IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 2128 of 2026
Reserved on: 20.11.2026
Date of Decision: 25.11.2026

Alok Kumar ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

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

For the Petitioner : Mr. Vijender Katoch, Advocate.

For the Respondent/State : Mr. P.K. Nadda, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 91 of 2026, dated 16.08.2026, registered at Police Station Shahpur, District Kangra, H.P., for the commission of offences punishable under Sections 21 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.

2. It has been asserted that, as per the prosecution, the police stopped a bus bearing registration No. HP-67-7395 on the intervening night of 15/16.08.2026 at about 1:45 AM. The petitioner was occupying Seat No. 37, and co-accused Sahil was occupying Seat No. 39. They had kept a backpack between their seats. The police searched the backpack and recovered an electronic digital weighing scale and a transparent polythene containing 20.74 grams of heroin. These allegations are false, and there is no material to connect the petitioner to the commission of the crime. The police have completed the investigation and filed the charge-sheet before the Court. The quantity of heroin stated to have been recovered by the police is less than commercial, and the rigours of Section 37 of the NDPS Act do not apply to the present case. The petitioner would abide by all 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 stopped an HRTC bus bearing registration No. HP-67-7395 on 16.08.2026 at about 1:45 AM. The police checked the passengers in the presence of Manoj

Kumar (driver) and Bansi Ram (conductor). One bag was found on seats Nos. 37, 38, and 39. The occupants identified themselves as Sahil (the present petitioner) and Alok Kumar. The police checked the bag and found 20.74 grams of heroin in it. The police seized the heroin and arrested the petitioner and the co-accused. The heroin was sent to the SFSL, and as per the result of the analysis, it was found to be a sample of Diacetylmorphine (Heroin). FIR No. 91 of 2024 has been registered against the petitioner. Co-accused Sahil has been released on bail. Hence, the status report.

4. I have heard Mr Vijender Katoch, learned counsel for the petitioner, and Mr P.K. Nadda, learned Additional Advocate General, for the respondent-State.

5. Mr Vijender Katoch, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The bag was found between the seats occupied by the petitioner and the co-accused. There is no material to show that the petitioner was in possession of the bag, and he cannot be held liable merely because he was travelling on public transport from which the recovery of

contraband was effected. The quantity of contraband found in possession of the petitioner is less than commercial, and the rigours of Section 37 of the NDPS Act do not apply to the present case. The police have presented the challan before the Court, and no fruitful purpose would be served by detaining the petitioner in custody. The petitioner has roots in society, and there is no chance of his absconding. The petitioner would abide by the terms and conditions that the Court may impose. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr P.K. Nadda, learned Additional Advocate General, for the respondent-State, submitted that the petitioner was found in possession of heroin. He has criminal antecedents, and he is likely to indulge in the commission of the crime in case of his release on bail. Heroin is adversely affecting society, and the petitioner should not be released 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.

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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.
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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.]
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> > *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 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, 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 on 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. The status report shows that the petitioner was travelling in an HRTC bus, which is a public transport. He was occupying seat No. 37, and Sahil was occupying seat No. 39. A backpack was lying between them. The police checked the backpack and found 20.74 grams of heroin in it. The status report does not mention how the police concluded that the petitioner was in possession of the heroin or that he had abetted the possession of heroin by the co-accused. It was held in ***Sorabkhan Gandhkhan Pathan v. State of Gujarat*, *(2004) 13 SCC***

608 : (2006) 1 SCC (Cri) 508 : 2003 SCC OnLine SC 694 that merely travelling in an autorickshaw from which the recovery of the contraband is not sufficient to infer possession. It was observed at page 609:

> **"7**.....Whereas in regard to Appellant 2, it is the prosecution case itself that he was travelling in the autorickshaw, along with three other persons. The prosecution has not produced any material whatsoever to establish that either this appellant had the knowledge that Appellant 1 was carrying the contraband or was, in any manner, conniving with the said accused in carrying the contraband. In the absence of any such material, to convict the second appellant only on the ground that he was found in the autorickshaw, in our opinion, is not justified...."

11. It was submitted that the petitioner and the co-accused belong to the same village, and the possibility of the petitioner being in possession cannot be ruled out. This submission will not help the prosecution. The police were required to establish the petitioner's possession by independent evidence, and merely because two villagers were found travelling together in public transport cannot lead to an inference that both of them were in possession. The matter would have been different had they been travelling in a private transport. Therefore, *prima facie*, the material on record is

insufficient to connect the petitioner with the commission of the crime.

12. The quantity of heroin stated to have been recovered by the police is intermediate, and the rigours of Section 37 of the NDPS Act do not apply to the present case.

13. The status report mentions that the police have filed the charge sheet before the Court, and the matter is pending before the learned Special Judge-I, Kangra at Dharamshala, for checking of copies. It means that the investigation is complete, and the petitioner's custodial interrogation is not required. The status report also does not mention that the petitioner's custodial interrogation is required for the investigation of the matter. Therefore, no fruitful purpose would be served by detaining the petitioner in custody.

14. The petitioner asserted that he is a permanent resident of District Amritsar. This was not stated to be incorrect. Hence, the petitioner has roots in society, and there is no chance of his absconding.

15. It was submitted that the petitioner has criminal antecedents and he would indulge in the commission of a similar

crime in case of his release on bail. This submission will not help the prosecution because, *prima facie*, the police have failed to connect the petitioner with the commission of the crime, and he cannot be detained in custody merely because of his criminal antecedents.

16. 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 bond 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.

17. 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.

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

19. 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

25th November, 2026
(Chander)

CHANDER SHEKHAR

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