2026:HHC:3331

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 2552 of 2025
Reserved on: 16.01.2026
Date of Decision: 23.01.2026.

Uchechukwau Emmahulf ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Vacation Judge.

Whether approved for reporting?[1] No

For the Petitioner : Mr K.S. Gill, Advocate.

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

Rakesh Kainthla, Vacation Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 28 of 2024, dated 21.02.2024, registered at Police Station Nahan, District Sirmaur, H.P., for the commission of offences punishable under Sections 21, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

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

2026:HHC:3331

2. It has been asserted that police intercepted a vehicle bearing registration No. HR-12Y-8814 and recovered 22.92 grams of heroin and 960 capsules each containing Acetaminophen 325 MG, Dicyclomine Hydrochloride 10 MG, Tramadol Hydrochloride 50 mg. The police arrested Roshan Lal, the driver of the vehicle and seized the contraband. Roshan Lal revealed during the interrogation that he had purchased the drugs from Tej Pratap. The police arrested him, and he made a statement that he had purchased the drug from Uchechukwau Emmahulf (the present petitioner). The police arrested the petitioner and recovered 32.45 grams of heroin from his possession. The petitioner has been in custody since 29.02.204. The allegations against the petitioner are false. The co-accused have been released on bail. The petitioner belongs to a respectable family, and no fruitful purpose would be served by detaining the petitioner in custody. The prosecution has failed to complete the evidence, which violates the petitioner's right to a speedy trial. 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 were on patrolling duty on 20.02.2024.

They received secret information at about 6:20 p.m. that Roshan Lal was transporting the intoxicating drugs in his vehicle bearing registration No.HR12Y-8814, and a huge quantity of capsules could be recovered by its search. The police reduced the information into writing and sent it to the Superintendent of Police, Nahan. The police joined Harish and Harinder and set up a Nakka. A vehicle bearing registration No. HR12Y-8814 reached the spot. The police stopped the vehicle. Roshan Lal was driving it. The police recovered 960 capsules of Parivon Spas Plus containing Tramadol and a polythene containing 22.92 grams of heroin. The police seized the heroin and capsules and arrested the driver, Roshan Lal, who revealed that he had purchased the heroin and capsules from Tej Pratap. The police checked the mobile phone of Roshan Lal and found the financial transaction with 15-20 persons through Google Pay. Roshan Lal had paid ₹60,000/-in cash and the other amount by Google Pay to Tej Pratap. The police found the transaction of ₹6,05,000/- between the mobile number used by Roshan Lal and Tej Pratap. The police obtained the call detail record and the customer application form, and the mobile number xxxx xx7649 was found registered in the name of Neetu Devi, and the mobile number xxxx xx5555 was

2026:HHC:3331

found registered in the name of Tej Partap. The location of these mobile numbers was found to be at Ambala on 15.02.2024. The police arrested Tej Pratap. He produced his vehicle bearing registration No. HR85F-0550. Tej Pratap revealed during interrogation that he had purchased the heroin from some Foreign Nationals. He also disclosed the place from where he had purchased the heroin. The police arrested Uchechukwau Emmanual with a carry bag containing 32.45 grams of heroin. The police also arrested Rajwinder Kaur and Nitu Devi, the owners of the accounts, which were used for the transfer of money. The police filed the charge sheet before the Court. 18 prosecution witnesses have been examined out of 44 prosecution witnesses cited by the prosecution. The statements of 19 witnesses have been recorded, and the matter was listed for recording the statements of the witnesses on 29/30.12.2025. The petitioner can abscond in case of his release on bail. Hence, the status report.

4. I have heard Mr K.S. Gill, learned counsel for the petitioner and Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State.

2026:HHC:3331

5. Mr K.S. Gill, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The prosecution has failed to complete the evidence despite the lapse of more than one year from the date of the petitioner's arrest. The petitioner would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Ajit Sharma, learned Additional Advocate General for the respondent/State, submitted that the petitioner had abetted the possession of the commercial quantity of Tramadol by Roshan Lal. Rigours of Section 37 of the NDPS Act apply to the present case. The petitioner has failed to satisfy the twin conditions laid down under Section 37 of the NDPS Act. He had earlier filed a bail petition, which was dismissed by the Court, and the present petition only lies when there is a change in the circumstances. There is no change in the circumstances. 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. It is undisputed that the petitioner had earlier filed a bail petition, which was registered as Cr.MP(M) No. 19 of 2025 and was dismissed on 05.05.2025. It was held in the ***State of Maharashtra v 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 which 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 application needs 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 on the basis of the change in the circumstances, and it is not permissible to review the order passed by the Court.

14. The status report mentions that the police had recovered a commercial quantity of 960 capsules (each containing 50 mg of Tramadol) and 22.92 grams of heroin from the vehicle being driven by Roshan Lal. Roshan Lal named Tej Pratap Singh, with whom the financial transactions were found. Tej Pratap Singh named the petitioner as the supplier of the drug. The police arrested the petitioner and recovered 32.45 grams of heroin from him. It was laid down by the Hon'ble Supreme Court in ***Mehboob Ali v. State of Rajasthan*, *(2016) 14 SCC 640: (2016) 4 SCC (Cri) 412: 2015 SCC OnLine SC 1043***, that the information given by the accused, leading to the discovery of another accused from whom forged currency notes were recovered, is admissible under

2026:HHC:3331

Section 27 of the Indian Evidence Act. It was observed at page 646: -

> "**15.** It is apparent that on the basis of the information furnished by accused Mehboob Ali and Firoz, and other accused, Anju Ali was arrested. The fact that Anju Ali was dealing with forged currency notes was not known to the police. The statements of both the accused have led to the discovery of the fact and arrest of the co-accused, not known to the police. They identified him, and ultimately, statements have led to unearthing the racket of the use of fake currency notes. Thus, the information furnished by the aforesaid accused persons vide information memos is clearly admissible, which has led to the identification and arrest of accused Anju Ali, and as already stated, from possession of Anju Ali's fake currency notes had been recovered. As per information furnished by the accused Mehboob and Firoz vide memos Exts. P-41 and P-42, the fact has been discovered by the police as to the involvement of the accused Anju Ali, which was not known to the knowledge of the police. The police were not aware of the accused Anju Ali, as well as the fact that he was dealing with fake currency notes, which were recovered from him. Thus, the statement of the aforesaid accused Mehboob and Firoz is clearly saved by Section 27 of the Evidence Act. The embargo put by Section 27 of the Evidence Act was clearly lifted in the instant case. The statement of the accused persons has led to the discovery of facts proving complicity of the other accused persons, and the entire chain of circumstances clearly makes out that the accused acted in conspiracy, as found by the trial court as well as the High Court.
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> **xxxxxxx**
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> **20.** Considering the aforesaid dictums, it is apparent that there was a discovery of a fact as per the statement of Mehmood Ali and Mohd. Firoz. The co-accused was nabbed on the basis of an identification made by the accused

> Mehboob and Firoz. That he was dealing with fake currency notes came to the knowledge of the police through them. Recovery of forged currency notes was also made from Anju Ali. Thus, the aforesaid accused had the knowledge about co-accused Anju Ali, who was nabbed at their instance and on the basis of their identification. These facts were not to the knowledge of the police, hence the statements of the accused persons leading to the discovery of the fact are clearly admissible as per the provisions contained in Section 27 of the Evidence Act, which carves out an exception to the general provisions about inadmissibility of confession made under police custody contained in Sections 25 and 26 of the Evidence Act."

15. In the present case, the statement made by the co-accused Tej Pratap Singh led the police to the present petitioner and the petitioner was found in possession of the heroin; therefore, *prima facie,* there is sufficient material to connect the petitioner to the commission of the crime.

16. The petitioner was involved in abetting the commercial quantity of the contraband. Hence, the rigours of Section 37 of the NDPS Act apply to the present case. There is no material to show that the petitioner would not indulge in the commission of a similar offence if released on bail. Therefore, he has not satisfied the twin conditions laid down under Section 37 of the NDPS Act.

17. It was submitted that there is a delay in the progress of the trial, and the petitioner is entitled to bail because of the delay. This submission will not help the petitioner. It was laid down by the Hon'ble Supreme Court in ***Union of India vs. Vijin K. Varghese 2025:INSC:1316*** that bail cannot be granted on the ground of prolonged incarceration without satisfying the twin conditions laid down under Section 37 of the NDPS Act. It was observed: -

> "17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii), which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon the appreciation of evidence which would be in the domain of the trial court at first instance.
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> 18. This Court ordinarily shows deference to the discretion exercised by the High Court while considering the grant of bail. However, offences involving a commercial quantity of narcotic drugs stand on a distinct statutory footing. Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure.
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> 19. In the present case, the High Court has not undertaken the analysis of those twin requirements with reference to

> the material placed by the prosecution. The orders dated 22.01.2025 and 12.03.2025 do not advert to the allegation regarding the respondent's prior involvement in a seizure of narcotic drugs and psychotropic substances only days prior to the seizure forming the subject matter of the present complaint, nor do they engage with the prosecution's assertion as to the respondent's role in arranging, importing, clearing and supervising the consignments. The omission to consider these factors bears directly upon the statutory satisfaction required by Section 37(1)(b)."

18. A similar view was taken in ***Union of India v Namdeo Ashruba Nakade SLP (Crl.) 9792/2025, decided on 07.11.2025,*** wherein it was observed:

> "11. In the present case, this Court finds that though the Respondent-accused was in custody for one year, four months, and charges have not been framed, yet the allegations are serious since not only is the recovery much in excess of the commercial quantity, but the Respondent-accused allegedly got the cavities ingeniously fabricated below the trailer to conceal the contraband.
> 12. Prima facie, this Court is of the opinion that the Respondent-accused is involved in drug trafficking in an organised manner. Consequently, no case for dispensing with the mandatory requirement of Section 37 of the NDPS Act is made out in the present matter."

19. Therefore, it is impermissible to grant bail on the ground of delay alone when the petitioner had not satisfied the requirement of Section 37 of the NDPS Act.

20. No other point was urged.

2026:HHC:3331

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

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

(Rakesh Kainthla)
Vacation Judge

23rd January, 2026.
(Nikita)