



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1228 of 2026

Reserved on: 10.08.2026

Decided on: 11.08.2026

Shakti Sharma

.... Petitioner

Versus

State of HP

.... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner : Mr Vaibhav Sharma, Advocate.

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

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 95 of 2026 dated 07.04.2026 registered at Police Station Sadar, District Mandi, H.P. for the commission of an offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act).

2. It has been asserted that the petitioner was travelling from Manali to Chandigarh in a bus bearing registration No. DD-

01Y-9603. The police checked the luggage of the passengers and recovered one bag kept beneath seat numbers 13 and 14. The bag does not belong to the petitioner. A false case was made against him. As per the prosecution, 890 grams of charas was recovered, which is an intermediate quantity. The police had not associated any passengers who were sitting on seat number 14 or the passengers sitting in the front or the rear of the petitioner's seat. The police only joined the driver and conductor with the investigation. The petitioner belongs to a reputed family and FIR No. 253 of 2025 was registered against him for the commission of an offence punishable under Section 20 of the NDPS Act for the recovery of 30 grams of cannabis, which is pending trial. The Police have completed the investigation, and no fruitful purpose would be served by detaining the petitioner in custody. Hence, it was 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 had set up a nakka on 07.04.2026 at Bindravani. They stopped a bus bearing registration No. DD-01Y-9603 at 03:15 p.m. The police checked the passengers in the presence of driver Deepak Kumar and conductor Ghanshyam. The

petitioner was trying to conceal something kept beneath his seat. The police made enquiries from him, and he got frightened. The police checked the bag and found 890 grams of charas. The police seized the charas. The petitioner identified himself as Shakti Sharma. Charas was sent to the FSL, and as per the result of analysis, it was found to be an extract of cannabis and a sample of charas. An FIR No. 253 of 2025 has been registered against the petitioner. The matter is listed before the learned Trial Court on 16.10.2026 for recording the statements of prosecution witnesses. Hence the status report.

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

5. Mr Vaibhav Sharma, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The police had recovered the bag from public transport, and there is no material to connect the petitioner to the commission of the crime. Recovery of the bag from public transport without anything more does not show the petitioner's conscious possession. The police have completed the investigation and filed

the charge sheet before the Court. No fruitful purpose would be served by detaining the petitioner in custody. The registration of the FIR is not sufficient to show that the petitioner had committed the offence, and cannot be used to deny bail to the petitioner. Hence, he prayed that the present petition be allowed and the petitioner be released on bail. He relied upon the judgments in *Jai Singh vs. State of H.P.* 2025:HHC:12313, *Avtar Singh and others vs. State of Punjab* (2002) 7 SCC 419, *Prabhakar Tewari vs. State of Uttar Pradesh & another* (2020) 11 SCC 648, *Union of India vs. Md. Nawaz Khan* (2021) 10 SCC 100, *Vishwajeet Mandal versus State of H.P.* 2025:HHC:3182 and *Ayub Khan vs. State of Rajasthan* 2024:SCC Online SC 3763 in support of his submission.

6. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State submitted that the petitioner was trying to conceal the bag kept beneath his seat, which *prima facie* shows that he was in a position to exercise control over the bag and the contents of the bag. The registration of an FIR against the petitioner shows that he is likely to commit a similar offence in case of his release on bail. The quantity of charas stated to have been recovered from the petitioner's possession was huge and could not have been meant for self-consumption. The consumption of charas

is adversely affecting society and the petitioner should not be released 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 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)

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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 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 shows that the petitioner was occupying seat No. 13. He tried to conceal the bag kept beneath his seat with the help of his feet. These averments are to be *prima facie* considered to be correct, and they show that the petitioner was in a position to exercise control over the bag and the contents of the bag. It was laid down by the Hon'ble Supreme Court in *Md. Nawaz Khan* (supra) that when a person is in a position to exercise control over something, he is said to be in possession. It was observed:

“25. We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27-A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In *Madan Lal v. State of H.P.* [*Madan Lal v. State of H.P.*, (2003) 7 SCC 465; 2003 SCC (Cri) 1664] this Court held that: (SCC p. 472, paras 19-23 & 26)

“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 in order to make the possession illicit, there must be a 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 which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja* [*Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja*, (1979) 4 SCC 274: 1979 SCC (Cri) 1038] to work out a completely logical and precise definition of “possession” uniform[ly] applicable to all situations in the context of all statutes.

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

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

26. What amounts to “conscious possession” was also considered in *Dharampal Singh v. State of Punjab* [*Dharampal Singh v. State of Punjab*, (2010) 9 SCC 608: (2010) 3 SCC (Cri) 1431], where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in the case of a public



transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In *Mohan Lal v. State of Rajasthan* [*Mohan Lal v. State of Rajasthan*, (2015) 6 SCC 222: (2015) 3 SCC (Cri) 881], this Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.”

12. A heavy reliance was placed upon the judgment of Hon'ble Supreme Court in *Avtar Singh* (supra), but the said judgment does not apply to the present case. The Hon'ble Supreme Court found on facts that the silence and failure to explain the circumstances in which the accused were travelling in the vehicle at odd hours was a strong circumstance. However, no question was asked to them in their statements recorded under Section 313 of the CrPC about their possession, and failure to ask the question would make it difficult to apply the presumption under Section 114 of the Indian Evidence Act. Thus, it is apparent that the judgment turned on its own facts and the Hon'ble Supreme Court was pleased to acquit the accused because the learned Trial Court had failed to ask the relevant question regarding the possession of the accused. In the present case, the prosecution will get an opportunity to establish the circumstances showing the possession of the

petitioner, and the accused will get an opportunity to disprove those circumstances. However, the cited judgment cannot be applied to the present case at this stage.

13. It was submitted that the police had not joined the passengers of the bus as witnesses, which makes the prosecution's case suspicious. This submission cannot be accepted. The police was required to join two independent witnesses, and the police had joined the driver and conductor of the bus as witnesses. Thus, the prosecution's case cannot be *prima facie* doubted because of failure to join the passengers.

14. It was submitted that the quantity of charas stated to have been recovered from the possession of the petitioner is intermediate and the rigours of Section 37 of the NDPS Act do not apply to the present case. Therefore, the petitioner is entitled to bail. This submission is not acceptable. It was laid down by this Court in *Khushi Ram Gupta v. State of H.P.*, 2022 SCC OnLine HP 3779, that the menace of drug addiction has seriously eroded into the fabric of society, and the release of an accused on bail in NDPS Act cases will send a negative signal to society. It was observed:

“8. The menace of drug addiction, especially in adolescents and students, has seriously eroded into the fabric of society,



putting the future generation as well as the prospects of future nation-building into serious peril.

9. It is not a case where the investigating agency is clueless in respect of evidence against the petitioner. Though allegations against the petitioner are yet to be proved in accordance with the law, it cannot be taken singly as a factor to grant bail to the petitioner. Nothing has been placed on record on behalf of the petitioner to divulge as to how and in what manner he came in contact with the persons who were residents of the State of Himachal Pradesh. Thus, there is sufficient prima facie material to infer the implication of the petitioner in the crime. In such circumstances, the release of the petitioner on bail will send a negative signal in society, which will definitely be detrimental to its interests.

10. The prima facie involvement of the petitioner in the dangerous trade of contraband cannot be ignored merely on account of the fact that he has no past criminal history. It cannot be guaranteed that there will be re-indulgence by the petitioner in similar activities, in case he is released on bail.”

15. Similarly, it was held in *Bunty Yadav v. State of H.P., 2022 SCC OnLine HP 4996*, that bail cannot be claimed as a matter of right even though the rigours of Section 37 of the NDPS Act do not apply to a case. Each case has to be adjudged on its own facts. It was observed:

“6. The quantity involved in the case is 89.89 grams of heroin and 3.90 grams of MDMA. Such quantity may not technically fall under the category of commercial quantity; nevertheless, such quantity cannot be termed to be less by any stretch of the imagination. The evident nature of commercial transactions and dealing with the contraband aggravates the situation for the petitioner. In a case where Section 37 of the NDPS Act is not applicable, bail cannot be



claimed as a matter of right. The fate depends on the facts of each and every case.

7. The menace of drug addiction, especially in adolescents and students, has seriously eroded into the fabric of society, putting the future generation as well as the prospects of future nation-building into serious peril.”

16. It was laid down by the Hon’ble Supreme Court in *Union of India v Namdeo Ashruba Nakade SLP (Crl.) 9792/2025, decided on 07.11.2025*, that there is a concerning increase in drug abuse amongst the youth. It was observed: -

8. This Court is of the view that the issue of substance abuse has emerged as a global public health crisis in the twenty-first century, affecting every country worldwide, as drug trafficking and addiction have become pervasive. The United Nations Office on Drugs and Crime (UNODC) reported in its 2025 World Drug Report that “As at 2023, some 316 million people worldwide had used drugs in the past year, representing an increase over the past decade that outpaces population growth, which indicates a higher prevalence of drug use.”

9. In India, there has been a concerning increase in drug abuse among the youth. Substance abuse not only affects individuals, families, and communities but also undermines various aspects of health, including physical, social, political, and cultural foundations, and mental well-being. (See: “Bhattacharya S, Menon GS, Garg S, Grover A, Saleem SM, Kushwaha P. The lingering menace of drug abuse among the Indian youth—it’s time for action. *Indian J Community Med* 2025;50: S9-12, published on 17th April, 2025”)

10. According to many news reports, India faces a clear dilemma between tackling the narcotics crisis systematically or sacrificing its most valuable resource, i.e. its young people. The extent of menace of drug abuse has also been highlighted by this Court in the case of *Ankush Vipin Kapoor*



v. *National Investigation Agency*, (2025) 5 SCC 155, wherein this Court has observed as under:

“9.1 The ills of drug abuse seem to be shadowing the length and breadth of our country, with the Central and every State Government fighting against the menace of substance abuse. The debilitating impact of the drug trade and drug abuse is an immediate and serious concern for India. As the globe grapples with the menace of escalating substance use disorders (“SUD”) and an ever-accessible drug market, the consequences leave a generational Page 75 of 84 imprint on public health and even national security. Article 47 of the Constitution makes it a duty of the State to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties, and in particular, the State shall endeavour to bring about the prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health. The State has a responsibility to address the root causes of this predicament and develop effective intervention strategies to ensure that India’s younger population, which is particularly vulnerable to substance abuse, is protected and saved from such a menace. This is particularly because substance abuse is linked to social problems and can contribute to child maltreatment, spousal violence, and even property crime in a family.”

17. Hence, the petitioner cannot be released on bail simply because the rigours of Section 37 of the NDPS Act do not apply to his case.

18. The status report shows that an FIR under 253 of 2025 has been registered against the petitioner for the commission of an



offence punishable under Section 20 of the NDPS Act. This shows that the petitioner has criminal antecedents. It was held in *State of Maharashtra v. Sitaram Popat Vetal*, (2004) 7 SCC 521: 2004 SCC (Cri) 1971: 2004 SCC OnLine SC 932 that antecedents of the petitioner cannot be ignored while considering his bail application. It was held at page 524:

“9. The High Court has lightly brushed aside the factum of recovery of the weapons and identification at the test identification parade. Its conclusion that political rivalry has a double-edged effect was based on surmises without any material before it to show that a false case had been foisted because of political rivalry. Further, the antecedents of the present respondents, though noticed, were also lightly brushed aside on the ground that they were not of the recent past. Even though criminal antecedents are not always determinative of the question whether bail is to be granted, yet their relevance cannot be totally ignored. It was submitted that the accused Sitaram Vetal is not appearing in court on the date fixed. If that is really so, it is open to the trial court to take such action as is available to be taken in law.”

19. In *Neeru Yadav vs. State of U.P.* (2015) 16 SCC 422, many FIRs were registered against the accused. The bail was granted to him by the High Court. Hon’ble Supreme Court held that keeping in view the criminal history of the accused, he was not entitled to bail. It was observed:

“9. On a perusal of the aforesaid list, it is quite vivid that respondent no.2 has a history and is involved in heinous



offences. Having stated the facts and noting the nature of involvement of the accused in the crimes in question, there can be no scintilla of doubt to name him a “history-sheeter”

.....

15. This being the position of law, it is clear as the cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. *A history-sheeter involved in the nature of crimes which we have reproduced hereinabove is not a minor offence so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of the imagination, can be regarded as jejune.* Such cases do create thunder and lightning, having the effect potentiality of torrential rain in an analytical mind. *The law expects the judiciary to be alert while admitting these kinds of accused persons to be at large and, therefore, the emphasis is on the exercise of discretion judiciously and not in a whimsical manner.*

20. Hon’ble Supreme Court held in *State of Bihar Versus Rajballav Prasad* (2017) 2 SCC 178, that when the petitioner was involved in the commission of similar offences, it was a relevant consideration. It was held in *Dataram Singh vs. State of U.P.* (2018) 3 SCC 22 that while granting bail, a judge must consider whether the accused is a first-time offender or has been accused of other offences and, if so, the nature of such offences and his or her general conduct.

21. The law regarding the relevance of the criminal history of the accused while considering the bail application was

considered by this Court exhaustively in *Prem Singh vs. State of H.P.*

2020 (1) *Shim. L.C. 476*, wherein it was observed:

“9. In *Ravinder Singh @ Ravi Pavar v. State of Gujarat*, (2013) 12 SCC 446, the Supreme Court observed,

"24. In para 5 of the rejoinder affidavit, the State has highlighted that A-2 is a "habitual offender" and there are 22 cases pending against him in various police stations. It is also mentioned in the counter affidavit that during the period while he was granted temporary bail by the High Court, he indulged in an offence of theft and a case was registered against him vide I-C.R. No. 92 of 2011 under Section 379 of IPC by the Vasad Police Station for which he was arrested on 10.08.2011 and later enlarged on bail. It is also brought to our notice that respondent A-2, while on regular bail, was arrested on 13.09.2012 in Vadodara city in connection with Javaharnagar Police Station crime registered vide I-C.R. No. 94 of 2012 under Sections 407, 408 and 120B and later on he was released on bail.

25. Taking note of all these aspects, his antecedents, the gravity and nature of the offence, loss of human lives, the impact on the social fabric of the society, and his continuous involvement in criminal activities while on bail, we are satisfied that respondent (A-2) does not deserve to continue to remain on bail."

10. In *State of Maharashtra v. Pappu @ Suresh Budharmal Kalani*, (2014) 11 SCC 244, the Supreme Court holds,

"14. It is not in dispute that in spite of being acquitted in some of the cases, still there are 15 cases in which a trial is pending against the respondent, out of which two cases are under Sections 302 read with 120B, IPC. In the present case also, initially, along with charges under Sections 302/120B, IPC, offences punishable under TADA were also charged against the respondent, but later on, the TADA charges were withdrawn. Though we are not inclined to



go into the matter in detail at present to interfere in the order passed by the High Court, taking into consideration the peculiar facts and circumstances of the case, we are inclined to interfere and cancel the bail granted by the High Court."

11. In *Chandrakeshwar Prasad @ Chandu Babu v. State of Bihar*, (2016) 9 SCC 443, the Supreme Court holds,

"13. On a careful perusal of the records of the case and considering all the aspects of the matter in question and having regard to the proved charges in the concerned cases, and the charges pending adjudication against the respondent-accused and further balancing the considerations of individual liberty and societal interest as well as the prescriptions and the perception of law regarding bail, it appears to us that the High Court has erred in granting bail to the respondent accused without taking into consideration the overall facts otherwise having a bearing on the exercise of its discretion on the issue.

14. Judged on the entire conspectus of the attendant facts and circumstances and considering the stage of the present case before the trial court where the charge sheet has already been submitted, together with pending proceedings against the respondent-accused as of date, and his recorded antecedents in the various decisions of this Court, we are thus unable to sustain the impugned order of the High Court granting bail to him."

12. In *Neeru Yadav v. State of U.P.*, (2016) 15 SCC 422, the Supreme Court rejected the bail granted by the High Court, by holding as follows,

"9. On a perusal of the aforesaid list, it is quite vivid that respondent No. 2 is a history-sheeter and is involved in heinous offences. Having stated the facts and noting the nature of involvement of the accused in the crimes in question, there can be no scintilla of doubt to name him a "history-sheeter". The question, therefore, arises whether in these circumstances,



should the High Court have enlarged him on bail on the foundation of parity.

10. In *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598, it has been clearly laid down that the grant of bail though involves the exercise of the discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of crimes warrants more caution, as there is a greater chance of rejection of bail, though, however, dependent on the factual matrix of the matter. In the said case, reference was made to *Prahlad Singh Bhati v. NCT of Delhi*, (2001) 4 SCC 280, and thereafter the court proceeded to state the following principles: -

"(a) While granting bail, the court has to keep in mind not only the nature of the accusations but the severity of the punishment if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat to the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt, there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered, and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

11. It is a well-settled principle of law that while dealing with an application for a grant of bail, it is the duty of the Court to



take into consideration certain factors and they basically are, (i) the nature of the accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for the apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court in support of the charge. [See *Chaman Lal v. State of U.P.*, (2004) 7 SCC 525]

12. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496, while dealing with the court's role to interfere with the power of the High Court to grant bail to the accused, the Court observed that it is to be seen that the High Court has exercised this discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a catena of judgments on that point. The Court proceeded to enumerate the factors: -

"9. ... among other circumstances, the factors [which are] 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) the 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."



13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime, though committed against an individual, in all cases does not retain an individual character. It, on occasion and in certain offences, accentuates and causes harm to society. The victim may be an individual, but in the ultimate eventuate, it is society which is the victim. A crime, as is understood, creates a dent in the law-and-order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of society. An individual can enjoy his liberty, which is definitely of paramount value, but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back, eloquently spoke thus: -

"Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion, as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere, and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters [Alfred Howard, *The Beauties of Burke* (T. Davison, London) 109]."

22. In *Krishna @ Kiran Versus State of H.P. Cr. MP (Main) no. 2212 of 2019, decided on 06.01.2020*, this Court found that the petitioner was earlier involved in the possession of Ganja and was not held entitled to bail. The fact that the criminal antecedents of



the accused are relevant was also laid down in *Arnav Manoranjan Goswami Versus State of Maharashtra, AIR 2021 SC 1*, wherein it was held:

“57. While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors, which emerge from the precedents of this Court. These factors can be summarised as follows:

- (i) The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction;
- (ii) Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses;
- (iii) The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice;
- (iv) The antecedents of and circumstances which are peculiar to the accused;
- (v) Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR; and
- (vi) The significant interests of the public or the State and other similar considerations.

58. These principles have evolved over a period of time and emanate from the following (among other) decisions: *Prahlad Singh Bhati vs. NCT, Delhi*, (2001) 4 SCC 280; *Ram Govind Upadhyay vs. Sudarshan Singh*, (2002) 3 SCC 598; *State of UP vs. Amarmani Tripathi*, (2005) 8 SCC 21; *Prasanta Kumar Sarkar vs. Ashis Chatterjee*, (2010) 14 SCC 496; *Sanjay Chandra vs. CBI*, (2012) 1 SCC 40; and *P. Chidambaram vs. Central Bureau of Investigation* [Criminal Appeal No. 1605 of 2019 decided on 22 October 2019].

23. A similar view was taken in *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana*, (2021) 6 SCC 230: (2021) 2 SCC (Cri) 722: 2021 SCC OnLine SC 335, wherein it was held at page 250: -

“36. There is another aspect of this batch of cases which it is necessary to note. In the order of the High Court dated 22-10-2020 [*Siddhrajsinh Bhagubha Vaghela v. State of Gujarat*, 2020 SCC OnLine Guj 2985] granting bail to Sidhdhrajsinh (A-13), there was a reference to the submission of the Public Prosecutor to the criminal antecedents of A-13 bearing on previous FIRs registered against him in 2017 and 2019. This aspect bearing on the criminal antecedents of A-13 has not been considered in the reasons which have been adduced by the Single Judge. In *Ash Mohammad v. Shiv Raj Singh* [*Ash Mohammad v. Shiv Raj Singh*, (2012) 9 SCC 446: (2012) 3 SCC (Cri) 1172], this Court has held that criminal antecedents of the accused must be weighed for the purpose of granting bail. That apart, it is important to note that the ground on which A-13 was granted bail is that in the subsequent statement dated 3-6-2020, the overt act which was attributed in the FIR was found to be missing. Having said this, the learned Judge observed that the order shall not be treated as a precedent to claim bail on the basis of parity in any other case.

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40. However, having said that, in the case at hand, it is manifestly incorrect on the part of the High Court to have granted bail to Respondent 2/accused without taking into consideration the relevant facts and circumstances and appropriate evidence which proved that Respondent 2/accused has been charged with a serious offence.

41. Grant of bail to Respondent 2/accused only on the basis of parity shows that the impugned order passed by the High Court suffers from the vice of non-application of mind, rendering it unsustainable. The High Court has not taken into consideration the criminal history of Respondent



2/accused, the nature of the crime, material evidence available, involvement of Respondent 2/accused in the said crime and recovery of weapon from his possession.”

24. Similar is the judgment passed in *Sunil Kumar v. State of Bihar*, (2022) 3 SCC 245: (2022) 1 SCC (Cri) 603: 2022 SCC OnLine SC 88, wherein it was observed at page 252: -

“16. Even the High Court has also not at all considered the criminal antecedents of Respondent 2-accused. Though it was pointed out on behalf of the informant that the accused is involved in two cases and that the appellant (informant) was restrained from proceeding further in earlier cases pending against the accused, the High Court has simply brushed aside the same and has not considered the same at all. The High Court has noted the submission on behalf of the accused that one other accused — Shashi Bhushan Bhagat has been released on bail. However, the High Court has not at all considered whether the case of *Shashi Bhushan Bhagat* is similar to that of Respondent 2-accused Ramawatar Bhagat or not. It appears that the High Court has passed the order mechanically and in a most perfunctory manner.”

25. This position was reiterated in *Manoj Kumar Khokhar v. State of Rajasthan*, (2022) 3 SCC 501: 2022 SCC OnLine SC 30 at page 513, wherein it was observed: -

“25. Another factor which should guide the court's decision in deciding a bail application is the period of custody. However, as noted in *Ash Mohammad v. Shiv Raj Singh* [*Ash Mohammad v. Shiv Raj Singh*, (2012) 9 SCC 446: (2012) 3 SCC (Cri) 1172], the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the accused, if any. Further, the circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern



involved in releasing an accused, in juxtaposition to the individual liberty of the accused seeking bail.”

26. Similar is the judgment in *Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497: (2022) 2 SCC (Cri) 170: 2021 SCC OnLine SC 1280, wherein it was observed at page 505: -

“21. In *Gudikanti Narasimhulu [Gudikanti Narasimhulu v. Public Prosecutor, A.P. High Court, (1978) 1 SCC 240: 1978 SCC (Cri) 115]*, Krishna Iyer, J., while elaborating on the content and meaning of Article 21 of the Constitution of India, has also elaborated the factors that have to 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 also is pertinent. The punishment to which the party may be liable if convicted or conviction is confirmed also bears upon the issue.

8. Another relevant factor is as to 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*, (London) 1960, p. 75 — *Mod. Law Rev. ibid.*, 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.”

22. *Prahlad Singh Bhati v. State (NCT of Delhi)* [*Prahlad Singh Bhati v. State (NCT of Delhi)*, (2001) 4 SCC 280: 2001 SCC (Cri) 674] is a case wherein this Court proceeded to state the following principles which are to be considered while granting bail:

“4. ... (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt, there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered, and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.” (*Ram Govind Upadhyay case* [*Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598: 2002 SCC (Cri) 688], SCC p. 602, para 4)

23. This Court in *Ram Govind Upadhyay v. Sudarshan Singh* [*Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598: 2002 SCC (Cri) 688], speaking through Banerjee, J., observed as under: (SCC p. 602, para 3)



“3. Grant of bail though being a discretionary order — but, however, calls for the exercise of such 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, however, do always vary from case to case. While placement of the accused in society may be considered, that by itself cannot be a guiding factor in the matter of grant of bail, and the same should and ought always to 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.”

24. In *Kalyan Chandra Sarkar v. Rajesh Ranjan* [*Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977], this Court observed in para 11 as under : (SCC pp. 535-36)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.



(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh* [*Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598: 2002 SCC (Cri) 688] and *Puran v. Rambilas* [*Puran v. Rambilas*, (2001) 6 SCC 338: 2001 SCC (Cri) 1124])”

25. *Gobarbhai Naranbhai Singala v. State of Gujarat* [*Gobarbhai Naranbhai Singala v. State of Gujarat*, (2008) 3 SCC 775: (2008) 2 SCC (Cri) 743], is a case which concerns the cancellation of bail by this Court in a petition filed under Article 136 of the Constitution of India. In the said case reliance was placed on *Panchanan Mishra v. Digambar Mishra* [*Panchanan Mishra v. Digambar Mishra*, (2005) 3 SCC 143: 2005 SCC (Cri) 660] wherein in para 13 it was observed as under :(*Panchanan Mishra case* [*Panchanan Mishra v. Digambar Mishra*, (2005) 3 SCC 143: 2005 SCC (Cri) 660], SCC pp. 147-48)

“13. ... The object underlying the cancellation of bail is to protect a fair trial and secure justice being done to society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime ... It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation.”

26. Further on referring to the *State of U.P. v. Amarmani Tripathi* [*State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2)], this Court in *Gobarbhai Naranbhai Singala case* [*Gobarbhai Naranbhai Singala v. State of Gujarat*, (2008) 3 SCC 775 : (2008) 2 SCC (Cri) 743] noted the facts of the case therein to the effect that the respondent therein had



been named in ten other criminal cases in the last 25 years or so, out of which five cases were under Section 307 IPC for attempt to murder and another under Section 302 IPC for committing murder. That in most of the cases he was acquitted for want of sufficient evidence. Without saying anything further, this Court noted that the High Court in the said case completely ignored the general principle for grant of bail in a heinous crime of commission of murder in which the sentence, if convicted, is death or life imprisonment.

28. This Court in *Ash Mohammad v. Shiv Raj Singh* [*Ash Mohammad v. Shiv Raj Singh*, (2012) 9 SCC 446: (2012) 3 SCC (Cri) 1172], observed that though the period of custody is a relevant factor, the same has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents. That these are to be weighed in the scale of collective cry and desire and that societal concern has to be kept in view in juxtaposition to individual liberty, was underlined.

29. In *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2016) 15 SCC 422: (2016) 4 SCC (Cri) 647], after referring to a catena of judgments of this Court on the consideration of factors for grant of bail observed through Dipak Misra, J. (as His Lordship then was) in paras 15 and 18 as under : (SCC pp. 429-30)

“15. This being the position of law, it is clear as a cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove is not a minor offence so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create thunder and lightning, having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kinds of accused persons to be at large



and, therefore, the emphasis is on the exercise of discretion judiciously and not in a whimsical manner.

18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration, which include the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancing of the impugned order [*Budhpal v. State of U.P.*, 2014 SCC OnLine All 14815].”

30. In *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], this Court has spelt out some of the significant considerations which must be placed in the balance in deciding whether to grant bail : (SCC p. 138, para 17)

“17. While granting bail, the relevant considerations are (i) the nature of seriousness of the offence; (ii) the character of the evidence and circumstances which are peculiar to the accused; and (iii) the likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail; each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.”

27. It was observed in *Jaibunisha v. Meharban*, (2022) 5 SCC 465: 2022 SCC OnLine SC 58 that the period of custody has to be weighed with the criminal antecedent. It was observed at page 478:



“21.6. Another factor which should guide the court's decision in deciding a bail application is the period of custody. However, as noted in *Ash Mohammad v. Shiv Raj Singh* [*Ash Mohammad v. Shiv Raj Singh*, (2012) 9 SCC 446: (2012) 3 SCC (Cri) 1172], the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the accused, if any. Further, the circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern involved in releasing an accused, in juxtaposition to individual liberty of the accused seeking bail.”

28. It was held in *Bharwad Santoshbhai Sondabhai v. State of Gujarat*, 2023 SCC OnLine SC 1092 that bail cannot be granted to a person having criminal antecedents. It was observed:

“12. For the reasons noted above, we are of the firm opinion that respondent No. 2 was not entitled to any relief in the instant case. Respondent No. 2 had remained in custody for barely six months (23rd September 2021 to 18th February 2022) before he was released on bail in respect of a serious offence under Section 302 of the IPC. His antecedents also indicate his propensity towards committing crime. Accordingly, the impugned order dated 18th February 2022 is quashed and set aside, and respondent No. 2 is directed to surrender forthwith before the trial Court.”

29. It was held in *V. Senthil Balaji v. Enforcement Directorate*, 2024 SCC OnLine SC 2626, that where the petitioner can become a threat to society because of her criminal antecedents, he should not be released on bail. It was observed:

“27.....An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on

bail. The jurisdiction to issue prerogative writs is always discretionary.”

30. Similarly, it was held in *Union of India v. Barakathullah*, 2024 SCC OnLine SC 1019, that where the persons were involved in the commission of similar offences, they should not be released on bail. It was observed: –

“20. ... So far as the respondents in the instant appeals are concerned, they are in custody for hardly one and a half years, apart from the fact that all the respondents are shown to have been involved in previous cases. There are about 8 to 9 previous cases shown in the chargesheet against the respondents, except accused Nos. 1, 4 and 6, who are shown to have been involved in two cases. Considering the nature and gravity of the alleged offences and considering their criminal antecedents, in our opinion, the High Court should not have taken a lenient view, more particularly when there was sufficient material to show their *prima facie* involvement in the alleged offences under the UAPA.

31. It was held in *Zeba Khan v. State of U.P.*, 2026 SCC OnLine SC 188 that criminal antecedents constitute a significant factor in the exercise of judicial discretion while granting bail. It was observed:

28. In *Ash Mohammad v. Shiv Raj Singh @ Lalla Babu* (2012) 9 SCC 446, this Court underscored that criminal antecedents cannot be ignored, particularly where the nature of allegations and their societal impact are grave. The Court clarified that while a history-sheeter is not disentitled to bail as a rule, antecedents constitute a significant factor in the exercise of judicial discretion. The relevant passage reads as under:



“28. Coming to the nature of crime, it is perceivable that two persons came on a motorcycle and kidnapped Bihari Lal and kept him in confinement for eight days. The role of the accused is clearly stated. *It is apt to note that a history-sheeter has a recorded past. The High Court, in toto, has ignored the criminal antecedents of the accused. What has weighed with the High Court is that the accused had spent seven months in custody. That may be one of the factors, but that cannot be the whole and the sole factor in every case. It depends upon the nature of the offence, the manner in which it is committed and its impact on society. We may hasten to add that when we state that the accused is a history-sheeter, we may not be understood to have said that a history-sheeter is never entitled to bail. But it is a significant factor to be taken note of, regard being had to the nature of crime in respect of which he has been booked. In the case at hand, as the prosecution case unfolds, the accused did not want anyone to speak against his activities. He had sent two persons to kidnap Bihari Lal, who remained in confinement for eight days. The victim was tortured. Kidnapping, as an offence, is on the increase throughout the country. Sometimes it is dealt with formidable skill and sometimes with terror and sometimes with threat or brute force. The crime relating to kidnapping has taken many a contour. True it is, sometimes allegations are made that a guardian has kidnapped a child or a boy in love has kidnapped a girl. They do stand on a different footing. But kidnapping for ransom or for revenge or to spread terror or to establish authority are in a different realm altogether. In the present case, the victim had been kidnapped under threat, confined and abused. The sole reason for kidnapping is that the victim had shown some courage to speak against the accused. This may be the purpose for sustaining authority in the area by the accused and his criminal antecedents, which speak eloquently in that regard. In his plea for bail, the accused had stated that such offences had been registered because of political motivations, but the range of offences and their alleged years of occurrence do not lend prima facie*



acceptance to the same. Thus, in the present case his criminal antecedents could not have been totally ignored.” (Emphasis Supplied)

29. Similarly, in *Neeru Yadav v. State of Uttar Pradesh* (2016) 15 SCC 422, this Court set aside a bail order on the ground that relevant factors, including criminal antecedents, had been completely ignored, holding that such a grant of bail amounted to a deviant exercise of discretion warranting appellate interference. The relevant paragraphs are extracted below:

“15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove is not a minor offence so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create thunder and lightning, having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kinds of accused persons to be at large and, therefore, the emphasis is on the exercise of discretion judiciously and not in a whimsical manner.

18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration, which include the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order [*Budhpal v. State of U.P.*, 2014 SCC OnLine All 14815]” (Emphasis Supplied)

30. The principles reiterated by a three-Judge Bench in *Brijmani Devi v. Pappu Kumar* (2022) 4 SCC 497 further emphasise that while personal liberty under Article 21 of the



Constitution is invaluable, courts must balance such liberty against the nature of the accusations, supporting material, criminal antecedents, and the broader societal impact. Bail discretion must be exercised judiciously and supported by reasons grounded in the material on record. The following observations are apposite:

“21. In Gudikanti Narasimhulu v. Public Prosecutor, A.P. High Court, [(1978) 1 SCC 240: 1978 SCC (Cri) 115], Krishna Iyer, J., while elaborating on the content and meaning of Article 21 of the Constitution of India, has also elaborated the factors that have to 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 also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

*8. Another relevant factor is as to 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, (London) 1960, p. 75 — Mod. Law Rev. *ibid.*, 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.”



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 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)

32. It was held in *Kaushal Singh v. State of Rajasthan, 2025 SCC OnLine SC 1473* that criminal antecedents constitute an important factor while granting bail. It was observed:

22. Before parting, we would like to state that, accounting for the criminal antecedents of the accused while considering the bail applications has been the subject matter of concern for Courts across the country. The rules and orders of the Punjab and Haryana High Court, to be specific, Rule 5 of Chapter 1-A(b) Volume-V specifically provide as below:

"5. Bail applications. - In every application for bail presented to the High Court the petitioner shall state whether similar application has or has not been made to the Supreme Court, and if made shall state the result thereof. The petitioner/applicant shall also mention whether he/she is/was involved in any other criminal case or not. If yes, particulars and decisions thereof. An application which does not contain this information shall

be placed before the bench with the necessary information.”

23. We feel that every High Court in the country should consider incorporating a similar provision in the respective High Court Rules and/or Criminal Side Rules as it would impose an obligation on the accused to make disclosures regarding his/her involvement in any other criminal case(s) previously registered.

33. It was held in *Balmukund Singh Gautam v. State of M.P.*, (2026) 6 SCC 216: 2026 SCC OnLine SC 205 that the accused having criminal antecedents is not entitled to bail. It was observed at page 229:

59. Further, as per the documents on record placed before us, the accused also has criminal antecedents, i.e. Crime No. 07/2010, 217/2017, 155/2017, and 217/2019, which cannot be brushed aside lightly, as they have an extreme adverse impact on society. Even in the order dated 27-8-2021, the 22nd Additional Sessions Judge and Special Judge (MP and MLA), Bhopal provided security to the injured victim Shailendra alias Pintu due to the threat by the accused. The firearms also have not been recovered from the accused or seized by the police till date.

34. This Court dealt with the relevance of criminal antecedents while granting bail in *Champa vs. State of H.P.: 2025: HHC:28899* and held that the criminal antecedents would disentitle an accused from the concession of bail. This judgment was unsuccessfully assailed before the Hon’ble Supreme Court in *SLP(Criminal) 19120 of 2025* titled *Champa Devi vs State of H.P.*,

decided on 27.11.2025. Therefore, the relevance of criminal antecedents cannot be ignored.

35. In view of the binding precedents of the Hon'ble Supreme Court, the judgment in *Jai Singh* (supra) cannot be followed.

36. In *Prabhakar Tewari* (supra), the Hon'ble Supreme Court was dealing with a petition for cancellation of bail and held that the discretion to grant bail could not be interfered with merely because of pendency of the criminal cases. In the present case, the Court is considering the grant of bail and not the cancellation of bail, for which different parameters are applicable. Thus, not much advantage can be derived from the cited judgment.

37. In *Vishwajeet Mandal* (supra) the accused had no criminal antecedents, whereas, in the present case, the petitioner has criminal antecedents and this judgment does not apply to the present case.

38. In *Ayub Khan* (supra), the Hon'ble Supreme Court held that the criminal antecedents may not be relevant when the bail is being granted on the basis of long incarceration or in the absence of *prima facie* case. It has been found out above, that there is, *prima*

facie, case against the petitioner and the period of incarceration is not such as would justify the grant of bail, hence, the cited judgment does not apply to the present case.

39. The pendency of a similar case against the petitioner *prima facie* justifies the prosecution's apprehension that the petitioner would indulge in the commission of a similar offence if he is released on bail.

40. No other point was urged.

41. In view of the above, the present petition fails, and it is dismissed.

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

(Rakesh Kainthla)
Judge

11th August, 2026
(Nikita)