

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 2426 of 2025

Reserved on: 13.11.2025

Date of Decision: 28.11.2025.

Raj Kumar

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

For the Petitioner : Mr Bodh Raj Thakur, Advocate.

For the Respondent : Mr Lokender Kutlehria, Additional
Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No. 10 of 2022, dated 26.01.2022, registered at Police Station Nagrota Bagwan, District Kangra, H.P., for the commission of offences punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (in short NDPS Act).

¹ 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 intercepted the petitioner on 26.01.2022 with 142.98 grams of charas. These allegations are false. The petitioner was falsely implicated. The petitioner was arrested on 26.01.2022 and was remanded to judicial custody. He filed the bail petition, which was allowed on 04.03.2022. The petitioner regularly attended the Court but could not appear before the Court on 28.12.2023. Hence, non-bailable warrants of arrest were issued to secure his presence. He appeared before the Court on 27.02.2024 and was released on bail on 13.03.2024. The petitioner again attended the Court but could not appear before the Court on 02.06.2025 due to the demise of a close family member and the birth of a child requiring the petitioner's immediate attention. The learned Trial Court issued non-bailable warrants of arrest, noticing that three prosecution witnesses present in the Court had to be discharged. The petitioner was arrested on 28.07.2025 and was produced before the learned Trial Court. He remained in judicial custody. He filed a bail petition explaining the reasons for his absence, however, the bail petition was dismissed. The learned Trial Court had taken a strict view in the matter and had not considered the petitioner's circumstances. The petitioner's right to a speedy trial

is being violated. The petitioner was found in possession of an intermediate quantity of charas, and the rigours of Section 37 of the NDPS Act do not apply to the present case. Hence, it was prayed that the petitioner be released on bail.

3. The petition is opposed by filing a status report asserting that the police party was on patrolling duty on 26.01.2022. They stopped a bus bearing registration No. HP-68A-0625. The petitioner was occupying seat No.7. He took out a bag from his jacket and threw it after seeing the police. The police checked the bag in the presence of the witnesses and recovered 142.98 grams of charas. The police arrested the petitioner and seized the charas. The charas was sent to the SFSL Junga and was confirmed to be an abstract of cannabis and a sample of charas. The petitioner was released on bail on 04.03.2022. The petitioner failed to appear before the Court on 28.12.2023. He was arrested and produced before the Court. He was released on bail on 13.03.2024. He again failed to appear before the Court. The Court issued non-bailable warrants of arrest. The petitioner was arrested and produced before the Court. The matter is listed before the learned Trial Court for recording the statements of the prosecution witnesses on 30.12.2025.

4. I have heard Mr Bodh Raj Thakur, learned counsel for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

5. Mr Bodh Raj Thakur, learned counsel for the petitioner, submitted that the petitioner could not appear before the Court due to the circumstances beyond his control. The petitioner would appear before the Court regularly. Hence, he prayed that the present petition be allowed and the petitioner be released on bail. He relied upon the judgment of this Court in *Dharam Pal vs. State of Himachal Pradesh Cr.MP(M) No. 752 of 2025, decided on 23.04.2025* in support of his submission.

6. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the petitioner had failed to appear twice before the Court, and there is nothing on record to show that he would abide by the terms and conditions which the Court may impose. The witnesses were present in the Court when the petitioner was absent, leading to the delay in the progress of the trial. He cannot claim the right to a speedy trial when he himself delays the progress of the trial. Therefore, 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 record carefully.

8. It was laid down by the Hon'ble Supreme Court in *Talab Haji Hussain v. Madhukar Purshottam Mondkar*, 1958 SCC OnLine SC 81: 1958 SCR 1226: 1958 CRI LJ 701: 1958 SCJ 672: AIR 1958 SC 376 that a person cannot compromise a fair trial by absenting from the Court and if he does so, his bail is liable to be cancelled, even in a bailable offence. It was observed:

“6. Now, it is obvious that the primary object of criminal procedure is to ensure a fair trial of accused persons. Every criminal trial begins with the presumption of innocence in favour of the accused, and provisions of the Code are so framed that a criminal trial should begin with and be throughout governed by this essential presumption, but a fair trial has naturally two objects in view; it must be fair to the accused and must also be fair to the prosecution. The test of fairness in a criminal trial must be judged from this dual point of view. It is, therefore, of the utmost importance that, in a criminal trial, witnesses should be able to give evidence without any inducement or threat, either from the prosecution or the defence. A criminal trial must never be so conducted by the prosecution as it would lead to the conviction of an innocent person; similarly, the progress of a criminal trial must not be obstructed by the accused so as to lead to the acquittal of a really guilty offender. The acquittal of the innocent and the conviction of the guilty are the objects of a criminal trial, and so there can be no possible doubt that if any conduct on the part of an accused person is likely to obstruct a fair trial, there is occasion for the exercise of the inherent power of the High Courts to secure the ends of justice. There can be no more

important requirement of the ends of justice than the uninterrupted progress of a fair trial, and it is for the continuance of such a fair trial that the inherent powers of the High Courts are sought to be invoked by the prosecution in cases where it is alleged that accused persons, either by suborning or intimidating witnesses, are obstructing the smooth progress of a fair trial. *Similarly, if an accused person who is released on bail jumps bail and attempts to run to a foreign country to escape the trial, that again would be a case where the exercise of the inherent power would be justified in order to compel the accused to submit to a fair trial and not to escape its consequences by taking advantage of the fact that he has been released on bail and by absconding to another country. In other words, if the conduct of the accused person subsequent to his release on bail puts in jeopardy the progress of a fair trial itself and if there is no other remedy which can be effectively used against the accused person, in such a case, the inherent power of the High Court can be legitimately invoked.* In regard to non-bailable offences, there is no need to invoke such power because Section 497(5) specifically deals with such cases. The question which we have to decide in this case is whether the exercise of inherent power under Section 561-A against persons accused of bailable offences who have been released on bail is contrary to or inconsistent with the provisions of Section 496 of the Code of Criminal Procedure.” (Emphasis supplied)

9. It was held by a Division Bench of the Calcutta High Court in *Nagendra Nath Chakravarti, In re*, 1923 SCC OnLine Cal 318: 1924 Cri LJ 732: AIR 1924 Cal 476 that the primary purpose of granting bail is to secure the presence of the accused during the Trial. It was observed:

“It is indisputable that bail is not to be withheld merely as a punishment. The requirements as to bail are to secure the

attendance of the accused at the trial: *R. v. Rose* [(1898) 18 Cox. 717. The proper test to be applied in the solution of the question, whether bail should be granted or refused, is whether it is probable that the party will appear to take his trial: *Re Robinson* (1854) 23 L.J.Q.B. 286: 2 W.R. 424, *R. v. Scaife* [(1841) 9 Dowling P.C. 553: 5 Jurist 700. The test is applied by reference to the following considerations:

(a) The nature of the accusation: *R. v. Barronet* [(1852) 1 E. & B. 1: Dearsley 51.], *R. v. Butler* [(1861) 14 Cox. 530: 8 L.R. (Ir.) 39.] ;

(b) The nature of the evidence in support of the accusation: *Re Robinson* [(1854) 23 L.J.Q.B. 286: 2 W.R. 424.], *R. v. Butler* [(1861) 14 Cox. 530: 8 L.R. (Ir.) 39.], *R. v. McCormick*; [(1864) 17 Ir. C.L.R. 411.]

(c) The severity of the punishment which conviction will entail: *Re Robinson* [(1854) 23 L.J.Q.B. 286: 2 W.R. 424.], and this explains the reluctance of Courts to grant bail on charges of murder: *Re Barthelemy* [(1852) 1 B. & B. 8: Dearsley 60.], *R. v. Andrews* [(1844) 2 D. & L. 10: 13 L.J.M.C. 113.]. In this connection, we may recall that in England, bail in treason or felony is discretionary in the High Court or Courts having jurisdiction to try the offence: *R. v. McCartie* [(1859) 11 Ir. C.L.R. 188, 192.], *R. v. Platt* [(1777) 1 Leach 157.]; on the other hand, bail in misdemeanour is said to be of right at Common Law: *R. v. Spilsbury* [[1898] 2 Q.B. 615.]; *R. v. Badger* [(1843) 4 Q.B. 468, 472: D. & M. 375: 4 St. T.N.S. 1387.]; *Re Frost* [(1888) 4 T.L.R. 757.]; see also *R. v. Crowe* [(1829) 4 C. & P. 251.]; *R. v. Beardmore* [(1836) 7 C. & P. 497.] ; *R. v. Osborn* [(1837) 7 C. & P. 799.] *King v. Fortier* [(1902) 13 Quebec K.B. 251: 9 Canada Cr. Cas. 191: 1 Ann. Cas. 10.]. This distinction is reflected in sections 496 and 497 of the Criminal Procedure Code, which respectively treat of the grant of bail in cases of what are described in the phraseology of the Indian Legislature as bailable and non-bailable offences.”

10. A similar view was taken by the Hon'ble Supreme Court in *Sanjay Chandra v. CBI*, (2012) 1 SCC 40: (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397: 2011 SCC OnLine SC 1502, wherein it was observed at page 52:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by a reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”

11. In the present case, the conduct of the accused shows that his presence cannot be secured in the Court by enlarging him on bail. Therefore, there was no error in the order passed by the learned Trial Court declining bail to the petitioner.

12. It was submitted that the relative of the petitioner had died, and his wife had given birth to a child. The petitioner could not appear before the Court due to these circumstances. This submission will not help the petitioner. He could very well inform his counsel to seek the exemption by filing an appropriate application. However, he did not do so. Further, he has not

produced any material on record to justify his pleas that his relative had died or his wife had delivered a child. Therefore, these pleas are not substantiated on record.

13. It was submitted that the petitioner was found in possession of an intermediate quantity of charas, and the petitioner is entitled to bail as a matter of right. 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.”

14. Similarly, it was held in *Bunty Yadav v. State of H.P.*, 2022 SCC OnLine HP 4996, that the 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, the 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.”

15. Thus, the submission that the petitioner is entitled to bail as a matter of right cannot be accepted.

16. No other point was urged.

17. In view of the above, the petitioner is not entitled to bail. Hence, the present petition fails, and it is dismissed.

18. The observation made herein before shall remain confined to the disposal of the instant petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

28th November, 2025
(Nikita)