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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP(M) No. 2260 of 2025
Reserved on : 13.10.2025
Decided on : 31.10.2025

Kumar Chand ...Applicant

Versus

State of Himachal Pradesh ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?

For the applicant : Mr. Yashveer Singh Rathore, Advocate.

For the respondent : Mr. Mohinder Zharaick, Additional Advocate General, assisted by LHC Reenu Dhiman No. 74, Police Station Palampur, District Kangra, H.P.

Virender Singh, Judge

Applicant-Kumar Chand has filed the present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), for releasing him, on bail, during the pendency of the trial,

arising out of **FIR No. 133/2024, dated 21.11.2024, under Sections 18, 20, 25 & 29 of the Narcotic Drugs & Psychotropic Substances Act** (hereinafter referred to as the 'ND&PS Act'), registered with **Police Station Palampur, District Kangra, H.P.**

2. According to the applicant, he is innocent and has falsely been implicated, in this case.

3. As per the stand of the applicant, he has been arrested mainly on the ground of having committed offence under Section 29 of the ND&PS Act, whereas no contraband has been recovered from him nor at his instance. The alleged contraband was recovered from an unclaimed bag in the bus and no passenger came forward to own the same.

4. It is his further case that he has been named as accused in the case, on the basis of statement of co-passenger and said statement is stated to be inadmissible and the same is hit by the judgment of Hon'ble Apex Court in Toofan Singh's case. He has termed the entire prosecution case highly improbable.

5. It is his further case that the police could not collect any evidence connecting him with the crime in question. The investigation of the case is stated to be complete.

6. The applicant had earlier tried his luck by moving the similar bail application before this Court, bearing Cr.MP(M) No. 1383 of 2025, however, the same was dismissed as withdrawn.

7. Apart from this, Mr. Yashveer Singh Rathore, Advocate, appearing for the applicant, has given certain undertakings, on behalf of the applicant, for which, the applicant is ready to abide by, in case, ordered to be released on bail, during the pendency of the trial.

8. On the basis of the above facts, a prayer has been made to allow the bail application, as prayed for.

9. When, put to notice, the police has filed the status report, disclosing therein, that on 21.11.2024, the driver and conductor of bus bearing No. HP66-9707, namely Jitender Kumar (driver) and Roshan Lal (conductor) appeared before the police of Police Station Palampur, at

11:10am, and got lodged a complaint that an unclaimed bag was found in the bus and when they had inquired from the passengers, none of the passengers had owned the same.

9.1 According to the driver and conductor, they had suspicion that the same might be containing some suspicious article, upon which, ASI Gopal Krishan, along with other police officials, reached at the spot. In the bus, six-seven passengers were there. Inquiry was made with regard to the said unclaimed bag, but, none of the passengers had claimed the same.

9.2 During inquiry, the names and addresses of all the passengers, who were present were inquired. During the entire process, one passenger, who has disclosed his name as Surajmani son of Kalu Ram, resident of Village Graman, Post Office Sihalbudhani, Tehsil Padhar, District Mandi, H.P. become perplexed and on intensive inquiry, he has disclosed that the bag containing charas is owned by one Kumar Chand resident of Bulang and Sunil Kumar resident of Bulang. Both of the said persons had proceeded towards Pathankot side in Scorpio vehicle bearing No. HP76-

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3921. He has further disclosed to the police that both of them had met him at Jogindernagar and allured him to pay Rs. 5,000 – Rs. 10,000/- and also directed him that they will contact him on phone at Jasoor to disclose the name of person, as to whom the bag is to be handed over.

9.3 Upon this, Surajmani boarded Kullu – Pathankot bus and he has not kept the bag with him, rather, the same was put in the rack. ASI Gopal Krishan informed the police that his departure be recorded in the DDR.

9.4 Before checking the bag, request was made to the passengers to be the independent witnesses, but all of them had put forward their personal problems, hence, I.O. associated driver Jitender Kumar and conductor Roshan Lal as independent witnesses and bag was checked.

9.5 On checking the bag, it was found to be containing white coloured polythene, which, on opening, was found to be containing four polythene packets. On opening the packets, stick shaped black coloured substance was found. On the basis of experience and on smelling, the same was found to be charas. Accused Surajmani, has also

confirmed that the said substance is charas.

9.6 When the said packets were minutely checked, then one packet containing sticky substance wrapped in the newspaper was found, which, on experience was found to be opium. On weighment, the charas was found to be 4.028 kg, whereas the opium along with newspaper was found to be 0.054 gram. The contraband, so recovered, was again put in the same envelope and the envelope was sealed with nine seals of seal 'FU'. Other codol formalities were completed.

9.7 Thereafter, the rukka was submitted under Section 18 and 20 of ND&PS Act, against accused Surajmani, for registration of FIR. After registration of FIR, accused Surajmani was arrested on 21.11.2024 at about 6:30 pm.

9.8 Thereafter, accused Surajmani was produced before the Court, from where, he was remanded to police custody. During police custody, he disclosed that Kumar Chand (applicant) has contacted him and apprised him that on 21.11.2024, 3-4 kg charas is being transported and

requested him to accompany him and he has also been requested to hand over vehicle No. HP76-3921 (Scorpio) to Sunil Kumar, upon which, he agreed to do so and in lieu of the said work, he was assured to get Rs. 30,000/-. Sunil stayed with him on that day.

9.9 On 21.11.2024, accused Surajmani left his house in tipper and Sunil Kumar took his Scorpio vehicle for Jogindernagar at 7:00 am. Sunil Kumar, thereafter, picked up Kumar Chand (applicant) from his house and both of them reached Jogindernagar at 9:00 am. When, he was on the way, Kumar Chand (applicant), telephonically contacted him on his mobile phone No. 93172-97193. Kumar Chand (applicant) has allegedly disclosed him that in the HRTC bus enroute from Kullu to Pathankot, he has kept black coloured bag, containing charas and he had assured him to impart instructions at Jogindernagar.

9.10 It is the further case of the police that accused Surajmani has further made disclosure to the police that when he reached Jogindernagar, some technical issues developed in his tipper and in order to get those issues

removed, he has parked his vehicle in the shop of mechanic near Petrol Pump and Sunil Kumar took him away from there in his Scorpio vehicle. At that time, Kumar Chand (applicant) was not in the vehicle.

9.11 Thereafter, they came to Jogindernagar bus-stand. Sunil Kumar had dropped him at bus-stand and thereafter, he received a telephonic call from Kumar Chand (applicant), who disclosed that the bag, which was kept in the bus enroute from Kullu to Pathankot is in the rack of the bus and Surajmani was allegedly directed by Kumar Chand (applicant) to purchase travelling ticket for Jasoor.

9.12 Thereafter, Kumar Chand (applicant) and Sunil Kumar followed the bus in Scorpio vehicle No. HP76-3921. Accused Surajmani has purchased the ticket up to Jasoor, after paying Rs. 296/-. He has not kept the bag with him, as in case of checking, he may fall in trouble. Moreover, Kumar Chand (applicant) and Sunil Kumar have also directed him not to keep the bag with him. When, the bus crossed Baijnath, the conductor of the bus inquired about the ownership of the bag, upon which, all the passengers

refused to own the same and Surajmani also did so.

9.13 It is the further case of the police that during investigation, it was found that from that day, mobile phones of Kumar Chand (applicant) and Sunil Kumar were found switched off. Despite their search, the police could not nab them. Surajmani was produced before the Court on 22.11.2024, from where, he was remanded to police custody for five days. The contraband i.e. charas 4.012 kg and opium 54 gram, was produced before the Court and inventory proceedings were got conducted and samples were sent to SFSL Junga.

9.14 It is the further case of the police that during investigation, ASI Gopal Krishan, I.O., Police Station Palampur, has checked the CCTV footage of the camera installed outside the Bus-Stand Jogindernagar. On checking the CCTV footage, it was found that accused Surajmani, in his vehicle No. HP76-3921 (make Scorpio), came there along with his companion Sunil Kumar and after alighting down from the vehicle, he went inside the shop and thereafter, boarded the HRTC bus. His friend Sunil was

found following him along with bag, containing charas and opium. He entered in HRTC bus and thereafter, he was seen coming out empty handed. The CCTV footage was downloaded in the pen-drive and was taken into possession. Since the vehicle was used for transporting the charas and opium, as such Section 25 of ND&PS Act was added.

9.15 On 22.12.2024, Scorpio vehicle No. HP76-3921 was found to be in the Padhar area, as such, the same was detained by In-charge, Police Station Padhar. On 22.12.2024, the said vehicle was taken into possession by the police, in the present case. The said vehicle was found to be in the name of Devi Singh son of Chitru Ram.

9.16 Positive report regarding the samples of the contraband, so sent to SFSL Jugna, were received. CDRs of the mobile phone numbers of the accused persons were obtained and as per CDRs, accused persons were found talking with each other. Accused Surajmani has also confirmed this fact during investigation. Against accused Surajmani case FIR No. 77/21, dated 19.12.2021, under Sections 20, 25 and 29 of ND&PS Act, with Police Station

Sainj, District Kullu, is found to be registered, which is pending in the competent Court of law.

9.17 During investigation, involvement of Kumar Chand son of Chuhda Ram (applicant) and Sunil Kumar was found, as such, Sections 25 and 29 of ND&PS Act were added, in this case. Applicant Kumar Chand surrendered himself to the Court of learned ASJ-1, on 27.06.2025 and he has been remanded to judicial custody till 09.07.2025. Thereafter, his custody was transferred in the present case and he was remanded to police custody. The police has also mentioned the alleged revelation made by accused Kumar Chand (applicant), during police custody.

9.18 The police has further taken the stand that during the investigation, the CCTV cameras installed near Bus-Stand Jogindernagar, taxi-stand near Vijay Dhaba were checked and as per the CCTV footage, on 21.11.2024, Scorpio vehicle No. HP76-3921, which was allegedly used by the accused persons to commit the crime was found moving from Pathankot Chowk to Bassi road at 9:39 am. The said vehicle was found to be stopped on the exit gate of HRTC

bus-stand. Accused Surajmani was found alighted down and moving towards HRTC bus-stand. Thereafter, accused Sunil Kumar drove the same from there. As per the CCTV camera installed in HRTC bus-stand, the HRTC bus enroute from Kullu to Pathankot was found entering in the bus-stand at 9:41 am. At about 9:43 am, accused Sunil Kumar and at about 9:44 am accused Surajmani were found going from bus-stand to Janta Dhaba. At about 9:49 am, accused Surajmani came out from Janta Dhaba and boarded the HRTC bus. At about 9:50 am, accused Sunil Kumar was found coming out from Janta Dhaba along with bag and entered in HRTC bus from the rear door and after handing over the bag to Surajmani, he deboarded the bus.

9.19 As per the CCTV camera installed at Taxi-stand near Vijay Dhaba, at about 9:56 am, accused Sunil was coming out from Janta Dhaba and accused Kumar Chand (applicant) also found coming from Janta Dhaba at about 9:59 am, were seen going towards Bassi road. At about 10:01 am, Scorpio vehicle No. HP76-3921 was found moving from Bassi road to Pathankot Chowk side. On the basis of

footage of CCTV camera, accused persons have been stated to be gathered at Jogindernagar, as such their involvement, in the present case, was found.

9.20 It is the further case of the police that on the day of recovery of contraband, the mobile phones location of accused persons was found to be Jogindernagar, Baijnath, Palampur side at the relevant time. After the arrest of accused Surajmani, mobile phones of accused Sunil Kumar and Kumar Chand (applicant) were found to be switched off and their location was found to be Nurpur.

10. On the basis of above facts, a prayer has been made to dismiss the application.

11. Admittedly, the contraband, allegedly recovered, in this case, falls within the definition of 'commercial quantity'. In view of the law laid down by Hon'ble Supreme Court in ***Criminal Appeal No. 5544 of 2024***, titled as '***Narcotics Control Bureau versus Kashif***', ***Citation No.2024 INSC 1045,*** before releasing the person, involved in the crime, it is obligatory upon the Court to record the findings, which should be more than *prima-facie* findings,

regarding existence of the twin conditions, as enumerated under Section 37(b)(ii) of the NDPS Act. In other words, it can be said that before releasing the person, involved in the crime in issue, findings have to be recorded by the Court, about the fact that accused is not guilty of such offence, and while on bail, he will not commit any offence.

12. Admittedly, the applicant was not arrested at the spot and according to the police, only accused Surajmani, whose behaviour gave an occasion to the I.O. to inquire him intensively and when the contraband, so found in the bag, which, according to accused Surajmani, was allegedly kept by accused Sunil Kumar, in connivance with accused Kumar Chand (applicant), has been kept in the bus. Whatsoever, alleged against applicant Kumar Chand is the alleged revelations, which were made by him, when he was nabbed by the police, when the ownership of the said bag was ascertained from the passengers present in the vehicle i.e. HRTC bus No. HP66-9707.

13. As per the stand of the police, when, the I.O. was inquiring from other passengers, accused Surajmani got

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perplexed, then he was inquired, upon which he has not only admitted the fact that he is sitting in the bus along with the said bag, but also named Sunil Kumar and Kumar Chand (applicant) as the persons, in connivance with whom, he was transporting the contraband, which has allegedly been kept in the bus by accused Sunil Kumar.

14. Accused Surajmani was arrested on 21.11.2024, at 6:30 pm. Although, his formal arrest was made at 6:30 pm on 21.11.2024, but police had started inquiring from the passengers, including Surajmani from 11:10 am. Meaning thereby, at the time, when the contraband was firstly recovered or claimed by Surajmani, by disclosing, that the bag, containing charas, was of Kumar Chand (applicant) and Sunil Kumar, the said Surajmani was in police custody.

15. The custody and arrest are two different terms. Hon'ble Apex Court in ***Vikram Singh and ors*** *versus* ***State of Punjab; AIR 2010 Supreme Court 1007*** has distinguished between the word 'arrest' and the word 'custody', as used in Section 27 of the Evidence Act. Relevant Paras-12 & 16 of the judgment, are reproduced, as

under:-

> *"12. Mr. Sharan has, however, referred us to Section 46(1) of the Code of Criminal Procedure to argue that till the appellants had been arrested in accordance with the aforesaid provision they could not be said to be in police custody. We see that Section 46 deals with 'Arrest how made'. We are of the opinion that word "arrest" used in Section 46 relates to a formal arrest whereas Section 27 of the Evidence Act talks about custody of a person accused of an offence. In the present case the appellants were undoubtedly put under formal, arrest on the 15th February 2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused is an offence at the time of their apprehension on the 14th February 2005. Moreover, in the light of the judgment in the Constitution Bench and the observation that the words in Section 27 "accused of any offence" are descriptive of a person making the statement, the submission that this Section would be operable only after formal arrest under Section 46(1) of the Code, cannot be accepted. This argument does not merit any further discussion.*
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> *xxx xxx xxx*
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> *16. It is also significant that Jasvir Singh also disclosed that he had kept concealed the dead body in the fields of village Daulatpur and that it had been removed from Darshan Kaur's house in the Chevrolet car belonging to him and the three appellants had further revealed that the dead body had been disposed of in the fields of village Daulatpur and the dead body was recovered and taken into possession by Memo Ex.PGGG signed by Manohar Lal as also Sub-Inspector Jeevan Kumar. We are unable to accept Mr. Sharan's bare submission that the evidence of Manohar Lal*

> *and Sub-Inspector Jeevan Kumar should not be believed as they were interested in the successful outcome of the prosecution, as no other material adverse circumstance has been brought to our notice."*

16. Full Bench of Hon'ble Lahore High Court in ***Hakam Khuda Yar*** *versus* ***Emperor; AIR 1940 Lahore 129,*** has also defined the word 'custody' and held that the police custody does not necessarily mean custody after formal arrest. Relevant portion of the judgment, is reproduced, as under:-

> *"..... As regards the first point, the term "custody" is not defined either in the Criminal Procedure Code or in the Evidence Act. There is, of course, no doubt that an accused person will be in the "custody" of the police after his arrest; but the question is whether he can be considered to be in "custody" at any time earlier, when he has not been formally arrested, but is merely detained by the police for the purpose of the investigation. Section 27 is anomalous in so far as it applies only to information leading to a discovery when received from an accused person in the custody of the police, but not if he is not in the custody of the police. If the information is relevant when it comes from a person in the custody of the police, there seems no good reason why it should not be so when it comes from an accused person, who is not in the custody of the police and therefore not under the influence of the police. The real intention of the Section very probably is to make information from an accused person which leads to discovery relevant even when the person is in*

> *police custody. But the language of, the Section makes such information relevant only when it comes from an accused person in the custody of the police.*
>
> *The language used in the Section thus leads to the curious result probably never intended--that when such information is given by an accused person, who is not in the "custody" of the police it will not be covered by the Section. However, apart from the above anomaly, the intention of the Section seems, I think, clear enough and that is to make information leading to a discovery relevant, even when it comes from an accused person who is in the custody of the police and thus subject to police influence. Ordinarily information coming from an accused person, who is liable to be influenced by the police will be open to suspicion. But if the information leads to the discovery of a relevant fact, that discovery is considered to be a guarantee of the truth of the information as has been pointed out already and hence such information is made relevant by Section 27. Now there can be little doubt, that even before his formal arrest, an accused person, who is detained by the police owing to suspicion against him, is liable to be influenced by the police. This Court has therefore put a wide interpretation on the word "custody" as used in Section 27. In AIR 1933 Lah 609, it was held by a Division Bench of this Court consisting of Sir Shadi Lal and Coldstream J. that 'police custody' does not necessarily mean custody after formal arrest and that it also includes 'some form of police surveillance and restriction on the movements of the person concerned by the police.*

17. Being guided by the above discussion, admittedly, when the alleged disclosure about the

involvement of applicant Kumar Chand and his co-accused Sunil Kumar were made, at that time, accused Surajmani was in police custody.

18. Considering the above position, now, the question, which arises for determination before this Court is as to whether the said revelation can be taken into consideration, that too, against the co-accused in the same case. Answer to this question is in negative. In view of the decision of the Hon'ble Supreme Court in ***'Tofan Singh*** *versus* ***State of Tamil Nadu', (2021) 4 Supreme Court Cases 1***, the said statement cannot be taken into account, in order to convict the accused, under the provisions of NDPS Act. Relevant paragraph 158.1 of the judgment is reproduced as under:

> *"158.1 That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers' within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act."*

19. In view of the above, whatsoever disclosed

allegedly by accused Surajmani cannot be taken into consideration as evidence against his co-accused.

20. So far as the CDRs, as well as, CCTV footage are concerned, their authenticity is yet to be ascertained by the trial Court during the trial and at this stage, it can be said that the CDRs are nothing but metadata of the call record.

21. Hon'ble Supreme Court in **State by (NCB) Bengaluru versus Pallulabid Ahmad Arimutta & Anr.**, reported in 2022 (2) SCALE 14 has held that evidentiary value of the CDRs is to be determined, during trial. Relevant portion, of the judgment, is reproduced, as under:

> *"10. It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu , that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused 6 (2021) 4 SCC 1 Page 9 of 12 2022 Live Law (SC) 63 Petition for Special Leave to Appeal (Criminal) No. 1569 OF 2021 under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th*

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> *January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless."*
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> *(self emphasis supplied)*

22. The CDRs can only provide information like Caller ID duration and Cell Tower Details, however, they do not capture the substance of the conversation itself. These are the call record details, which are the metadata (data about data) about the call and the same is totally different from call recording, which offers direct evidence of the communication, including specific words spoken and context of the conversation, which can be crucial, for deciding the matter.

23. In view of the above discussion, at this stage, this Court is of the view that from the above highlighted facts, it can be said, at this stage, that accused Kumar Chand (applicant) can be said to be not guilty of such

offences and in case, he is released on bail, he may not commit any offence.

24. Moreover, for the apprehension i.e. in case, released on bail, the applicant may not commit the similar offence, “reasonable conditions” can be imposed by directing him to file affidavit before the learned trial Court in first week of every month by declaring that he has not been involved in any other criminal case.

25. Considering all these facts, this Court is of the view that the present bail application is liable to be allowed and is accordingly allowed.

26. Consequently, the applicant is ordered to be released on bail in case **FIR No. 133/2024, dated 21.11.2024, under Sections 18, 20, 25 & 29 of the Narcotic Drugs & Psychotropic Substances Act** registered with **Police Station Palampur, District Kangra, H.P.** , on his furnishing personal bonds, in the sum of ₹ 1,00,000/-, with two sureties, in the like amount, to the satisfaction of the learned trial Court.

27. This order, however, shall be subject to the

following conditions:-

> *"a) The applicant shall regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing the appropriate application;*
>
> *b) The applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;*
>
> *c) The applicant shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer, and*
>
> *d) The applicant shall not leave the territory of India without the prior permission of the Court.*
>
> *e) The applicant shall file affidavit before the learned trial Court in first week of every month by declaring that he has not been involved in any other criminal case."*

28. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

29. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions, is found to be violated by the applicant.

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30. The Registry is directed to forward a soft copy of the bail order to the Superintendent of Jail, District Jail Kangra at Dharamshala H.P. through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

31. In case, the applicant is not released within a period of seven days from the date of grant of bail, the Superintendent of Jail, District Jail Kangra at Dharamshala, H.P., is directed to inform this fact to the Secretary, DLSA, Kangra at Dharamshala. The Superintendent of Jail, District Jail Kangra at Dharamshala, H.P. is further directed that if the applicant fails to furnish the bail bonds, as per the order passed by this Court, within a period of one month from today, then, the said fact be submitted to this Court.

32. Record be returned back to the quarter concerned.

(Virender Singh)
Judge

31st October, 2025
(*Pramod Kumar*)

PRADEEP
Digitally signed by PRADEEP
Date: 2025.10.31 14:15:29 +0530