IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.2270 of 2025
Reserved on: 06.10.2025
Decided on: 14.10.2025.

Nanak Dass ..... Petitioner

Versus

State of Himachal Pradesh .....Respondent

Coram

The Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?*[1] *No

For the Petitioner: **Mr Piyush Verma, Senior Advocate, with Mr Ajay Kumar, Advocate.**

For the Respondent/State: **Mr Prashant Sen, Deputy Advocate General.**

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in F.I.R. No.40/2025, dated 10.07.2025, registered at Police Station, Kumarsain, District Shimla, H.P., for the commission of offences punishable under Sections 21 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. It has been asserted that the petitioner was falsely implicated at the instance of his enemies. The grounds of arrest

[1] *Whether the reporters of the local papers may be allowed to see the Judgment? Yes*

were not communicated to him. No contraband was recovered from his possession. As per the prosecution, 6.02 grams of Heroin were recovered from the petitioner's possession, which is slightly above the small quantity and less than the commercial quantity. Rigours of Section 37 of the NDPS Act do not apply to the present case. The custody of the petitioner will not serve any fruitful purpose. The petitioner is ready and willing to abide by the terms and conditions which the Court may impose. Hence, the petition.

3. The petition is opposed by a filing status report asserting that the police were on patrolling duty on 10.07.2025. They received a secret information at about 5:45 P.M. that accused and Anshul Rana was present in Room No. 501 at Hotel Royal Food Point, Shilaroo, and were selling heroin. A huge quantity of heroin could be recovered by his search. The police reduced the information into writing and sent it to the Supervisory Officer. The police associated Ajay Royal and Ajay Kumar and went to Room No. 501. The petitioner, Nanak Dass and Anshul Rana were found present in the room. The police searched the room in their presence and in the presence of witnesses and recovered 6.02 grams of heroin. The police seized heroin and arrested the petitioner and the co-accused. The

heroin was sent to FSL, and as per the report, it indicated the presence of Diacetylmorphine (Heroin). F.I.R. No.11/2025 dated 22.01.2025 was registered against the petitioner at Police Station, Dhalli, for the commission of offences punishable under Sections 21 & 29 of the NDPS Act. The charge sheet was filed before the Court on 29.08.2025, and the matter was listed on 26.09.2025 for the consideration of the charge. Hence, the status report.

4. I have heard Mr Piyush Verma, learned Senior Advocate, assisted by Mr Ajay Kumar, learned counsel for the petitioner and Mr Prashant Sen, learned Deputy Advocate General, for the respondent-State.

5. Mr Piyush Verma, learned Senior Counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. As per the prosecution, the petitioner was found in possession of 6.02 grams of heroin, which is slightly more than a small quantity and substantially less than commercial quantity. The rigours of Section 37 of the NDPS Act do not apply to the present case. The grounds of arrest were not communicated to the petitioner, and his arrest is illegal. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Prashant Sen, learned Deputy Advocate General, for the respondent-State, submitted that an F.I.R. was registered against the petitioner previously under the NDPS Act. Therefore, the possibility that the petitioner would indulge in the commission of a similar offence in case of his release on bail cannot be ruled out. The drugs are adversely affecting the young generation, and no leniency should be shown to the petitioner. 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. 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*
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> **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)
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> > "*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

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 placement of the accused in the society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, and 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, de-*

pendent 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 so as 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. It was submitted that the petitioner was not informed about the grounds of arrest, and his arrest is illegal. This submission is not acceptable. It was laid down by three Judges of the Hon'ble Supreme Court in ***Madhu Limaye, In re*****, (*****1969) 1 SCC 292: 1968 SCC OnLine SC 374*****,** that if the accused is arrested red-handed, there is no need to explain the grounds of arrest: it was observed at Page 298:

> "Lord Simonds gave an illustration of the circumstances where the accused must know why he is being arrested.
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> > "There is no need to explain the reasons for arrest if the arrested man is caught red-handed and the crime is patent to high Heaven."

11. It was held in ***Balbir Kaur v. State of Punjab*****, *****(2009) 15 SCC 795: (2010) 3 SCC (Cri) 997: 2009 SCC OnLine SC 1258,*** that where the accused knew that she was being searched for the contraband, the plea taken by her regarding non-communication of the reason of arrest is technical in nature. It was observed at page 802:

> **"20.** In view of the concurrent findings of the trial court and as also the High Court holding that the appellant was in conscious possession of the said contraband goods, the allegation of non-disclosure of the purpose of the search and the grounds of arrest to her is of a technical

> nature and without there being any material force in them. The appellant herself knew that she was being searched for possession of contraband goods, and therefore, she had also sought protection as provided under Sections 52 and 57 of the NDPS Act.
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> **21.** The appellant was being searched and arrested on account of possession of contraband goods. The violation of the provisions of the NDPS Act was clearly known to her. The allegation that she herself asked for such protection instead of prosecution, giving her the option to be searched before a gazetted officer, as required under the law, would not in any manner adversely affect her conviction and order of sentence passed by both the courts below. No prejudice could be shown by the appellant against the DSP, who was a gazetted officer and the lady officer present at the time of the search."

12. The matter is pending before the Hon'ble Supreme Court in ***Mihir Rajesh Shah vs State of Maharashtra, SLP (Crl.) 17132 of 2024***, and nothing more is required to be said regarding this aspect at this stage.

13. The status report shows that the petitioner and his co-accused, Anshul Rana, were found in Room No.501. The police searched the room in their presence and in the presence of independent witnesses and recovered 6.02 grams of heroin. Thus, the status report, *prima facie,* connects the petitioner with the commission of crime

14. It was submitted that the quantity of heroin stated to have been found in possession of the petitioner was intermediate, the rigours of Section 37 of the NDPS Act do not

apply to the present case, and the petitioner is entitled to bail as a matter of right. This submission is not acceptable. It was laid down by this Court in ***Khushi Ram Gupta v. State of H.P., 2022 SCC OnLine HP 3779,*** that the menace of drug addiction has seriously eroded into the fabric of society, and the release of an accused on bail in NDPS Act cases will send a negative signal to society. It was observed:

> "**8.** The menace of drug addiction, especially in adolescents and students, has seriously eroded into the fabric of society, putting the future generation as well as the prospects of future nation-building into serious peril.
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> **9.** It is not a case where the investigating agency is clueless in respect of evidence against the petitioner. Though allegations against the petitioner are yet to be proved in accordance with the law, it cannot be taken singly as a factor to grant bail to the petitioner. Nothing has been placed on record on behalf of the petitioner to divulge as to how and in what manner he came in contact with the persons who were residents of the State of Himachal Pradesh. Thus, there is sufficient prima facie material to infer the implication of the petitioner in the crime. In such circumstances, the release of the petitioner on bail will send a negative signal in society, which will definitely be detrimental to its interests.
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> **10.** The prima facie involvement of the petitioner in the dangerous trade of contraband cannot be ignored merely on account of the fact that he has no past criminal history. It cannot be guaranteed that there will be re-indulgence by the petitioner in similar activities, in case he is released on bail."

15. Similarly, it was held in ***Bunty Yadav v. State of H.P., 2022 SCC OnLine HP 4996,*** that the bail cannot be claimed as a

matter of right even though the rigours of Section 37 of the NDPS Act do not apply to a case. Each case has to be adjudged on its own facts. It was observed:

> "**6.** The quantity involved in the case is 89.89 grams of heroin and 3.90 grams of MDMA. Such quantity may not technically fall under the category of commercial quantity; nevertheless, such quantity cannot be termed to be less by any stretch of the imagination. The evident nature of commercial transactions and dealing with the contraband aggravates the situation for the petitioner. In a case where Section 37 of the NDPS Act is not applicable, the bail cannot be claimed as a matter of right. The fate depends on the facts of each and every case.
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> **7.** The menace of drug addiction, especially in adolescents and students, has seriously eroded into the fabric of society, putting the future generation as well as the prospects of future nation-building into serious peril."

16. The status report also shows that F.I.R. No.11/2025 dated 22.01.2025 has been registered against the petitioner for the commission of offences punishable under Sections 21 & 29 of the NDPS Act, which shows that the apprehension of the State that the petitioner is likely to indulge in the commission of similar offences has some basis. This Court exhaustively dealt with the relevance of criminal antecedents in ***Aminodin vs State of H.P. 2024: HHC: 6091*** and held, after referring to various judgments, that a Judge must consider the criminal antecedents of the accused, the nature of offences and his

general conduct while considering the bail petition. Bail should not be generally granted to an accused with criminal antecedents when there is a likelihood of the commission of the crime.

17. It was held in ***V. Senthil Balaji v. Enforcement Directorate, 2024 SCC OnLine SC 2626,*** that where the petitioner can become a threat to society because of her criminal antecedents, she should not be released on bail. It was observed:

> "27.....An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary."

18. Similarly, it was held in ***Union of India v. Barakathullah, 2024 SCC OnLine SC 1019,*** that where the persons were involved in the commission of similar offences, they should not be released on bail. It was observed: -

> **"20.** ... So far as the respondents in the instant appeals are concerned, they are in custody for hardly one and a half years, apart from the fact that all the respondents are shown to have been involved in previous cases. There are about 8 to 9 previous cases shown in the chargesheet against the respondents, except accused Nos. 1, 4 and 6, who are shown to have been involved in two cases. Considering the nature and gravity of the alleged offences and considering their criminal antecedents, in our opinion High Court should not have

> taken a lenient view, more particularly when there was sufficient material to show their *prima facie* involvement in the alleged offences under the UAPA.

19. Similarly, it was held in ***Union of India v. Barakathullah, 2024 SCC OnLine SC 1019,*** that where the persons were involved in the commission of similar offences, they should not be released on bail. It was observed: -

> **"20.** ... So far as the respondents in the instant appeals are concerned, they are in custody for hardly one and a half years, apart from the fact that all the respondents are shown to have been involved in previous cases. There are about 8 to 9 previous cases shown in the chargesheet against the respondents, except accused Nos. 1, 4 and 6, who are shown to have been involved in two cases. Considering the nature and gravity of the alleged offences and considering their criminal antecedents, in our opinion, the High Court should not have taken a lenient view, more particularly when there was sufficient material to show their *prima facie* involvement in the alleged offences under the UAPA."

20. It was laid down by the Hon'ble Supreme Court in ***Pinki v. State of U.P., (2025) 7 SCC 314: 2025 SCC OnLine SC 781*** that the liberty of a person has to be balanced with peace and harmony in society. Liberty cannot be elevated to such a high pedestal as would bring in anarchy or disorder in society. It was observed at page 384:

> **"65.** We are absolutely conscious that the liberty of a person should not be lightly dealt with, for the deprivation of the liberty of a person has an immense

impact on the mind. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of emptiness. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law, an individual is expected to grow within the social restrictions sanctioned by law. Individual liberty is restricted by larger social interests, and its deprivation must have due sanction of law. In an orderly society, an individual is expected to live with dignity, having respect for the law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated, and such regulations, which are the source of law, subserve the social balance and function as a significant instrument for the protection of human rights and the security of the collective. This is because, fundamentally, laws are made for their obedience so that every member of the society lives peacefully in a society to achieve their individual as well as social interests. That is why Edmond Burke, while discussing liberty, opined, "*it is regulated freedom*".

66. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal that it would bring in anarchy or disorder in society. The prospect of greater justice requires that law and order prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude, but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society, the

> concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing, J. Oerter stated: "*Personal liberty is the right to act without interference within the limits of the law.*"
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> **67.** Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one, and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act. (See: ***Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446: (2012) 3 SCC (Cri) 1172***.).

21. Therefore, the petitioner is not entitled to bail because of his criminal antecedents as well.

22. No other point was urged.

23. In view of the above, the present petition fails, and it is dismissed.

24. The observation made herein before shall remain confined to the disposal of the instant petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

14 October, 2025.
(yogesh)