IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 2016 of 2026
Reserved on: 30.10.2026
Date of Decision: 04.11.2026

Mustaq Ali .... Petitioner

Versus

State of HP .... Respondent

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

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

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 37 of 2026, dated 13.05.2026, registered at Police Station Kumarsain, District Shimla, H.P. for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act).

2. It has been asserted that the police have arrested the petitioner on the basis of vague and baseless allegations. As per the prosecution, 6.73 grams of heroin was recovered from the

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

petitioner, which is intermediate, and the rigours of Section 37 of the NDPS Act do not apply to the present case. No independent witnesses were associated during the search and seizure proceedings. The statements of police officials were relied upon, which vitiates the search procedure. The police have completed the investigation and filed the charge-sheet before the Court. No fruitful purpose would be served by detaining the petitioner in custody. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

3. The petition is opposed by filing a status report asserting that the police found a truck bearing registration no. HP-92-4030 parked in a lonely place on 12.05.026 at about 9:45 p.m. at Baru Bagh. The cabin light was switched on, and the curtains were also pulled. The police asked the occupants to open the door of the cabin. Two persons and heavy smoke were found in the cabin. The occupants of the cabin got frightened after seeing the police. The driver identified himself as Mushtaq Ali, the present petitioner, and the other person identified himself as Balbir. The police searched the cabin and found two burnt currency notes of ₹10, one burnt piece of foil paper, a digital weighing machine, and 6.73 grams of heroin. The police seized the heroin and arrested the occupants.

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The heroin was sent to the FSL, and as per the report, it was confirmed to be diacetylmorphine. An FIR No. 4 of 2026 was registered against the petitioner at Police Station Kumarsain, District Shimla, for the commission of offences punishable under Sections 21 and 29 of the NDPS Act. No traces of ethyl alcohol/any other drug were found in the blood samples. Hence, the status report.

4. I have heard Mr Mohar Singh, learned counsel for the petitioner, and Mr Ajit Sharma, learned Deputy Advocate General for the respondent-State.

5. Mr Mohar Singh, learned 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 6.73 grams of heroin, which is less than commercial quantity, and the rigours of Section 37 of the NDPS Act do not apply to the present case. The police have completed the investigation, and no fruitful purpose would be served by detaining the petitioner in custody. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

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6. Mr Ajit Sharma, learned Deputy Advocate General for the respondent-State, submitted that the petitioner has criminal antecedents, and he would commit a similar offence in case of his release on bail. Hence, he prayed that the present petition be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. 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 a conviction is confirmed, also bears upon the issue.
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> > *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, calls for 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, 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, 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*:
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> (*i*) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence*;
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> (*ii*) *nature and gravity of the accusation*;
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> (*iii*) *severity of the punishment in the event of conviction*;
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> (*iv*) *danger of the accused absconding or fleeing, if released on bail*;
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> (*v*) *character, behaviour, means, position and standing of the accused*;
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> (*vi*) *likelihood of the offence being repeated*;
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> (*vii*) *reasonable apprehension of the witnesses being influenced; and*
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> (*viii*) *danger, of course, of justice being thwarted by grant of bail.*" (emphasis supplied)
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> **xx**

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

10. The status report shows that the petitioner was found in the cabin of the vehicle bearing registration number HP-92-4030 along with the co-accused. The police found smoke inside the cabin and recovered burnt currency notes, burnt foil paper, and heroin. In ***Madan Lal versus State of H.P. (2003) 7 SCC 465: 2003 SCC (Cri) 1664: 2003 SCC OnLineSC 874*****,** the contraband was recovered from a vehicle, and it was held that all the occupants of the vehicle would be in conscious possession of the contraband. It was observed:

"19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle, and as noted by the trial court, they were known to each other, and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act, which relates to offences for possession of such articles. It is submitted that to make the possession illicit, there must be conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element, i.e., conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression "possession" is a polymorphous term that assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in the ***Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52]*** to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness of a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in ***Gunwantlal v. State of M.P. [(1972) 2 SCC 194: 1972 SCC (Cri) 678: AIR 1972 SC 1756],*** possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.

25. The word "possession" means the legal right to possession (see ***Heath v. Drown [(1972) 2 All ER 561: 1973 AC 498: (1972) 2 WLR 1306 (HL)]***). In an interesting case, it was

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> observed that where a person keeps his firearm in his mother's flat, which is safer than his own home, he must be considered to be in possession of the same. (See ***Sullivan v. Earl of Caithness [(1976) 1 All ER 844: 1976 QB 966: (1976) 2 WLR 361 (QBD)]***.)
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> 26. Once possession is established, the person who claims that it was not a conscious possession has to establish it because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54, where a presumption is also available to be drawn from possession of illicit articles.
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> 27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act."

11. Therefore, *prima facie*, the petitioner was found in possession of 6.73 grams of heroin, and the burden would shift upon him to show that he was not in possession as per Sections 35 and 54 of the NDPS Act.

12. It was submitted that the police had recovered 6.73 grams of heroin from the truck, which is less than the commercial quantity; 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."

13. Similarly, it was held in ***Bunty Yadav v. State of H.P., 2022 SCC OnLine HP 4996,*** that 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, 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 the fabric of society, putting the future generation as well as the prospects of future nation-building into serious peril."

14. It was laid down by the Hon'ble Supreme Court in ***Union of India v. Namdeo Ashruba Nakade, SLP (Crl.) 9792/2025, decided on 07.11.2025,*** that there is a concerning increase in drug abuse amongst the youth. It was observed: -

> 8. This Court is of the view that the issue of substance abuse has emerged as a global public health crisis in the twenty-first century, affecting every country worldwide, as drug trafficking and addiction have become pervasive. The United Nations Office on Drugs and Crime (UNODC) reported in its 2025 World Drug Report that "As at 2023, some 316 million people worldwide had used drugs in the past year, representing an increase over the past decade that outpaces population growth, which indicates a higher prevalence of drug use."
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> 9. In India, there has been a concerning increase in drug abuse among the youth. Substance abuse not only affects individuals, families, and communities but also undermines various aspects of health, including physical, social, political, and cultural foundations, and mental well-being. (See: "Bhattacharya S, Menon GS, Garg S, Grover A, Saleem

SM, Kushwaha P. The lingering menace of drug abuse among the Indian youth–it's time for action. Indian J Community Med 2025;50: S9-12, published on 17th April, 2025")

10. According to many news reports, India faces a clear dilemma between tackling the narcotics crisis systematically or sacrificing its most valuable resource, i.e. its young people. The extent of the menace of drug abuse has also been highlighted by this Court in the case of ***Ankush Vipan Kapoor v. National Investigation Agency, (2025) 5 SCC 155***, wherein this Court has observed as under:

> "9.1 The ills of drug abuse seem to be shadowing the length and breadth of our country, with the Central and every State Government fighting against the menace of substance abuse. The debilitating impact of the drug trade and drug abuse is an immediate and serious concern for India. As the globe grapples with the menace of escalating substance use disorders ("SUD") and an ever-accessible drug market, the consequences leave a generational Page 75 of 84 imprint on public health and even national security. Article 47 of the Constitution makes it a duty of the State to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties, and in particular, the State shall endeavour to bring about the prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. The State has a responsibility to address the root causes of this predicament and develop effective intervention strategies to ensure that India's younger population, which is particularly vulnerable to substance abuse, is protected and saved from such a menace. This is particularly because substance abuse is linked to social problems and can contribute to child maltreatment, spousal violence, and even property crime in a family."

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15. Hence, the petitioner cannot be released on bail merely because the rigours of Section 37 of the NDPS Act do not apply to the present case.

16. The status report shows that FIR No. 4 of 2026 has been registered against the petitioner for the commission of an offence punishable under Sections 21 and 29 of the NDPS Act. Thus, the petitioner has criminal antecedents. This Court dealt with the relevance of criminal antecedents while granting bail in ***Champa vs. State of H.P.: 2025: HHC:28899*** and held that the criminal antecedents would disentitle an accused from the concession of bail, especially when the FIR registered against him related to the commission of a similar offence. This judgment was unsuccessfully assailed before the Hon'ble Supreme Court in ***SLP(Criminal) 19120 of 2025*** titled ***Champa Devi vs State of H.P.,*** decided on***27.11.2025.*** This position was reiterated in ***Shakti Sharma vs. State of H.P., 2026: HHC:33462.*** Therefore, the relevance of criminal antecedents cannot be ignored.

17. In the present case, the registration of the FIR against the petitioner for the commission of an offence punishable under the NDPS Act shows that the apprehension of the prosecution is

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justified, that the petitioner would indulge in the commission of a similar offence in case of his release on bail, and the petitioner is not entitled to bail because of his criminal antecedents.

18. No other point was urged.

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

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

(Rakesh Kainthla)
Judge

04th November, 2026
(Ravinder)