

(2025) 12 SHI CK 0019

Himachal Pradesh HC

Case No: Criminal Miscellaneous Petition (M) No. 2592 Of 2025

Ram Prakash

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision: Dec. 20, 2025

Acts Referred:

- Constitution Of India, 1950-Article 20(3)
- Indian Forest Act, 1927-Section 32, 33, 41, 42
- Explosive Substances Act, 1908-Section 5
- Bharatiya Nyaya Sanhita, 2023-Section 132, 303(2), 304(2)
- Bharatiya Nagarik Suraksha Sanhita, 2023-Section 482
- Code Of Criminal Procedure, 1973-Section 438, 438(1), 438(2)(i)
- Evidence Act, 1872-Section 27

Hon'ble Judges: Virender Singh, J

Bench: Single Bench

Advocate: Nand Lal Thakur, Udayanand Sharma, H.S. Rawat, Tejasvi Sharma, Rohit Sharma

Final Decision: Disposed Of

Judgement

Virender Singh, J

1. Applicant Ram Prakash, apprehending his arrest, in a case arising out of FIR No.171 of 2025, dated 24.10.2025, registered, under Sections 32, 33, 41, 42 of the Indian Forest Act, Section 5 of the Explosive Substance Act and Sections 303(2), 304(2), 132 of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as BNS), with Police Station, Bhuntar, District Kullu, H.P., has filed the present application, under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as BNSS).

2. By way of the present application, indulgence of this Court has been sought to direct the Police/ Investigating Officer of Police Station Bhuntar, District Kullu, H.P., to release him on bail, in the event of his arrest, in the above noted case.
3. The relief, as claimed, in the application has been sought on the ground that the applicant is innocent and has falsely been implicated, in this case, by the Police.
4. According to the applicant, no recovery has been effected from his possession.
5. The applicant has further pleaded that he has no concern with the crime in question, for which, he has been named as accused in the present case. According to the applicant, he is having deep roots in the society.
6. The applicant has tried his luck by moving similar application before the Court of learned Additional Sessions Judge, Kullu, however, the said application has been dismissed on 30.10.2025.
7. Apart from this, learned counsel appearing for the applicant, has given certain undertakings, on behalf of the applicant, for which, the applicant is ready to abide by, in case, any direction is issued to the I.O./Police, under Section 482 BNSS.
8. On the basis of the above acts, a prayer has been made to allow the application.
9. When put to notice, the police has filed the status report, on 31.10.2025, disclosing therein, that on 24.10.2025, complainant Neeraj Sharma, moved a complaint to the police, mentioning therein, that on 24.10.2025, he, along with his team consisting of Forest Guard Ahilya Devi and two other Van Rakshak Mitter, reached at the house of Ram Prakash @ Palu (applicant) in village Ninu Nallah, Post Office Thela, Tehsil Bhuntar, District Kullu, in pursuance of the search warrant dated 24.10.2025. When they reached at Neenu Nallah, Pawan Kumar met them and disclosed that the said house is being constructed by his son Ram Prakash @ Pallu, upon which, the complainant apprised him about the search.
9. 2. After obtaining the consent of Pawan Kumar, the measurement of the timber, used in doors and windows was started. Thereafter, the documents were sought regarding the said wood, but no document could be produced.
- 9.3. After measurement, when the complainant reached at second floor, then, in one room, they found four boxes containing illegal crystal, which is forest wealth, for which also, no licence could be produced. The weight of the said crystal was found to be 34 kilograms. In one carton box, explosive substance was found.
- 9.4. After some time, when the complainant came out of the room, then, he noticed Palu and 2-3 other persons coming to the said room. After some time, Forest Guard Pappu Soni and Budhi Singh Forest Guard and Forest Mitter, disclosed to the complainant that in order to cause harm, the above persons have lifted bricks. They also snatched the boxes containing explosive substance and ran towards down side. One person Ram Prakash @ Palu was identified by those persons.

10. On the basis of the above facts, the complainant has prayed that action be taken against the above said persons.

11. On the basis of the above facts, the police registered the case and criminal machinery swung into motion.

12. During investigation, 34 kilograms crystal contained in four sacks, was produced before ASI Balraj, which was taken into possession. On 20.10.2025, case bearing FIR No.169 of 2025, dated 20.10.2025, was registered against applicant Ram Prakash @ Palu, as, he had a scuffle with Forest Guard Pappu Soni, while he was on duty. During investigation of this case, the applicant was searched for, but he was not found.

13. Considering the said status report, interim protection was granted to the applicant and the matter was adjourned to 07.11.2025.

14. On 07.11.2025, the police has filed supplementary status report, disclosing therein, that the applicant, has not joined the investigation.

15. In the status report filed on 14.11.2025, it has been mentioned that the applicant has joined the investigation on and after 08.11.2025. He has produced the bills regarding the crystal recovered from the under construction house. The said bills were taken into possession. Despite repeated inquiry about the co-accused, as well as, about the boxes containing explosive substance, the applicant is not disclosing anything.

16. During investigation, the applicant has also disclosed that the bills regarding the timber, used for windows and doors has been produced by his wife to Shri Neeraj Sharma, Forest Range Officer. When Forest Range Officer Neeraj Sharma was contacted, he has disclosed that the measurement of the timber, used in the doors and windows of the under construction house of the applicant, has not yet been completed.

17. In the status report, which has subsequently been filed, a stand has been taken that the applicant was associated, in the investigation, however, nothing has been disclosed by him, about the other co-accused.

18. In the status report filed on 15.12.2025, a stand has been taken that the applicant is not cooperating with the investigation and also not disclosing anything about the boxes containing explosive substance.

19. On the basis of the above facts, a prayer has been made to dismiss the application.

20. As per the stand, taken by the police, the applicant has joined the investigation and he has also been associated in the investigation. However, according to the police, he is not cooperating with the investigation and also not disclosing anything about the boxes containing explosive substance.

21. Merely, the protection, not to take any coercive action, does not preclude the police to get the recovery effected from the applicant as, in view of the decision of the Honble Supreme Court in Gurbaksh Singh Sibbia & Others versus State of Punjab, (1980) 2 Supreme Court Cases 565, a person, having the protection under Section 438 Cr.PC (482 of the BNS), is deemed to have surrendered himself, if a discovery is to be made. Relevant paragraph 43 of the judgment, is reproduced, as under:-

43. During the last couple of years this Court, while dealing with appeals against orders passed by various High Courts, has granted anticipatory bail to many a person by imposing conditions set out in Section 438(2)(i), (ii) and (iii). The Court has, in addition, directed in most of those cases that (a) the applicant should surrender himself to the police for a brief period if a discovery is to be made under Section 27 of the Evidence Act or that he should be deemed to have surrendered himself if such a discovery is to be made. In certain exceptional cases, the Court has, in view of the material placed before it, directed that the order of anticipatory bail will remain in operation only for a week or so until after the filing of the F.I.R. in respect of matters covered by the order. These orders, on the whole, have worked satisfactorily, causing the least inconvenience to the individuals concerned and least interference with the investigational rights of the police. The Court has attempted through those orders to strike a balance between the individual's right to personal freedom and the investigational rights of the police. The appellants who were refused anticipatory bail by various courts have long since been released by this Court under Section 438(1) of the Code.

22. Similar view has again reiterated by Honble Supreme Court in Sushila Aggarwal and others versus State (NCT of Delhi) and another, (2020) 5 Supreme Court Cases 1. Relevant paragraph 92.8 is reproduced as under:-

92.8. The observations in Sibbia regarding limited custody or deemed custody to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia (supra) had observed that

19...if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of H.P. v. Deoman Upadhyaya.

23. In the status report, the prayer, as made in the bail application, has been opposed mainly on the ground that applicant is not cooperating with the

investigation and also not disclosing anything about the box containing explosive substance. The alleged refusal/non-cooperation of the applicant, to the considered opinion of this Court, can not be made the basis for dismissal of the application, since no one can be compelled to be the witness against himself, as the same is violative of Article 20(3) of the Constitution of India.

24. If the facts and circumstances of the present case are seen in the light of the decision of the Honble Supreme Court in Tusharbhairaj Rajnikantbhairaj Shah versus Kamal Dayani & Others, (2025) 1 Supreme Court Cases 753, the applicant is entitled to the relief, as claimed, in the application. Relevant paragraph 43 of judgment, are reproduced, as under:-

43. We are of the firm opinion that non-cooperation by the accused is one matter and the accused refusing to confess to the crime is another. There would be no obligation upon the accused that on being interrogated, he must confess to the crime and only thereafter, would the Investigating Officer be satisfied that the accused has cooperated with the investigation. As a matter of fact, any confession made by the accused before a police officer is inadmissible in evidence and cannot even form a part of the record.

25. The applicant is permanent resident of District Kullu, as such, it cannot be apprehended that in case the interim order is made absolute, he may not be available for the trial.

26. The role attributed to the applicant would be proved during the trial and rejection of the bail would be nothing, but pre-trial punishment, which is prohibited under the law. The accused is presumed to be innocent unless proven guilty, by the competent Court of Law.

27. Considering the totality of circumstances, this Court is of the view that the interim protection, granted to the applicant, is required to be made absolute, as, no useful purpose would be served by dismissing the present application, which would result into the judicial custody of the applicant.

28. Considering all these facts, the interim order dated 31.10.2025, passed by this Court, is hereby made absolute. Therefore, it is ordered that the applicant be released on bail, in the event of his arrest, in case arising out of FIR No.171 of 2025, dated 24.10.2025, registered, under Sections 32, 33, 41, 42 of the Indian Forest Act, Section 5 of the Explosive Substance Act and Sections 303(2), 304(2), 132 of the BNS, with Police Station, Bhuntar, District Kullu, H.P., on his furnishing personal bond, in the sum of ₹50,000/-, with one surety of the like amount, to the satisfaction of the Investigating Officer.

29. This order, however, shall be subject to the following conditions :

a) That the applicant shall join the investigation of the case, as and when, called for, by the Investigating Officer, in accordance with law;

b) That the applicant shall not leave India, without prior permission of the Court;

c) That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person, acquainted with the facts of the case, so as to dissuade him/her from disclosing such facts to the Investigating Officer or the Court; and

d) That the applicant shall regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so seek exemption from appearance by filing appropriate application.

30. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present application.

31. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions, is found violated by the applicant.