

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1706 of 2025

Reserved on: 23.07.2025

Date of Decision: 29.07.2025

Mahesh Thakur

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner : Mr. Peeyush Verma, Senior Advocate, with Mr. Anuj Bali, Advocate.

For the Respondent/State: Mr. Jitender Sharma, Additional Advocate General, with HC Vinod Kumar, No.959, IO PS New Shimla, present with police record.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No.19 of 2025, dated 08.07.2025, registered for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the ND&PS Act') at Police Station New Shimla, District Shimla, H.P.

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

2. It has been asserted that the petitioner is a resident of Thakur Niwas, Lower Cemetery, Sanjauli. As per the prosecution, the police had recovered the narcotics from the house of the co-accused. There is nothing to connect the petitioner to the house from where the recovery was effected. The petitioner is innocent, and he was falsely implicated. He would abide by 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 08.07.2025. The police received a secret information at 04:45 pm that Atul Bohra and his friend were selling heroin from their house. In case of a 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 Supervisory Officer. The police associated Anil Kaundal and went to the house where Atul Bohra was present. He also called Mahesh Thakur (the present petitioner). The police searched the house and recovered the burnt currency note of ₹10/- kept under the mattress. The police also found a pouch containing 45.350 grams of heroin. A bundle of currency notes worth ₹44,000/- was also recovered. The police arrested Atul Bohra and the petitioner. An FIR No.51/20 is already

registered against the petitioner. The substance was sent to FSL, and the report is awaited. The petitioner and the co-accused revealed during the interrogation that they were heroin addicts. They used to purchase the heroin from one Gopi. However, no person by the name of Gopi could be found. The petitioner was found in possession of heroin and would indulge in the commission of a similar offence in case of his release on bail. Hence, the status report.

4. I have heard Mr. Peeyush Verma, learned Senior Counsel, assisted by Mr. Anuj Bali, learned counsel for the petitioner and Mr. Jitender Sharma, learned Additional Advocate General for the respondent/State.

5. Mr. Peeyush Verma, learned Senior Counsel for the petitioner, submitted that as per the prosecution case, the recovery was effected from the house owned by the co-accused. The substance was kept beneath the mattress. The petitioner was only a casual visitor, and he had not been connected to the commission of crime. Hence, he prayed that the present petition be allowed and the petitioner be released on bail. He relied upon

the judgment of this Court in *Shubham Bitalu Vs. State of Himachal Pradesh 2020 STPL 4980 HP*, in support of his submission.

6. Mr. Jitender Sharma, learned Additional Advocate General, submitted that the police had recovered burnt currency notes of ₹10/- used for the consumption of heroin. The police had taken the blood samples of the petitioner and the co-accused, which were sent to FSL for analysis. The result is still awaited. The petitioner has criminal antecedents. The petitioner and the co-accused named Gopi as a supplier of the heroin. The police could not locate Gopi and are trying to locate the supplier; 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 records carefully.

8. The parameters for granting bail were considered by the Hon'ble Supreme Court in *Ajwar v. Waseem (2024) 10 SCC 768: 2024 SCC OnLine SC 974*, wherein it was observed at page 783: -

“Relevant parameters for granting bail

26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal

antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [Refer: *Chaman Lal v. State of U.P.* [*Chaman Lal v. State of U.P.*, (2004) 7 SCC 525: 2004 SCC (Cri) 1974]; *Kalyan Chandra Sarkar v. Rajesh Ranjan* [*Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977]; *Masroor v. State of U.P.* [*Masroor v. State of U.P.*, (2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368]; *Prasanta Kumar Sarkar v. Ashis Chatterjee* [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765]; *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527]; *Anil Kumar Yadav v. State (NCT of Delhi)* [*Anil Kumar Yadav v. State (NCT of Delhi)*, (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425]; *Mahipal v. Rajesh Kumar* [*Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] .]

9. This position was reiterated in *Ramratan v. State of M.P.*, 2024 SCC OnLine SC 3068, wherein it was observed as under: -

“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 Maharashtra* (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 herein below:

“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 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, and 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 bail application 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 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)

10. This position was reiterated in *Shabeen Ahmed versus State of U.P.*, 2025 SCC Online SC 479.

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

12. As per the status report, pouch and bundles of currency notes were kept beneath the mattress inside the room of the co-accused. There is nothing to connect the petitioner with the commission of the crime except his visit to the house. It was laid down by this Court in *Shubham Bitalu (supra)* that a casual visitor to the home cannot, *prima facie*, be attributed with the knowledge

of the presence of narcotics kept inside the house. It was observed:-

“7. The case of the State is that the quantity recovered is a commercial quantity. Without going into the said controversy, in the present case more important question for the purpose of deciding the present bail petition is that whether the petitioners, who were visitors to the home of the main accused, from whose home, the Police had recovered the contraband, had the initial knowledge and awareness of the drugs being kept in the said house? The Police had conducted the search of the house on the basis of a complaint of a neighbour, who apprised the Police that the house is a den of drugs. However, he did not name the present petitioners as the regular visitors or members of the drug mafia. The Police either did not conduct any investigation to connect them as members of the mafia, or the incriminating material did not come up in the investigation against the petitioners. Thus, mere presence in the house, without other evidence implicating them, or pointing out that they were regular visitors to the said house, would entitle the petitioners to a grant of bail, subject to the stringent conditions, as detailed in this order.”

13. A heavy reliance was placed upon the statement made by the petitioner and the co-accused that they had purchased the heroin for their self-consumption from one Gopi. No advantage can be derived from the statement made by the petitioner and the co-accused during the investigation. It was held in *Surinder Kumar Khanna vs Intelligence Officer Directorate of Revenue Intelligence* 2018 (8) SCC 271 that a confession made by a co-accused cannot be

taken as a substantive piece of evidence against another co-accused and can only be utilised to lend assurance to the other evidence. The Hon'ble Supreme Court subsequently held in *Tofan Singh Versus State of Tamil Nadu 2021 (4) SCC 1* that a confession made to a police officer during the investigation is hit by Section 25 of the Indian Evidence Act and is not saved by the provisions of Section 67 of the NDPS Act. Therefore, no advantage can be derived by the prosecution from the confessional statement made by the co-accused implicating the petitioner.

14. A similar situation arose before this Court in *Dinesh Kumar @ Billa Versus State of H.P. 2020 Cri. L.J. 4564*, and it was held that a confession of the co-accused and the phone calls are not sufficient to deny bail to a person.

15. It was laid down by this Court in *Saina Devi v. State of H.P., 2022 SCC OnLine HP 1627* that where the police have no material except the call details record and the disclosure statement of the co-accused, the petitioner cannot be kept in custody. It was observed: -

16. In the facts of the instant case also the prosecution, for implicating the petitioner, relies upon firstly the confessional statement made by accused Dabe Ram and secondly the CDR details of calls exchanged between the

petitioner and the wife of co-accused Dabe Ram. Taking into consideration the evidence with respect to the availability of CDR details involving the phone number of the petitioner and the mobile phone number of the wife of co-accused Dabe Ram, this Court had considered the existence of a prima facie case against the petitioner and had rejected the bail application as not satisfying the conditions of Section 37 of NDPS Act.

17. Since, the existence of CDR details of accused person(s) has not been considered as a circumstance sufficient to hold prima facie case against the accused person(s), in *Pallulabid Ahmad's case* (supra), this Court is of the view that petitioner has made out a case for maintainability of his successive bail application as also for grant of bail in his favour.

18. Except for the existence of CDRs and the disclosure statement of the co-accused, no other material appears to have been collected against the petitioner. The disclosure made by the co-accused cannot be read against the petitioner as per the mandate of the Hon'ble Supreme Court in *Tofan Singh v. State of Tamil Nadu (2021) 4 SCC 1*. Further, on the basis of the aforesaid elucidation petitioner is also entitled to the benefit of bail.

16. A similar view was taken by this Court in *Dabe Ram vs. State of H.P., Cr.MP(M) No. 1894 of 2023, decided on 01.09.2023, Parvesh Saini vs State of H.P., Cr.MP(M) No. 2355 of 2023, decided on 06.10.2023 and Relu Ram vs. State of H.P. Cr.MP(M) No. 1061 of 2023, decided on 15.05.2023.*

17. It was submitted that the police have sent the blood sample to the FSL, and the same is likely to indicate the presence of heroin. It is difficult to appreciate this submission. A person

cannot be detained in custody based on the assumption that some incriminating substance would be found against him. The police have to connect the person with the commission of a crime before his detention can be justified; therefore, it is impermissible to detain the petitioner in custody on the presumption that the blood sample is likely to indicate the presence of heroin.

18. It was submitted that the petitioner has criminal antecedents and he should not be released on bail. The criminal antecedents would have been relevant, had the prosecution succeeded in making a *prima facie* case against the petitioner. As already stated, no *prima facie* is made out against the petitioner, and the petitioner cannot be detained in custody based on mere criminal antecedents.

19. 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 of the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following terms and 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 in case a charge sheet is presented against him 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, 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.*

20. 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.

21. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, District Jail Shimla (Kaithu), H.P. and the learned Trial Court by **FASTER**.

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

29th July 2025 (Shamsh Tabrez)