IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 2099 of 2026
Reserved on: 28.10.2026
Decided on: 02.11.2026

Sashi Kumar @ Shashi Kumar .... Petitioner

Versus

State of HP .... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***No***

For the Petitioner : Mr Rakesh Chaudhary, Advocate.

For the Respondent/State : Mr Pawan Kumar Nadda, Additional Advocate General, assisted by ASI Raj Kumar, IO, PS Dharamshala, District Kangra, H.P.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 82 of 2025, dated 20.05.2025, for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "NDPS") registered at Police Station Dharamshala, District Kangra (HP).

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

2026:HHC:47938

2. It has been asserted that as per the prosecution, the police received secret information on 19.05.2025 at about 12:30 am that Shashi Kumar (petitioner) and Gautam were selling contraband from their house, and a huge quantity of contraband could be recovered by searching the house. The information was reduced to writing and was sent to the Additional Superintendent of Police through Constable Sachin Kumar. The police joined Abhishek Anand and Anil Kumar and reached the petitioner's house. The petitioner and co-accused Gautam were found present in the house. The police searched the house and recovered 13 grams of heroin. These allegations are false. The petitioner had earlier filed a bail petition, which was registered as Cr. M.P.(M) No. 2013 of 2025, and Cr. M.P.(M) No. 2957 of 2025, and were dismissed on 17.09.2025 and 03.03.2026. The petitioner had also filed a Special Leave Petition (Criminal) No. 8105 of 2026 titled *Shashi Kumar vs. State of H.P.*, which was dismissed by the Hon'ble Supreme Court of India on 25.09.2026. The petitioner has been in custody for almost one year and five months. The petitioner is innocent. The rigours of Section 37 of the NDPS Act do not apply to the present case. There is nothing to connect the petitioner to the commission of the crime. The police

had not complied with the requirement of Section 50 of the NDPS Act. The charge sheet has been filed before the Court, and no fruitful purpose would be served by detaining the petitioner in custody. 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.

3. The petition is opposed by filing a status report asserting that the police received secret information at Ghiyari Pul, Yol on 19.05.2025 at 12.30 AM that Shashi Kumar (the present petitioner) and Gautam were selling heroin from their home, which could be recovered by searching the house. The police reduced the information to writing and sent it to the Additional Superintendent of Police, Kangra. Police joined Anil Kumar and Abhishek Anand, went to the petitioner's house, and searched the house in the presence of the petitioner and co-accused (Gautam). One transparent polythene packet containing 13 grams of heroin was recovered during the search. Police seized the heroin and arrested the petitioner and the co-accused. Heroin was sent to SFSL Junga, and as per the result of analysis, it was found to be a sample of Diacetylmorphine (heroin). FIR Nos. 16 of 2022, 129 of 2022, 137 of 2022, 130 of 2022 and 141 of

2022 are pending against the petitioner. The charge sheet was filed before the Court after the completion of the investigation. The matter is listed before the learned trial Court on 16.12.2026 and 17.12.2026 for recording the statements of prosecution witnesses. Hence, the status report.

4. I have heard Mr Rakesh Chaudhary, learned counsel for the petitioner and Mr Pawan Kumar Nadda, learned Additional Advocate General, for the respondent-State.

5. Mr Rakesh Chaudhary, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The petitioner has remained in custody for about one year and five months, and the prosecution has not completed the evidence. The petitioner's right to a speedy trial is being violated, and the petitioner is entitled to bail on this consideration. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Pawan Kumar Nadda, learned Additional Advocate General for the respondent-State, submitted that the petitioner had earlier filed two bail petitions, which were dismissed by this Court. The subsequent bail petition lies only when there is a

change in the circumstances. The petitioner has not shown any change in the circumstances, and he is not entitled to bail. The petitioner has criminal antecedents, and he would indulge in the commission of the crime 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. It is undisputed that the petitioner had filed bail petitions which were registered as Cr. M.P.(M) No. 2013 of 2025 and Cr. M.P.(M) No. 2957 of 2025 and were dismissed on 17.09.2025 and 03.03.2026. It was held in ***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 observed:

> "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 that requires the earlier view to be interfered with or where the earlier finding has become obsolete. However, a change in circumstances has no bearing on the salutary principle of judicial propriety that successive bail applications need 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 circumstances 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 recognised 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 the 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 circumstances 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 petitioner was found in possession of 13 grams of heroin and he was arrested on 20.05.2025. Thus, the petitioner has remained in custody for more than one year and five months. The Central Government has notified 250 grams of heroin as the commercial quantity, which means that a person possessing 250 grams of heroin can be sentenced to undergo imprisonment for a period of 10 years. If the principle of proportionality is applied to the present case, the

petitioner has undergone a substantial part of the imprisonment that can be awarded to him in case of his conviction.

15. The status report mentions that the matter is listed for recording the statements of prosecution witnesses on 16th and 17th December 2026. Thus, the trial is not likely to conclude soon. Considering the period of incarceration and the imprisonment that can be awarded to the petitioner, the petitioner's further detention is not justified.

16. It was submitted that the petitioner would intimidate the witnesses in case of his release on bail. This apprehension is not sufficient to deny bail to the petitioner because it can be removed by imposing conditions.

17. The petitioner asserted that he is a permanent resident of Dharamshala, District Kangra, H.P. This was not stated to be incorrect. It means that the petitioner has roots in the society and there is no likelihood of his absconding.

18. In view of the above, 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.

2026:HHC:47938

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.

19. 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.

20. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, Lala Lajpat Rai Open Air Jail & Correctional Home, Dharamshala, District Kangra, H.P. and the learned Trial Court by *FASTER.*

2026:HHC:47938

21. 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

2nd November, 2026
(Chander)

NIKITA THAKUR
Digitally signed by NIKITA THAKUR
Date: 2026.11.02 13:04:33 +0530