



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr.MP(M) No. 266 of 2026**

**Reserved on: 17.03.2026**

**Date of Decision: 25.03.2026**

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Rajat Kumar

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

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*Coram*

*Hon'ble Mr Justice Rakesh Kainthla, Judge.*

*Whether approved for reporting?<sup>1</sup> No*

For the Petitioner : Mr. Ajay Kochhar, Sr. Advocate  
with M/s Bhairav Gupta and  
Vivek Sharma, Advocates.

For the Respondent/State : Mr Ajit Sharma, Deputy  
Advocate General.

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**Rakesh Kainthla, Judge**

The petitioner has filed the present petition for seeking regular bail in FIR No. 74 of 2025, dated 18.09.2025, registered at Police Station Kotkhai, District Shimla, H.P, for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'NDPS' Act).

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

2. It has been asserted that, as per the prosecution, the police were patrolling near Gumma Bazaar on 18.09.2025, when they received a secret information that heroin was being transported in a car bearing registration No. HP-55-0031. The police intercepted the vehicle at Baghi Ghati. Ravinder Thakur was driving the vehicle, the petitioner was occupying the front passenger's seat, and Sunny Baraik was occupying the rear seat. The police searched the vehicle after completing the formalities and recovered 45 grams of heroin from the rear pocket of the front passenger's seat. The police arrested the occupants and seized the heroin. The police have completed the investigation and filed the charge sheet before the Court. The allegations against the petitioner are false. He belongs to a respectable family and has roots in society. He would abide by the terms and conditions that the Court may impose. Hence, it is prayed that the present petition be allowed and the petitioner be released on bail.

3. The petition is opposed by filing a status report asserting that the police were patrolling on 18.09.2025 near Guma Bazaar. They received a secret information at about 2:20 am that a car bearing registration No. HP55-0031 was going from

Narkanda to Baghi, Sunny Baraik, Ravinder Thakur and Rajat Kumar were transporting heroin in the car, and a huge quantity of heroin could be recovered by searching the vehicle. The information was credible, and any delay in procuring the warrant would have led to the destruction of the heroin. Hence, the information was reduced into writing and was sent to Sub Divisional Police Officer (SDPO), Theog. The police set up a naka at Baghi Ghati and intercepted the vehicle bearing registration No. HP-55-0031. Another vehicle bearing registration No. HP-09C-3088 came to the spot from Ratnari. The driver identified himself as Sunny Rohata. The police joined him as an independent witness and enquired about the names of the occupants of the vehicle bearing registration No. HP-55-0031. The driver identified himself as Ravinder Thakur, the person sitting in the front seat identified himself as Rajat Kumar, and the person sitting in the rear seat identified himself as Sunny Baraik. The police searched the vehicle and recovered a bag kept in the seat cover of the front passenger's seat. The police checked the bag and found 45 grams of heroin. The police seized the heroin and arrested the occupants of the vehicle. The heroin was sent to SFSL, and as per the result, it was confirmed to be a

sample of Diacetylmorphine (heroin). No other FIR was registered against the petitioner. The police filed a charge sheet on 01.11.2025, and the matter is listed for service on 14.05.2026. Hence, the status report.

4. I have heard Mr Ajay Kochhar, learned Senior Advocate assisted by M/s Bhairav Gupta and Vivek Sharma, learned counsel for the petitioner, and Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State.

5. Mr Ajay Kochhar, learned Senior counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The quantity of heroin stated to have been recovered from the petitioner's possession is intermediate, and the rigours of Section 37 of the NDPS Act do not apply to the petitioner. The status report mentions that the petitioner is first time offender and he deserves a chance to reform himself. The status report further mentions that the heroin was meant for personal consumption and was not for sale to the public. The petitioner is a victim of the circumstances and should not be kept behind bars. 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 quantity of heroin recovered from the vehicle is huge and could not have been meant for self-consumption. The heroin is adversely affecting society and no leniency should be shown to the petitioner. 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 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, 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:*

- (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 released 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)*

**XXXXXXX**

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 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. Hon’ble Supreme Court held in *State of Rajasthan v. Balchand*, (1977) 4 SCC 308: 1977 SCC (Cri) 594: 1977 SCC OnLine SC 261 that the normal rule is bail and not jail, except where the gravity of the crime or the heinousness of the offence suggests otherwise. It was observed at page 308:

2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner

who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also, the heinousness of the crime....”

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

11. The status report mentions that the petitioner was occupying the front seat of the vehicle from which the recovery of 45 grams of heroin was effected. In *Madan Lal versus State of H.P. (2003) 7 SCC 465: 2003 SCC (Cri) 1664: 2003 SCC OnLineSC 874*, the contraband was recovered from a vehicle, and it was held that all the occupants of the vehicle would be in conscious possession of the contraband. It was observed:

“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.

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 to make the possession illicit, there must be conscious possession.

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.

22. The expression “possession” is a polymorphous term that assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in the *Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52]* to work out a completely logical and precise definition of “possession” uniformly applicable to all situations in the context of all statutes.

23. The word “conscious” means awareness of a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in *Gunwantlal v. State of M.P. [(1972) 2 SCC 194: 1972 SCC (Cri) 678: AIR 1972 SC 1756]*, possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.

25. The word “possession” means the legal right to possession (see *Heath v. Drown [(1972) 2 All ER 561: 1973 AC 498: (1972) 2 WLR 1306 (HL)]* ). In an interesting case, it was observed that where a person keeps his firearm in his mother's flat, which is safer than his own home, he must be considered to be in possession of the same. (See *Sullivan v. Earl of Caithness [(1976) 1 All ER 844: 1976 QB 966: (1976) 2 WLR 361 (QBD)]*.)

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

27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.”

12. Therefore, the prosecution’s version that the petitioner was found in possession of 45 grams of charas has to be *prima facie* accepted as correct.

13. The quantity of heroin stated to have been recovered from the petitioner’s possession is intermediate, and the rigours of Section 37 of the NDPS Act do not apply to the present case.

14. The status report mentions that the petitioner is a drug addict and had sought heroin for his consumption. Thus, there is a force in the submission of Mr Ajay Kochhar, learned Senior Counsel for the petitioner, that the petitioner is a victim of the circumstances and not a drug peddler. The status report also mentions that the petitioner does not have any criminal antecedents, and he deserves a chance to reform himself. Keeping the petitioner behind bars would prevent his reformation, as he would come in contact with hardened criminals.

15. The petitioner claims that he is a permanent resident of District Shimla. This was not stated to be incorrect in the status report. Hence, the petitioner has roots in society, and he is not likely to abscond in case of his release on bail.

16. 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 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 on each and every hearing 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 concerned, 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.

17. 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.

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

19. 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**

**25<sup>th</sup> March, 2026**  
(Nikita)