

(2025) 11 SHI CK 0007

Himachal Pradesh HC

Case No: Criminal Miscellaneous Petition (M) No. 2497 Of 2025

Ashwin Kumar

APPELLANT

Vs

State Of Himachal
Pradesh

RESPONDENT

Date of Decision: Nov. 18, 2025

Acts Referred:

- Constitution Of India, 1950-Article 21
- Narcotic Drugs And Psychotropic Substances Act, 1985-Section 21, 29, 37, 67
- Evidence Act, 1872-Section 25

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Rahul, Ajit Sharma

Final Decision: Allowed

Judgement

Rakesh Kainthla, J

1. The petitioner has filed the present petition for seeking regular bail in FIR No. 48 of 2025, dated 15.6.2025, registered at Police Station, East, District Shimla, H.P., for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act).

2. It has been asserted that, as per the prosecution, the police recovered 11 grams of heroin from Ashwani Kumar, who is a co-accused in the present case. The petitioner is innocent, and he was falsely implicated. The co-accused has been released on bail. No recovery is to be effected from the petitioner. The petitioner would abide by the terms and conditions that the Court may impose. Hence, the bail petition.

3. The petition is opposed by filing a status report asserting that the police party was on patrolling duty on 15.6.2025. They received a secret information at 4.00 PM that Ashwani Kumar alias Happy was residing as a tenant in Room No. 104, he was selling heroin with Ashwin Kumar (present petitioner), and a huge quantity of heroin could be recovered during the search of the home. The information was reduced to writing and sent to the Supervisory Officer. The police associated Mukul Kumar and proceeded to the house. The petitioner and the co-accused were

found in the room. They identified themselves as Ashwani Kumar alias Happy and Ashwin Kumar. The police searched the room and recovered one electronic weighing scale, three syringes and burnt currency notes of ₹10 and 20 and one leather pouch. The police opened the leather pouch and found a transparent pouch containing 11 grams of heroin. The police seized the articles and arrested the petitioner and co-accused. The heroin was sent to the FSL and was confirmed to be the sample of diacetylmorphine (Heroin). The investigation was completed, and the charge sheet was filed on 12.8.2025. The petitioner was involved in the commission of a similar offence in the past. FIR Nos. 57 of 2013, 65 of 2021, 2 of 2024 and 110 of 2019 were registered against the petitioner. The petitioner has criminal antecedents, and he would indulge in the commission of similar offences in case of his release on bail. Hence, the status report.

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

5. Mr. Rahul, 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 found in the room is less than a commercial quantity. The petitioner was a casual visitor to the room, and he did not know about the contraband. The rigours of Section 37 of the NDPS Act do not apply to the present case, and the petitioner would abide by the terms and conditions that the Court may impose. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Ajit Sharma, learned Deputy Advocate General, for the respondent-State, submitted that the petitioner was involved in the commission of a similar offence in the past. He would indulge in the commission of a similar 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. 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

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.

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.]

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 ex-tracted 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 cir-cumstances 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, calls for 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 con-textual 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 con-sidered by itself, cannot be a guiding factor in the matter of the grant of bail, 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, how-ever, 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 justi-fying 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 reject-ing 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 prin-ciples laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circum-stances, 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 re-leased 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 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. As per the status report, the police received a secret information that Ashwani Kumar, resident of Room No. 104, was selling heroin in his room. The police went to the house where the petitioner and the co-accused were present. The co-accused disclosed his name as Ashwani Kumar alias Happy, resident of Village Khatkhar, Post Office Tikkari Mihansa, Tehsil Bhoranj, District Hamirpur, HP and tenant of House No. 104, Village Shakrala, Post Office Malyana, Tehsil and District Shimla, H.P. The petitioner identified himself as Ashwin Kumar, son of Bhupender Kumar, resident of Raj Niwas, Flat No.2, BCS, Shimla. Therefore, *prima facie*, the plea of the petitioner that he was a casual visitor of the house of the co-accused has to be accepted as correct. It was laid down by this Court in *Shubham Bitalu v. State of Himachal Pradesh* 2020 STPL 4980 HP 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 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."

11. A heavy reliance was placed upon the fact that the petitioner and the co-accused disclosed during the interrogation that they had purchased heroin from an unknown person for ₹24,000/-. They had consumed it on the way to Shimla and in the room of Ashwani Kumar. This submission will not help the State. 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.

12. 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 was not sufficient to deny bail to a person.

13. 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.

14. It was submitted that the petitioner has criminal antecedents and he should not be released on bail. This submission will not help the State. 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.

15. 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.

16. 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.

17. 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.

18. 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.