

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MP (M) No. 2439 of 2025****Reserved on : 14.11.2025****Date of Decision: 24.11.2025**

Shiranjana Buddha**...Petitioner****Versus**

State of Himachal Pradesh**...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No*****For the Petitioner : M/s Ajay Sipahiya and Tarun Mehta, Advocates.****For the Respondent/State. : Mr Jitender Sharma, Additional Advocate General.**

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in F.I.R. No. 86 of 2025, dated 27.04.2025, for committing offences punishable under Sections 18 & 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS) at Police Station Sadar, Solan, District Solan, H.P.

2. It has been asserted that the petitioner is a Nepali national with clean antecedents. She was arrested on 27.04.2025.

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

The investigation is complete, and the matter was listed for consideration of charges on 08.10.2025. The prosecution has cited 22 witnesses, and the trial is not likely to conclude soon. As per the prosecution, the police had recovered 2.544 kgs of opium from the backpack kept near the feet of the petitioner and 5.640 kgs of opium kept near the co-accused. There are discrepancies in the weight. The recovery was effected from a bus, and exclusive possession of the petitioner is not established. The grounds of arrest were not communicated to the petitioner. The police claimed recovery of 8.184 kgs of opium; however, the weight of the contraband was found to be 8.216 kgs during the proceedings under Section 52A of the NDPS Act. 9 pouches were mixed, and this defeated the provision of taking a representative sample. Therefore, 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 were on patrolling duty on 27.04.2025. They received a secret information at 12:40 pm that a bus was going from Solan to Shimla. Two people were transporting opium in the bus, and they were sitting in the rear seats. A huge quantity of opium could be recovered by their search. The police reduced

the information into writing and sent it to the Supervisory Officer. The police intercepted a bus bearing registration No. HP63E-0330. Two people were found sitting in the rear seat. One person identified herself as Shiranjana Buddha (petitioner), and the other person identified himself as Shankar Bahadur. Two bags were found near their feet. The police checked the backpack and recovered three pouches containing 2.544 kgs of opium in the bag kept near the petitioner's feet. The police checked the backpack kept near the feet of Shankar Bahadur and recovered 6 pouches containing 5.640 kgs of opium. The total weight of opium was found to be 8.184 kgs. The police seized the backpack and arrested the petitioner and the co-accused. The CCTV footage from the Hotel where the petitioner and the accused had stayed was also recovered. The challan was filed before the Court on 02.07.2025. The matter is listed for consideration of the charge on 19.12.2025. Hence, the status report.

4. I have heard M/s Ajay Sipahiya and Tarun Mehta, Advocates, learned counsel for the petitioner and Mr Jitender Sharma, Additional Advocate General for the respondent/State.

5. Mr Ajay Sipahiya, learned counsel for the petitioner, has submitted that the petitioner is innocent and she was falsely implicated. The grounds of arrest were not supplied to her at the time of her arrest, which is a violation of her constitutional right. The petitioner was not found in conscious possession of any opium, and the bags were found near her feet. There is no material to connect the petitioner to the bags. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr. Jitender Sharma, learned Additional Advocate General for the respondent/State, submitted that the petitioner was found in possession of a commercial quantity of opium. Rigours of Section 37 of the NDPS Act apply to the present case. The petitioner has failed to satisfy the twin conditions laid down under Section 37 of the NDPS Act, and she is not entitled to bail. 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 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 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 placement of the accused in the society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, and 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 so as 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. The present petition has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

10. The status report shows that the police found backpacks lying near the feet of the petitioner and the co-accused. The police checked the backpacks and recovered 2.544 kgs of opium from the backpack kept near the feet of the petitioner and 5.640 kgs of opium from the backpack kept near the feet of the co-accused, kept in pouches. All the pouches were weighed together, and their weight was found to be 8.184 kgs. These were sealed together in one cloth parcel. These parcels were produced before the learned Chief Judicial Magistrate, Solan and samples were obtained from the parcel. The status report does not mention that the samples were sent to the State Forensic Science Laboratory (SFSL), and the report of the analysis found the sample to be of opium. Therefore, the status report is silent regarding the fact that the petitioner was found in possession of the opium.

11. The Investigating Officer had mixed the contents of the backpack and had weighed them together. The samples were taken from the mixed contents of the backpack. The status report does not mention that the sample was representative and homogeneous. The packets were also not sent individually to determine whether they contained opium or not. Thus, it is highly

doubtful that the samples were taken from the contents of the backpack recovered near the feet of the petitioner.

12. Therefore, in these circumstances, it is difficult to conclude that the petitioner was found in possession of a commercial quantity of opium. Hence, the submission that the rigours of Section 37 of NDPS apply to the present case is not acceptable.

13. The petitioner asserted that she has no criminal antecedents. The status report also does not mention that any FIR was registered against the petitioner. Hence, the plea that the petitioner has no criminal antecedents has to be accepted as correct.

14. The police have filed the charge sheet before the Court, and the matter is listed for consideration of the charge on 19.12.2025. The petitioner mentioned that the prosecution has cited 22 witnesses, which means that the trial is not likely to be concluded soon. The status report has not provided any reasons for the petitioner's pre-trial detention, hence no fruitful purpose would be served by detaining the petitioner in custody.

15. In view of the above, the present petition is allowed and the petitioner is ordered to be released on bail subject to her furnishing bail bonds in the sum of ₹1,00,000/- with two sureties in the like amount to the satisfaction of the learned Trial Court. The petitioner, while on bail, will abide by the following terms and conditions:-

- (i) The petitioner will join the investigation as and when directed to do so through a written *hukamnama*.
- (ii) The petitioner will not intimidate the witnesses nor will she influence any evidence in any manner whatsoever.
- (iii) The petitioner shall attend the trial in case a charge sheet is presented against her and will not seek unnecessary adjournments.
- (iv) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of intending a visit to the SHO, the Police Station concerned and the Trial Court.
- (v) The petitioner will surrender her passport, if any, to the Court; and
- (vi) The petitioner will furnish her mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

16. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

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

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

19. A downloaded copy of this order shall be accepted by the learned Trial Court while accepting the bail bonds from the petitioner, and in case said Court intends to ascertain the veracity of the downloaded copy of the order presented to it, the same may be ascertained from the official website of this Court.

24th November, 2025
(Nikita)

(Rakesh Kainthla)
Judge

CHANDER
SHEKHAR

Digitally signed
by CHANDER
SHEKHAR
Date: 2025.11.25
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