused person(s) has not been considered as a circumstance sufficient to hold a prima facie case against the accused person(s), in *Pallulabid Ahmad's case* (supra), this Court is of the view that the petitioner has made out a case for maintainability of his successive bail application as also for grant of bail in his favour.

[18] Except for the existence of CDRs and the disclosure statement of the co-accused, no other material appears to have been collected against the petitioner. The disclosure made by the co-accused cannot be read against the petitioner as per the mandate of the Hon'ble Supreme Court in *Tofan Singh Vs State of Tamil Nadu, 2021 4 SCC 1*. Further, on the basis of the aforesaid elucidation, the petitioner is also entitled to the benefit of bail.

14. The police also relied upon the statement made by the petitioner that he could show the place where he had kept the pistols, knives, and live cartridges. This disclosure statement will not help the prosecution because the carry bag containing the pistols, knives, and live cartridges was recovered much before

the petitioner's arrest. It was laid down by this Court in *State of Himachal Pradesh versus Sanjiv Kumar Alias Sanju 2019 (3) ShimLC 1710* that there cannot be any rediscovery of a fact. When the place was known to the police, the disclosure made by the accused regarding a place without any recovery would be inadmissible under Section 27 of the Indian Evidence Act. It was observed: -

“(j) Disclosure statement of accused Sanjay Kumar alias Sanjjan regarding the place from where the dead body was thrown: The prosecution examined Constable Narpat Ram (PW-16 in ST No.3/95) to prove the disclosure statement (Ext. PM) of accused Sanjay Kumar alias Sanjjan in ST No. 3/1995. However, the accused Sanjay Kumar is dead; therefore, this evidence is also not going to arrive at any conclusion. Even otherwise, his testimony is also cryptic and leads to no conclusion because it points out to the place from where the accused had thrown the dead body. *Whereas the police had already recovered the dead body from that place. Therefore, in the absence of recovery, such a confession does not fall within the exception of Section 27 of the Indian Evidence Act, 1872.*

(k) In *Aher Raja Khima v. State of Saurashtra*, AIR 1956 SC 217, a three-member bench of the Supreme Court holds,

20. Then we come to the recoveries. The false beard and mask were found buried in the grounds of Dewayat's house, and the appellant is said to have recovered them in the presence of panchas. But those discoveries are inadmissible in evidence because the police already knew where they were hidden...

(l) In *Thimma v. State of Mysore*, 1970 2 SCC 105, a three-

member bench of the Supreme Court holds,

10. Reliance on behalf of the prosecution was also placed on the information given by the appellant, which led to the discovery of the dead body and other articles found at the spot. It was contended that the information received from him related distinctly to the facts discovered and, therefore, the statement conveying the information was admissible in evidence under Section 27 of the Evidence Act. This information, it was argued, also lends support to the appellant's guilt. It appears to us that when P. W. 4 was suspected of complicity in this offence, he would in all probability have disclosed to the police the existence of the dead body and the other articles at the place where they were actually found. *Once a fact is discovered from other sources, there can be no fresh discovery, even if relevant information is extracted from the accused, and Courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of Sections 25 and 26 of the Evidence Act is not whittled down by the mere manipulation of the record of the case diary.* It would, in the circumstances, be somewhat unsafe to rely on this information for proving the appellant's guilt. We are accordingly disinclined to take into consideration this statement. (Emphasis supplied)

15. It was laid down by the Hon'ble Supreme Court in *Thimma and Thimma Raju v. State of Mysore*, (1970) 2 SCC 105: 1970 SCC (Cri) 320 that where the police had discovered some fact from other sources, it cannot be re-discovered at the instance of the accused. It was observed on page 112:

“10. Reliance on behalf of the prosecution was also placed on the information given by the appellant, which led to the discovery of the dead body and other articles found at the spot. It was contended that the information received from him related distinctly to the facts discovered and, therefore, the statement conveying the information was admissible in evidence under Section 27 of the Indian Evidence Act. This information, it was argued, also lends support to the appellant's guilt. It appears to us that when PW 4 was suspected of complicity in this offence, he would, in all probability, have disclosed to the police the existence of the dead body and the *other articles at the place where they were actually found. Once a fact is discovered from other sources, there can be no fresh discovery even if relevant information is extracted from the accused, and courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of Sections 25 and 26 of the Indian Evidence Act is not whittled down by mere manipulation of the record of the case diary.* It would, in the circumstances, be somewhat unsafe to rely on this information to prove the appellant's guilt. We are accordingly disinclined to take into consideration this statement.” (Emphasis supplied)

16. It was laid down by the Hon’ble Supreme Court in *Vijender v. State of Delhi*, (1997) 6 SCC 171: 1997 SCC (Cri) 857 that where the fact was within the knowledge of the police, it cannot be discovered at the instance of the accused. It was observed at page 179:

“17. Another elementary statutory breach which we notice in recording the evidence of the above witnesses is that of Section 27 of the Evidence Act. Evidence was led through the above three police witnesses that, in consequence of information received from the three appellants on 30-6-

1992, they discovered the place where the dead body of Khurshid was thrown. As already noticed, the dead body of Khurshid was recovered on 27-6-1992, and therefore, the question of the discovery of the place where it was thrown thereafter could not arise. Under Section 27 of the Evidence Act, if information given by the accused leads to the discovery of a fact which is the direct outcome of such information, then only it would be evidence, but when the fact has already been discovered, as in the instant case, evidence could not be led in respect thereof.”

17. A similar view was taken in *Allarakha Habib Memon Etc. v. State of Gujarat, 2024 SCC OnLine SC 1910*, wherein it was observed:

“41. We find that these so-called confessions are *ex facie* inadmissible in evidence for the simple reason that the accused persons were presented at the hospital by the police officers after having been arrested in the present case. As such, the notings made by the Medical Officer, Dr Arvindbhai (PW-2), in the injury reports of Mohmedfaruk @ Palak and Amin @ Lalo would be clearly hit by Section 26 of the Indian Evidence Act, 1872 (hereinafter referred to as ‘Evidence Act’). As a consequence, we are not inclined to accept the said admissions of the accused as incriminating pieces of evidence relevant under Section 21 of the Evidence Act. *The circumstance regarding the identification of the place of incident at the instance of the accused is also inadmissible because the crime scene was already known to the police, and no new fact was discovered in pursuance of the disclosure statements.*” (Emphasis supplied)

18. Therefore, no advantage can be derived by the police from the fact that the accused had pointed out the place.

19. There is no other evidence to connect the petitioner to the commission of the crime.

20. 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 bond 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 they 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 addresses 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.

21. 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.

22. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, Lala Lajpat Rai District-cum-Open Air Correctional Home, Dharamshala, District Kangra, H.P. and learned Trial Court by FASTER.

23. 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

28th September, 2026
(Chander)

**CHANDER
SHEKHAR**

Digitally signed
by CHANDER
SHEKHAR
Date: 2026.09.28
16:26:23 +0530