IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1581 of 2025
Reserved on: 21.08.2025
Date of Decision: 27.08.2025.

Champa ...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. Ajit Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No. 60 of 2025, dated 13.05.2025, registered at Police Station Damtal, District Kangra, H.P., for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (ND&PS Act).

2. It has been asserted that, as per the prosecution, the police party was on patrolling duty on 13.05.2025. They received

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

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a secret information that petitioner Champa Devi and her daughter-in-law, Sakshi, were selling heroin from their house, and in case of search of their house, a huge quantity of heroin could be recovered. The information was credible. It was reduced to writing and was sent to the Sub Divisional Police Officer (SDPO), Indora. The police party associated two independent witnesses, Ashwani Kumar and Suresh Kumar, and went to the petitioner's house, where she was present with her daughter-in-law. She brought Tajinder Kumar at the instance of the police. The police searched the house of the petitioner and recovered 17.91 grams of heroin kept in a plastic packet inside the Sofa. Co-accused Sakshi has been released on bail by the learned Trial Court. The petitioner is suffering from various ailments. Rigours of Section 37 of the NDPS Act do not apply to the present case. Ten FIRs were registered against the petitioner, out of which six have been decided, and four are still pending. The petitioner would abide by all the terms and conditions which the Court may impose. Hence, the petition.

3. The petition is opposed by filing a status report asserting that the Police party was on patrolling duty on 13.05.2025. They received a secret information at Hill Top

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temple, Damtal, at 3:15 p.m. that the petitioner and her daughter-in-law, Sakshi, were selling heroin, and in case of a search of their house, a huge quantity of heroin could be recovered. The police reduced the information into writing and sent it to SDPO, Indora, through Constable Pankaj. Police associated Ashwani Kumar, Up Pardhan, Village Chhanni and Suresh Kumar as independent witnesses. The police went to the petitioner's house, where the petitioner and her daughter-in-law were present. They were asked to bring a male member to search the police officials. Rajinder Kumar was called. The search of the police party was conducted, and the police searched the petitioner's house. Police recovered a plastic packet concealed in the Sofa, which contained 17.91 grams of heroin. The police arrested the petitioner and the co-accused and seized the heroin. The petitioner has been convicted in six F.I.Rs. No other F.I.R. was registered against the co-accused. Sakshi revealed that Rahul had sold the heroin. He was also arrested. The investigation was conducted. Heroin was sent to SFSL Junga, and as per the report, it was found to be a sample of diacetylmorphine (heroin). Hence, the status report.

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

5. Mr. Vijender Katoch, learned counsel for the petitioner, submitted that the petitioner is innocent and that he was falsely implicated. The quantity of heroin, stated to have been recovered from the petitioner's house, is less than a commercial quantity. Rigours of Section 37 of the NDPS Act do not apply to the present case. The co-accused has been released on bail, and the petitioner is entitled to bail on the principle of parity. Mere pendency of the criminal cases against the petitioner is not a ground for pre-trial detention. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr. Ajit Sharma, learned Deputy Advocate General, submitted that the petitioner was found in possession of 17.91 grams of heroin, which could not have been meant for self-consumption. The police received definite information that the petitioner and her daughter-in-law were selling heroin. Heroin is affecting the young generation adversely. The petitioner has

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criminal antecedents, and she is likely to commit a similar offence in case of her 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 ***Ramratan v. State of M.P., 2024 SCC OnLine SC 3068,*** wherein it was observed as follows: -

> **"12.** The fundamental purpose of bail is to ensure the accused's presence during the investigation and trial. Any conditions imposed must be reasonable and directly related to this objective. This Court in ***Parvez Noordin Lokhandwalla*** **v.** ***State of Maharastra (2020) 10 SCC 77*** observed that though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437(3) and 439(1)(a) CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. The relevant observations are extracted below:
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> > **"14.** The language of Section 437(3) CrPC which uses the expression "any condition ... otherwise in the interest of justice", has been construed in several decisions of this Court. *Though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437(3) and 439(1)(a) CrPC, the discretion of the court has to be guided by the need to facilitate the*

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administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. Several decisions of this Court have dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail." (Emphasis supplied)

13. In ***Sumit Mehta* v. *State (NCT of Delhi)* (2013) 15 SCC 570**, this Court discussed the scope of the discretion of the Court to impose "any condition" on the grant of bail and observed in the following terms: —

"15. The words "any condition" used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. *Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance, effective in the pragmatic sense, and should not defeat the order of grant of bail.* We are of the view that the present facts and circumstances of the case do not warrant such an extreme condition to be imposed." (Emphasis supplied)

14. This Court, in ***Dilip Singh* v. *State of Madhya Pradesh* (2021) 2 SCC 779**, laid down the factors to be taken into consideration while deciding the application for bail and observed:

"**4.** It is well settled by a plethora of decisions of this Court that criminal proceedings are not for the realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. *The factors to be taken into consideration while considering an application for bail are the nature of the accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to*

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> *the complainant or the witnesses; the reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations.* A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial." (Emphasis supplied)

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

10. A perusal of the status report shows that the petitioner and co-accused were present in the house, from where the police had recovered 17.91 grams of heroin. It was laid down by the Hon'ble Supreme Court in ***Union of India v. Mohd. Nawaz Khan*, *(2021) 10 SCC 100: (2021) 3 SCC (Cri) 721: 2021 SCC OnLine SC 1237,*** that a person is in possession if he is in a position to exercise control over the article. It was observed at page 111:

> **25.** We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27-A, 29, and 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In ***Madan Lal v. State of H.P. [Madan Lal v. State of H.P., (2003) 7 SCC***

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465: 2003 SCC (Cri) 1664] this Court held that : (SCC p. 472, paras 19-23 & 26)

> "*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.
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> *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 in order to make the possession illicit, there must be a conscious possession.
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> *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.
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> 22. The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in ***Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja*** [***Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274: 1979 SCC (Cri) 1038***] to work out a completely logical and precise definition of "possession" uniform[ly] applicable to all situations in the context of all statutes.
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> *23*. The word "conscious" means awareness of a particular fact. It is a state of mind which is deliberate or intended.

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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 also a presumption is available to be drawn from possession of illicit articles."

26. What amounts to "conscious possession" was also considered in ***Dharampal Singh v. State of Punjab [Dharampal Singh v. State of Punjab, (2010) 9 SCC 608 : (2010) 3 SCC (Cri) 1431***], where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in the case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In ***Mohan Lal v. State of Rajasthan [Mohan Lal v. State of Rajasthan, (2015) 6 SCC 222: (2015) 3 SCC (Cri) 881]***, this Court also observed that the term "possession" could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.

11. Therefore, *prima facie*, there is sufficient material to connect the petitioner with the commission of an offence punishable under Section 21(b) of the NDPS Act.

12. It was submitted that the petitioner was found in possession of an intermediate quantity of heroin, and she is

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entitled to bail as a matter of right. This submission is not acceptable. This Court laid down in ***Dilbar Khan v. State of H.P., 2022 SCC OnLine HP 2441,*** that a person found in possession of an intermediate quantity of drugs is not entitled to bail as a matter of right. It was observed:

> "9. No doubt the quantity of contraband in the case is intermediate and therefore the rigours of Section 37 of the NDPS Act will not be applicable. Merely because the quantity of contraband recovered is less than the commercial quantity may not, by itself, be sufficient to grant bail.
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> **10.** The menace of drug abuse is not unknown in society in modern times. The victims are innocent adolescents, among others. Drug abuse more often than not leads to drug addiction, which ruins the lives of a substantial number of such persons. The question arises as to how young adolescents, who by and large remain in the custody of their guardians, are able to procure the prohibited drug. Definitely, the drug is made available through a supply chain managed in an organised manner."

13. 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

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fabric of society, putting the future generation as well as the prospects of future nation-building into serious peril.

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.

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."

14. Similarly, it was held in ***Bunty Yadav v. State of H.P.,*** ***2022 SCC OnLine HP 4996,*** that even where the rigours of Section 37 of the NDPS Act are not applicable, the bail cannot be claimed as a matter of right. 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

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> a case where Section 37 of the NDPS Act is not applicable, the 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 into the fabric of society, putting the future generation as well as the prospects of future nation-building into serious peril."

15. The petitioner asserted in the petition that she was convicted in F.I.R. Nos. 313 of 2020, dated 29.09.2020, 348 of 2020, dated 15.10.2020, F.I.R. No. 78 of 2007, dated 18.02.2007, F.I.R. No. 103 of 2022, dated 05.08.2022 and F.I.R. No. 216 of 2020, dated 07.06.2020, and four other F.I.Rs are still pending against her. This shows that the petitioner has criminal antecedents. This Court exhaustively dealt with the relevance of criminal antecedents in ***Aminodin vs State of H.P. 2024: HHC: 6091*** and held, after referring to various judgments, that a Judge must consider the criminal antecedents of the accused, the nature of offences and his general conduct while considering the bail petition. The bail should not be generally granted to an accused having criminal antecedents when there is a likelihood of the commission of the crime.

16. It was held in ***V. Senthil Balaji v. Enforcement Directorate, 2024 SCC OnLine SC 2626,*** that where the petitioner

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can become a threat to society because of her criminal antecedents, he should not be released on bail. It was observed:

> "27.....An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary."

17. Similarly, it was held in ***Union of India v. Barakathullah, 2024 SCC OnLine SC 1019,*** that where the persons were involved in the commission of similar offences, they should not be released on bail. It was observed: -

> **"20.** ... So far as the respondents in the instant appeals are concerned, they are in custody for hardly one and a half years, apart from the fact that all the respondents are shown to have been involved in previous cases. There are about 8 to 9 previous cases shown in the chargesheet against the respondents, except accused Nos. 1, 4 and 6, who are shown to have been involved in two cases. Considering the nature and gravity of the alleged offences and considering their criminal antecedents, in our opinion High Court should not have taken a lenient view, more particularly when there was sufficient material to show their *prima facie* involvement in the alleged offences under the UAPA.

18. Therefore, the criminal antecedents of the petitioner would disentitle her from the concession of bail, especially when the F.I.R. registered against the petitioner relates to the commission of offences punishable under the NDPS Act, and the

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possibility of commission of a similar offence cannot be ruled out.

19. It was submitted that the co-accused has been released on bail, and the petitioner is entitled to be released on the principle of parity. This submission cannot be accepted. The status report shows that the co-accused had no criminal antecedents, and the petitioner, having criminal antecedents, cannot claim parity with her. Hence, the submission that the petitioner is entitled to be released on bail on the principle of parity cannot be accepted.

20. No other point was urged.

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

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

(Rakesh Kainthla)
Judge

27th August 2025
(ravinder)

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