2025:HHC:37590

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 2411 of 2025
Reserved on: 03.11.2025
Date of Decision: 07.11.2025.

Rakesh Kumar @ Rocky ...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 Umesh Kanwar, Advocate.

For the Respondent : Mr Prashant Sen, Deputy Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No. 15 of 2025, dated 21.01.2025, registered at Police Station Dharmshala, District Kangra, H.P., for the commission of an offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act.

2. It has been asserted that, as per the FIR, the police noticed the accused sitting in the car bearing registration No.

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

HP-86-1915 on 20.01.2025 at about 10 pm. The police searched the vehicle and recovered 9.5 grams of Heroin from the dashboard of the car. The quantity of Heroin stated to have been recovered from the petitioner's possession is less than a commercial quantity, and the rigours of Section 37 of the NDPS Act do not apply to the present case. The petitioner is a permanent resident of District Mandi, and there is no chance of his absconding. The petitioner is a drug addict and requires proper care and rehabilitation to get cured. FIR No. 33/2021, dated 01.03.2021, was registered against the petitioner, which is pending disposal. FIR No. 101/2015 dated 18.01.2015 was also registered against the petitioner, but he was acquitted by the learned Chief Judicial Magistrate, Kangra, at Dharmshala. Hence, the present petition.

3. The petition is opposed through a status report stating that the police party was on patrolling duty on 20.01.2025. They reached near the PWD Workshop at 10:20 PM and observed a parked car with its lights on, and the driver doing something. The police grew suspicious and approached the car. The driver attempted to start the vehicle after seeing the police. The police detained the driver and inquired about his name in the presence

of Rajinder Kumar. The driver identified himself as Rakesh Kumar @ Rocky (petitioner). The police inspected the vehicle and recovered a carry bag containing an electronic scale, a notebook, and a transparent pouch. Upon checking the pouch, they found 9.5 grams of Heroin. The police seized the Heroin and arrested the petitioner. The Heroin was sent to SFSL, and the report indicated the presence of Diacetylmorphine. Further investigation revealed the petitioner is a drug addict who had purchased 15 grams of Heroin in Amritsar (Punjab), consumed some of it, and was on his way to sell it when he was apprehended. FIR No. 33/21 is still pending against the petitioner. Hence, the status report.

4. I have heard Mr Umesh Kanwar, learned counsel for the petitioner and Mr Prashant Sen, learned Deputy Advocate General for the respondent/State.

5. Mr Umesh Kanwar, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The quantity of Heroin stated to have been recovered by the police is less than a commercial quantity, and the rigours of Section 37 of the NDPS Act do not apply to the present case. The

petitioner would abide by the terms and conditions which the Court may impose. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail. He relied upon the judgment of this Court in ***Birbal vs. State of H.P. Cr.MP(M) 789 of 2025 decided on 07.07.2025*** in support of his submission.

6. Mr Prashant Sen, learned Deputy Advocate General for the respondent/State, submitted that the petitioner was involved in the commission of a heinous offence. He would influence the witnesses and indulge in the commission of similar offences if released on bail. Therefore, 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 record 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)

> "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.]
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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 the 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, 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)

> **xxxxxxx**
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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)
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> "*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 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 police checked the vehicle in which the petitioner was sitting in the driver's seat. The police found a bag and recovered 9.5 grams of Heroin from it.

These allegations *prima facie* show the involvement of the petitioner in the commission of an offence punishable under Section 21(b) of the NDPS Act.

11. The petitioner was arrested on 21.01.2025. More than 9 months have elapsed since his arrest. The status report shows that the petitioner has been a drug addict for 10-12 years, which means that the petitioner is not a drug peddler and the apprehension expressed by the State that the petitioner would indulge in the commission of a similar offence is without any basis.

12. The police have filed the charge sheet, and the matter is listed before the learned Trial Court for recording the statements of prosecution witnesses, which means that the presence of the petitioner is no longer required, and no fruitful purpose would be served by detaining the petitioner in custody.

13. It was submitted that the petitioner would influence the witnesses and indulge in the commission of a similar offence in case of his release on bail. This apprehension can be removed by imposing a condition, and it is not sufficient to deny bail to the petitioner.

14. As per the prosecution's case, the petitioner was found in possession of 9.5 grams of Heroin. If the principle of proportionality is applied, the petitioner has undergone a substantial part of imprisonment, which can be awarded to him in the event of his conviction and his further detention in custody is not justified.

15. It was submitted that an F.I.R. is pending against the petitioner, and the petitioner should not be released on bail, because of the criminal antecedents. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Ayub Khan v. State of Rajasthan, 2024 SCC OnLine SC 3763: 2024: INSC:994*** that the criminal antecedents may not be a reason to deny bail to the accused in case of his long incarceration. It was observed:

> **"10.** The presence of the antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by him. In a given case, if the accused makes out a strong *prima facie* case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to deny bail. There may be a case where a Court can grant bail only on the grounds of long incarceration. The presence of antecedents may not be relevant in such a case. In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the

peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents."

16. Since, in the present case, the petitioner has undergone long incarceration, therefore, his criminal antecedents are not sufficient to deny him bail.

17. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail in the present case, 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 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 concerned Police Station and the 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, Lala Lajpat Rai District & Air Correctional Home, Dharmshala, District Kangra, H.P., and the learned Trial Court by FASTER.

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

(Rakesh Kainthla)
Judge

7th November, 2025.
(Nikita)

CHANDER SHEKHAR
Digitally signed by CHANDER SHEKHAR
Date: 2025.11.07 19:56:08 +0530