

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MP (M) No. 2473 of 2025****Reserved on: 13.11.2025****Date of Decision: 25.11.2025.**

Kundan Lal**...Petitioner****Versus****State of Himachal Pradesh****...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.*****For the Petitioner : Ms Meghna Singh, Advocate.****For the Respondent/State : Mr. Prashant Sen, Deputy Advocate General.**

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No. 24 of 2022, dated 3.9.2022, registered at Police Station, Mehatpur, District Una, H.P., for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS).

2. It has been asserted that, as per the prosecution, the police party was on patrolling duty on 2.9.2022. They noticed a

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

vehicle bearing registration No. PB-74B-3399, coming from Batoli towards Mehatpur at about 11.30 PM. The police signalled the driver to stop the car, but he tried to reverse it. The police stopped the car. The driver became frightened after seeing the police, and the person sitting in the left seat threw a small transparent plastic pouch on the road. The police checked the pouch and found it to be heroin. The police weighed it, and its weight was found to be 7.53 grams. The police seized the heroin and arrested the petitioner. The petitioner is innocent, and he was falsely implicated. The petitioner had earlier filed a bail petition, which was registered as Cr.MP(M) No. 514 of 2025 and was dismissed on 9.4.2025. 29 FIRs have been registered against the petitioner, out of which he was convicted in 14 cases, acquitted in 14 cases, and 02 are pending. The petitioner has been in custody since 3.9.2022. The trial has not concluded. The co-accused has been granted bail. 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 party was on patrolling duty on 2.9.2022. They intercepted a vehicle bearing registration

No. PB-74B-3399. The driver tried to reverse the vehicle after seeing the police. The police stopped the car. The driver got frightened. The person sitting on the left side suddenly threw a small transparent plastic pouch out of the car. The police checked the packet in the presence of independent persons and found 7.53 grams of heroin in it. The person sitting on the front left side identified himself as Kundan Lal (petitioner), the driver identified himself as Ridhamjot Singh, and the persons sitting in the rear seat identified themselves as Shivam and Sunil Kumar. The police arrested the occupants of the vehicle and seized the heroin. The heroin was sent to the State Forensic Science Laboratory (SFSL) for chemical analysis and was found to contain Diacetylmorphine (heroin). 29 cases were registered against the petitioner. The petitioner was involved in drug cases earlier. He would indulge in the commission of similar offences, and intimidate the witnesses on his release on bail. The matter is listed before the learned Trial Court on 27.11.2025. Hence, it was prayed that the present petition be dismissed.

4. I have heard Ms Meghna Singh, learned counsel for the petitioner and Mr Prashant Sen, learned Deputy Advocate General, for the respondent-State.

5. Ms Meghna Singh, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. As per the prosecution, 7.53 grams of heroin were found in the possession of the petitioner, which is an intermediate quantity. Hence, the rigours of Section 37 of the NDPS Act do not apply to the present case. The co-accused has been released on bail, and the petitioner is entitled to bail on the principle of parity. Therefore, she prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Prashant Sen, learned Deputy Advocate General, for the respondent-State, submitted that 29 FIRs were registered against the petitioner. The petitioner would indulge in the commission of a similar offence in case of his release on 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. It is undisputed that the petitioner had earlier filed a bail petition, which was registered as Cr.MP(M) No. 514 of 2025 and was dismissed on 9.4.2025. It was held in *State of Maharashtra Vs. Captain Buddhikota Subha Rao (1989) Suppl. 2*

SCC 605, that once a bail application has been dismissed, a subsequent bail application can only be considered if there is a change of circumstances. It was observed:

“Once that application was rejected, there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact situation. And when we speak of change, we mean a substantial one, which has a direct impact on the earlier decision and not merely cosmetic changes, which are of little or no consequence. 'Between the two orders, there was a gap of only two days, and it is nobody's case that during these two days, drastic changes had taken place, necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed, reversing all earlier orders, including the one rendered by Puranik, J., only a couple of days before, in the absence of any substantial change in the fact situation. In such cases, it is necessary to act with restraint and circumspection so that the process of the Court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order which had hitherto eluded him.

9. Similarly, it was held in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav (2004) 7 SCC 528* that where an earlier bail application has been rejected, the Court has to consider the rejection of the earlier bail application and then consider why the subsequent bail application should be allowed. It was held:

“11. In regard to cases where earlier bail applications have been rejected, there is a further onus on the court to

consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration, if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent bail application should be granted.”

10. This Court had earlier held that the petitioner was, *prima facie*, found in possession of the heroin. Subsequent bail petition does not amount to a review of the earlier order, and it is impermissible to record contrary findings in the present proceedings. Therefore, the submissions that the petitioner was falsely implicated cannot be considered in the present proceedings.

11. The status report shows that the petitioner was found in possession of 7.53 grams of heroin, which is less than a commercial quantity; therefore, the rigours of Section 37 of the NDPS Act do not apply to the present case.

12. The status report shows that the petitioner was arrested on 3.9.2022. More than three years have elapsed since then. Applying the principle of proportionality, the petitioner has undergone a substantial part of the imprisonment, which may be awarded after the conclusion of the trial.

13. Learned Trial Court held that the charges could not be framed due to non-production of the petitioner and absence of one of the co-accused. This cannot be held to be a circumstance against the petitioner. The petitioner is inside the Jail and has no control over his production before the Court. He cannot be faulted for his non-production, and the blame lies with the State. Further, the absence of the co-accused can also not be held against the petitioner in the absence of any material that the co-accused was absent at the petitioner's instance.

14. It was submitted that the petitioner has criminal antecedents and he is likely to commit a similar offence in case of his release on bail. This submission will not help the prosecution. The fact that the petitioner has undergone a substantial part of the imprisonment will outweigh the criminal antecedents. It was laid down by the Hon'ble Supreme Court in *Ayub Khan v. State of Rajasthan*, 2024 SCC OnLine SC 3763: 2024: INSC:994 that the criminal antecedents may not be a reason to deny bail to the accused in case of his long incarceration. It was observed:

“10. The presence of the antecedents of the accused is only one of the several considerations for deciding the

prayer for bail made by him. In a given case, if the accused makes out a strong *prima facie* case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to deny bail. There may be a case where a Court can grant bail only on the grounds of long incarceration. The presence of antecedents may not be relevant in such a case. In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents.”

15. Consequently, the present petition is allowed, and the petitioner is ordered to be released on bail subject to his furnishing bail bonds in the sum of ₹1,00,000/- with one surety of the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following terms and conditions: -

- (I) *The petitioner will not intimidate the witnesses, nor will he influence any evidence in any manner whatsoever.*
- (II) *The petitioner shall attend the trial on each and every hearing and will not seek unnecessary adjournments.*
- (III) *The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the SHO concerned, the Police Station concerned and the Trial Court.*
- (IV) *The petitioner will surrender his passport, if any, to the Court; and*
- (V) *The petitioner will furnish his mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts,*

the same will be intimated to the Police/Court within five days from the date of the change.

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 petition stands accordingly disposed of. A copy of this order be sent to the Superintendent of Central Jail, Ropar, Punjab and the learned Trial Court through **FASTER**.

18. The observations made here-in-above are regarding the disposal of this petition and will have no bearing, whatsoever, on the case's merits.

(Rakesh Kainthla)
Judge

25th November 2025
(Chander)

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