

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. MP (M) No. : 2337 of 2025

Reserved on : 13.10.2025

Decided on : 17.10.2025

Sher Mohammad @ Shera

...Applicant

Versus

State of Himachal Pradesh

...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹

For the applicant : Mr. Anirudh R.H. Sharma, Advocate.

For the respondent : Mr. Varun Chandel, Mr. H.S. Rawat
and Mr. Mohinder Zharaick,
Additional A.G., with Mr. Rohit
Sharma, Deputy A.G.

Virender Singh, Judge

Applicant-Sher Mohammad alias Shera, has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), with a prayer to release him on bail, during the pendency of trial, in case arising out of **FIR No. 03 of 2025, dated 05.01.2025**, registered, under

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

Sections 21, 29 and 15 of the Narcotic Drugs and Psychotropic Substances Act, (hereinafter referred to as the 'NDPS Act'), and **Section 25 of Arms Act, with Police Station, Arki, District Solan, H.P.**

2. According to the applicant, he is innocent person and has falsely been arrested by the Police, in the present case.

3. According to him, he has no direct or indirect link with the crime in question and he is ready to abide by any of the conditions, imposed by the Court, in case, ordered to be released on bail, during the pendency of trial.

4. As per the applicant, the investigation, in the present case, is complete and no useful purpose would be served by keeping him in judicial custody, as chances of commencement and conclusion of the trial against him, in near future, are not so bright.

5. Apart from this, the applicant has given the details of the cases, which has been registered against him.

The same is reproduced as under:-

- (i) FIR No. 212/2023, registered in Police Station Nalagarh, under Sections 21 and 29 of ND&PS Act;

- (ii) FIR No. 284/2024, registered in Police Station Nalagarh, under Sections 21 and 29 of ND&PS Act and Section 39(1)(a) of H.P. Excise Act.

6. Applicant has earlier tried his luck, by moving the similar application before learned Special Judge – III Solan, H.P., however, the same was dismissed vide order dated 18.03.2025. He again moved the bail application before learned Special Judge – III Solan, H.P., however, the same was also dismissed vide order dated 26.05.2025. Thereafter, he again moved the bail application before learned Special Judge – III Solan, H.P. and the same was also dismissed vide order dated 11.07.2025.

7. The applicant has also earlier approached this Court by filing the bail application, which was dismissed as withdrawn vide order dated 29.07.2025.

8. On the basis of the above facts, Sh. Anirudh R.H. Sharma, learned counsel appearing for the applicant has prayed that the application may kindly be allowed and he may kindly be released on bail, during the pendency of trial.

9. When put to notice, the police has filed the status report, disclosing therein that on 04.01.2025, HC

Parkash Chand No. 8, along with other police officials in his private vehicle No. HP11-9393, left Police Station Darlaghat, for collecting the information regarding the Excise Act and in order to prevent the crime in the area. They had conducted the patrolling at Darlaghat, Piplughat, Bhumti, Gambharpul, Kharadhatti, Dumehar etc. At about 7:50 pm, when they reached near Rain Shelter at Laadi, then HC Parkash Chand received a secret information about the fact that a vehicle being driven by Akshay Kumar, bearing No. HP64C-1635 is coming from Dumehar side and by the side of the seat of the driver, one Bhawani Singh is there and both of them in connivance with each other, are bringing large quantity of heroin/chitta and they are coming to sell the same. As per the information, in case, the said vehicle is intercepted, large quantity of heroin, could be recovered. The said information was authentic and reliable.

9.1 According to the I.O., in case, he would have obtained the search warrants, there were chances that vehicle No. HP64C-1635, along with contraband, could not be nabbed. As such, Section 42(2) of the Act has been

complied with and submitted to SDPO Darlaghat. Thereafter, C. Narender Kumar, was directed to arrange for independent witnesses. Upon this, Up-Pradhan Purshotam Ram, was requested to come to the spot. Thereafter, police had picketing near Rain Shelter Laadi, in order to intercept the said vehicle and in order to wait for the witnesses.

9.2 At about 8:30 pm, vehicle No. HP64C-1635, being driven by its driver, came there, which was signaled to stop by I.O. Parkash Chand. Two young men were found sitting in the car. The person, sitting on the driver seat, on inquiry, disclosed his name as Akshay Kumar and the person sitting by his seat, disclosed his name as Bhawani Singh. Thereafter, both the young men were apprised about the secret information. Meanwhile, at about 8:50 pm, Up-Pradhan Gram Panchayat Sannan, Purshotam Ram came there at the spot and in the presence of Up-Pradhan Purshotam Ram, the names and addresses of the said persons were again inquired.

9.3 Thereafter, the vehicle was searched. During the search of the vehicle, a plastic pouch was found in the dashboard of the vehicle, which, on checking was found to

be containing light brown coloured powdered and granular shaped substance. On checking the substance, on drug detection kit, the same was found to be heroin/chitta. Accused Akshay Kumar and Bhawani Singh also confirmed the said fact. On weighment, the same was found to be 9.20 grams of Chitta.

9.4. After completion of other codal formalities, the FIR, was registered and both the accused were arrested. The contraband, along with the vehicle, was taken into possession. Statement of witnesses were recorded under Section 180 of BNSS.

9.5. On 08.01.2025, both accused persons Akshay Kumar and Bhawani Singh, were produced before the Court of learned Judicial Magistrate First Class, Kandaghat, from where, they were remanded to police custody. Thereafter, the proceedings, under Section 52-A of the ND&PS Act were got conducted by producing the contraband before the Court of learned Judicial Magistrate First Class, Arki.

9.6. On 07.01.2025, accused persons named one Sher Mohammad @ Shera (applicant), as such, search

warrants were obtained from the Court of learned Judicial Magistrate First Class, Arki, regarding search of his house. Bhawani Singh, during custody has identified the house of Sher Mohammad @ Shera (applicant) and disclosed that he is Shera Chacha, from whom, he and Akshay had purchased the heroin on 04.01.2025.

9.7 During search of house of Sher Mohammad, the following substances were found:-

- (i) One white coloured plastic envelope, containing 347.37 grams poppy husk;
- (ii) One black coloured plastic envelope, containing 234.88 grams poppy husk;
- (iii) One white coloured plastic envelope, containing 272.68 grams poppy husk;
- (iv) One white coloured plastic envelope, containing 188.19 grams poppy husk;
- (v) One white coloured plastic envelope, containing 54.64 grams poppy husk; and
- (vi) One transparent polythene envelope, containing 40.241 grams poppy husk.

Apart from this, 6.05 grams heroin/chitta was found along with currency notes of Rs. 38,400/-, 13 live cartridges make SHAKTIMAN, were found, another live cartridge make KF 7.65, was found.

Apart from this, police has also got recovered 10 mobile phones, which were taken into possession.

9.8. Accused Sher Mohammad @ Shera (applicant) was arrested under Section 15 of ND&PS Act and Section 25 of Arms Act. The case property, so recovered, was produced before the Court of learned Judicial Magistrate First Class, Arki, from where, proceedings under Section 52(A) of the ND&PS Act were got conducted.

9.9 After the receipt of positive report of SFSL Junga, regarding the contraband, the police filed the charge-sheet, which is pending in the Court of learned Additional District & Sessions Judge, Solan.

9.10 Following two cases were found to be registered against the applicant, which have duly been described in the application:-

(i) FIR No. 212/23, dated 21.07.2023, under Section 21 of ND&PS Act with Police Station Nalagarh;

(ii) FIR No. 248/24, dated 28.08.2024, under Section 39(1) HP Excise Act, with Police Station Nalagarh.

9.11. On the basis of above facts, it has been apprehended that despite being released on bail in the

cases, which were earlier registered against the applicant, he has again indulged in the same activity. The case is now stated to be listed for 17.10.2025, for consideration of charge.

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

11. Admittedly, the contraband, which is recovered, in the present case, including the contraband, which has been recovered from the possession of accused Akshay Kumar and Bhawani Singh, does not fall within the definition of commercial quantity, as such, rigors of Section 37 of the ND&PS Act are not applicable.

12. Once, it has been held that rigors of Section 37 of the ND&PS Act are not applicable, then, the next question, which arises for determination, before this Court, is as to whether the applicant is entitled to the relief, as claimed in the application or not.

13. The police has filed the charge-sheet and case is now listed for consideration of charge on 17.10.2025. As such, it can be said that the custodial interrogation of the applicant is not required by the Police. Moreover, the

chances of commencement and conclusion of the trial against the applicant, in near future, are not so bright.

14. So far as the registration of two cases, as highlighted in the status report, are concerned, in none of the cases, the applicant has been convicted by the competent Court of Law.

15. Moreover, the status report is totally silent about the fact that any effort has been made by the police to get the bail granted to the applicant by the competent Court of Law cancelled.

16. The applicant is permanent resident of District Solan, as such, it cannot be apprehended that in case, he is ordered to be released on bail, he may not be available for the trial.

17. The bail application cannot be rejected, as a matter of punishment, as, pre-trial punishment is prohibited under the law and punishment can only be imposed, after the full fledged trial, by competent Court of law.

18. At the time of deciding the bail application, detailed discussion about the merits and demerits of the

case of the prosecution should be avoided, as the same could cause prejudice to the case of the prosecution, as well as, the case of the accused persons.

19. Considering all these facts, this Court is of the view that the bail application is liable to be allowed and is accordingly allowed. The applicant is ordered to be released on bail in case **FIR No. 03 of 2025, dated 05.01.2025, registered, under Sections 21, 29 and 15 of the NDPS Act and Section 25 of Arms Act, with Police Station Nalagarh, District Solan, H.P.**, on his furnishing personal bonds, in the sum of Rs. 50,000/-, with one surety, in the like amount, to the satisfaction of learned trial Court.

20. This order of release, however, shall be subject to the following conditions :-

- “a) 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;*
- b) Applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;*
- c) Applicant shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer; and*

- d) *Applicant shall not leave the territory of India without the prior permission of the Court."*

21. Any of the observations made herein above 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 bail application.

22. 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 to be violated by the applicant.

23. The Registry is directed to forward a soft copy of the bail order to the Superintendent of Jail, Model Central Jail Kanda District Shimla, through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

24. In case, the applicant is not released within a period of seven days from the date of grant of bail, the Superintendent of Jail, Model Central Jail Kanda, District Shimla, is directed to inform this fact to the Secretary, DLSA, Shimla. The Superintendent of Jail, Model Central Jail Kanda, District Shimla, is further directed that if the applicant fails to furnish the bail bonds,

as per the order passed by this Court, within a period of one month from today, then, the said fact be submitted to this Court.

(Virender Singh)
Judge

17th October, 2025
(Pramod Kumar)

RAJNI Digitally signed
by RAJNI
Date: 2025.10.17
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