2026:HHC:49555

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 2089 of 2026
Reserved on: 06.11.2026
Date of Decision: 18.11.2026.

Lal Bahadur Sahi ....Petitioner

Versus

State of HP .... Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No

For the Petitioner : Mr Nitin Rishi, Advocate.
For the Respondent/State : Mr Tarun Pathak, Deputy Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 111 of 2025, dated 15.06.2025, registered at Police Station Barmana, District Bilaspur, H.P., for the commission of offences punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS).

2. It has been asserted that, as per the prosecution, the police checked a bus bearing registration No. HP-18C-4796 and

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

recovered 2 kg 42 grams of charas from the handbag being carried by the co-accused Nisha Devi. The petitioner was occupying the seat adjacent to Nisha. The petitioner and Nisha had purchased one ticket, which was also seized by the police. These allegations, even if accepted to be correct, do not show the commission of any offence. The petitioner was not found in possession of the contraband. He is related to Nisha, but mere relationship will not establish the petitioner's possession. 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 had set up a naka on 15.6.2025 at the rain shelter ACC Check Post Barmana. The police stopped and boarded the bus bearing registration No. HP-18C-4796 at 1:20 AM. The occupant of Seat No.26 acted suspiciously. The police searched him and Nisha, who was occupying Seat No.21. Nisha was found in possession of a bag that contained 2 packets. The police checked the packets and recovered 2 kilograms 42 grams of charas. The police arrested the petitioner and Nisha. The total

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weight of charas was found to be 1968 grams during the inventory proceedings. The charas was sent to SFSL, and as per the report, it was confirmed to be an extract of cannabis and a sample of charas. The police filed a charge sheet before the Court on 30.7.2025. The matter is listed for recording the statements of prosecution witnesses on 08.12.2026. Hence, the status report.

4. I have heard Mr Nitin Rishi, learned counsel for the petitioner and Mr Tarun Pathak, learned Deputy Advocate General for the respondent/State.

5. Mr Nitin Rishi, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The recovery was effected from the handbag being carried by Nisha and not from the petitioner. The allegations in the FIR, even if accepted to be correct, do not connect the petitioner to the commission of the crime. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Tarun Pathak, learned Deputy Advocate General for the respondent/State, submitted that the petitioner abetted possession of commercial quantity of charas and the rigours of

Section 37 of the NDPS Act apply to the present case. The petitioner is the father of Nisha, and both of them were travelling together. The petitioner had stated in his statement that he had kept the charas in the handbag of Nisha. There is sufficient material to connect the petitioner to the commission of the crime. 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.
> >
> > *8. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.*

[***Patrick Devlin, "The Criminal Prosecution in England"*** (Oxford University Press, London 1960) p. 75 — Modern Law Review, Vol. 81, Jan. 1968, p. 54.]

9. Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance." (emphasis supplied)

57. In ***Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280: 2001 SCC (Cri) 674***, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284-85, para 8)

"*8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles, having regard to the circumstances of each case and not in an arbitrary manner. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic*

itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge." (emphasis supplied)

58. This Court in ***Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688***, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

"*3. Grant of bail, though being a discretionary order, but, however, calls for the exercise of such a discretion in a judicious manner and not as a matter of course. An order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts do always vary from case to case. While the placement of the accused in society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, the same should always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — the more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter*." (emphasis supplied)

59. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977***, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

60. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765***, this Court observed that where a High Court has granted bail mechanically, the said

order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under: (SCC p. 499, para 9)

> "*9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are*:
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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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> **xxxxxxx**

62. One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is ***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 :***

(2022) 2 SCC (Cri) 170, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (***Pappu Kumar v. State of Bihar, 2021 SCC OnLine Pat 2856*** and ***Pappu Singh v. State of Bihar, 2021 SCC OnLine Pat 2857***) of the High Court granting bail to the accused, observed as follows: (***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170]***), SCC p. 511, para 35)

> "*35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time, while considering an application for bail, courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record to enable a court to arrive at a prima facie conclusion. While considering an application for the grant of bail, a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.*" (emphasis supplied)

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

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

> or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.
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> **3.** It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also, the heinousness of the crime...."

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

11. The status report mentions that the petitioner was occupying seat No. 26 and Nisha was occupying seat No. 21. The police searched the petitioner and Nisha and found 2 kg 42 grams of charas in Nisha's handbag. No recovery was effected from the petitioner. Therefore, the status report does not show the petitioner's possession.

12. The police relied upon the statement made by the petitioner in which he stated that he had extracted the charas and handed it over to Nisha. This statement will not help the prosecution. It was laid down by the Hon'ble Supreme Court in ***Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547; (2020) 2 SCC (Cri) 361: 2019 SCC OnLine SC 588,*** that a statement made by an accused during the investigation is hit by Section 162 of Cr.P.C. and Section 25 of the Indian Evidence Act

and cannot be used as a piece of evidence. It was observed at page 568:-

> **44.** Such a person, viz., the person who is named in the FIR, and therefore, the accused in the eyes of the law, can indeed be questioned, and the statement is taken by the police officer. A confession that is made to a police officer would be inadmissible, having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act, would also be inadmissible. A confession, unless it fulfils the test laid down in ***Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66: AIR 1939 PC 47]*** and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains an admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC."

13. Therefore, not much advantage can be derived from the statement made by the accused.

14. It was submitted that the petitioner and Nisha had brought one ticket and the petitioner had abetted the transportation of charas by Nisha. This submission cannot be accepted. It is undisputed that the petitioner is Nisha's father, and purchasing one ticket by the petitioner and Nisha was natural. The mere purchase of the ticket does not show that the

petitioner had abetted the possession of charas by the co-accused Nisha.

15. There is no other material to connect the petitioner to the commission of the crime. Hence, the prosecution version that the petitioner is *prima facie* involved in the possession of commercial quantity of charas cannot be accepted.

16. It was submitted that the address of the petitioner has not been verified and the petitioner may abscond if released on bail. This submission will not help the prosecution because the prosecution was required to establish a *prima facie* case to justify the petitioner's detention, and he cannot be detained in custody because his address was not verified by the police and he may abscond.

17. There is no material to connect the petitioner to the commission of the crime, and his further detention in custody is not justified. Hence, the present petition is allowed, and the petitioner is ordered to be released on bail, subject to his furnishing bail bonds in the sum of ₹1,00,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

While on bail, the petitioner will abide by the following conditions: -

(I) The petitioner will not intimidate the witnesses, nor will he influence any evidence in any manner whatsoever.

(II) The petitioner shall attend the trial on each and every hearing and will not seek unnecessary adjournments.

(III) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the SHO concerned, the Police Station concerned and the Trial Court.

(IV) The petitioner will surrender his passport, if any, to the Court; and

(V) The petitioner will furnish his mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

18. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

19. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, Open Air District Jail, Bilaspur and the learned Trial Court by *FASTER*.

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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

18th November, 2026
(Nikita)

NIKITA THAKUR Digitally signed by NIKITA THAKUR
Date: 2026.11.18 15:03:32 +0000