



**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

Cr.MP(M) No. 2582 of 2025

Reserved on.: 20.03.2026

Announced on: 25.03.2026

Damini

.....Petitioner

Versus

State of Himachal Pradesh

.....Respondent

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting? Yes.*

For the petitioner:

Mr.N.S.Chandel, Senior Advocate with
Ms. Swetima Dogra and Mr. Sidharth,
Advocates.

For the respondent:
-State

Mr. Pawan Kumar Nadda, Additional
Advocate General.

Ranjan Sharma, Judge

Bail petitioner [Ms. Damini], **being in custody since 29.05.2025** has come up before this Court, seeking bail, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, (referred to as BNSS) originating from FIR No. 33 of 2025 dated 05.02.2025, registered at Police Station Nurpur, District Kangra [H.P.], under Section 21, 25 and 29 of the Narcotic

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



Drugs and Psychotropic Substances Act (referred to as the NDPS Act).

FACTUAL MATRIX

2. Case set up by Mr. N.S.Chandel, Senior Advocate is that on 05.02.2025 a police party head by ASI Satender Singh received a secret information at about 10.25 a.m that two persons, namely, Raj Kumar and Roop Lal were sitting in a vehicle parked near Government Hospital, Nurpur on Defence Road behind the Ekant Hotel near Shiv temple. On receipt of this information, the Investigating Officer sent information under Section 42(2) of Narcotic Drugs and Psychotropic Substances Act to SDPO, Nurpur, through Constable Lekh Raj. The Investigating Officer associated independent witnesses Khushal Singh and Ajay Kumar and reached the spot and found the vehicle being registration No. HP-01K-5700 parked near Kali Mata Mandir and found Roop Lal and Raj Kumar sitting in the vehicle. On search of vehicle, six packets wrapped with tape hidden inside the cover of the rear door of the vehicle was found containing stick and round shaped solid substance i.e. Charas and



the contraband was weighed and was found to be 2 Kgs. 950 grams. After completing codal formalities, Rukka was sent to Police Station, leading to registration of FIR No. 33 of 2025 dated 05.02.2025 [Annexure P-1] at Police Station Nurpur, District Kangra against the aforesaid namely, Roop Lal and Raj Kumar. During investigation, the aforesaid accused disclosed that they were to deliver the contraband to the bail petitioner [Damini], for which the bail petitioner had remitted an amount of Rs.20,000/- as advance in the bank account of the wife of accused Roop Lal.

2(i). It is further averred that the petitioner had filed an application for bail Cr.MP(M) No.238 of 2025 and the same was withdrawn on 11.02.2025 [Annexure P-2]. Bail application filed *second bail application* before Ld. Special Judge-II, Kangra at Dharamshala on 27.02.2025, which was dismissed on 10.03.2025 [Annexure P-3] and the *third bail application* Cr.MP(M) No. 910 of 2025, before this Court and the same was dismissed as withdrawn on 02.05.2025 [Annexure P-4]. It is averred that the *fourth bail application* was filed before Learned



Special Judge-II, Kangra at Dharamshala on 09.06.2025

and the same was dismissed on 24.06.2026 [Annexure P-5].

2(ii). The bail-petitioner has averred that she has been falsely implicated and there is no evidence to connect the petitioner with the accusation. It is averred that no recovery has been affected from the petitioner so far it relates to the accusation in the instant case. It is averred that the petitioner has participated in the investigation and investigation is complete and the police has presented the Challan-Final Police Report dated 29.07.2025 before concerned Court. Petitioner has furnished an undertaking that she will abide by the terms and conditions as may be imposed by this Court. Bail petitioner has averred that she shall not cause any inducement, threat or promise to any person or persons acquainted with the facts of the case and shall not flee away from investigation and trial. It is averred that the arrest of the petitioner is illegal as the grounds of arrest have not been furnished by Investigating Officer before arrest. It is averred that personal liberty of petitioner under Article 21 of the



Constitution of India could neither be curtailed or taken away by presuming the guilt at this stage against the petitioner. Instant petition has been filed through her cousin Sahil, with the prayer for releasing the petitioner [Damini] on bail.

STAND OF STATE AUTHORITIES

3. Upon issuance of notice by this Court on 31.10.2025, the State Authorities have filed the Status Report dated 13.11.2025 and Fresh Status Report dated 08.01.2026 in the Court on 09.01.2026; when at the request of Learned Counsel for petitioner, the matter was adjourned and it was finally heard on 20.03.2026.

3(i) Perusal of the Status Report(s) reveal that during interrogation, the main accused, namely, Roop Lal disclosed to police that the alleged contraband i.e. Charas was to be delivered to bail petitioner [Damini] at Damtal-Mohatti and Damini had remitted an amount of Rs. 20,000/- through UPI as advance, in the account of Radha wife of accused Roop Lal. Status Report(s) indicate that the bail petitioner has criminal antecedents, as F.I.R No. 68 of 2023 dated 28.04.2023 under Section 20 and 29 of



the NDPS Act has been registered against her in Police Station Damtal. In the above background, the State Authorities have opposed the bail application.

4. Heard, Mr. N.S.Chandel, Senior Advocate with Ms. Swetima Dogra and Mr. Sidharth, Advocates, for petitioner and Mr. Pawan Kumar Nadda, Additional Advocate General for Respondent(s).

MANDATE OF LAW ON BAIL IN GENERAL:

5. In general, the broad parameters regulating the claim for bail have been spelt out in **Gurbaksh Singh Sibbia versus State of Punjab** (1980) 2 SCC 565, **Ram Govind Upadhyay versus Sudarshan Singh** (2002) 3 SCC 598; **Kalyan Chandra Sarkar versus Rajesh Ranjan**, (2004) 7 SCC 528; **Prasanta Kumar Sarkar versus Ashish Chatterjee**, (2010) 14 SCC 496; reiterated in **P. Chidambaram versus Directorate of Enforcement**, (2019) 9 SCC 24, **Sushila Aggarwal versus State-NCT Delhi**, (2020) 5 SCC 01; **CBI versus Santosh Karnani** (2023) 6 SCALE 250; which have been reiterated by the Hon'ble Supreme



Court in **State of Haryana versus Dharamraj,**

2023 SCC Online SC 1085, that *bail is to be granted*

where the allegations are frivolous or groundless and incase neither any prima facie case nor reasonable grounds exists to believe or point towards the accusation. However, depending upon the facts of each case, the bail can be refused, in case, prima facie case or reasonable grounds exists and if an offence is serious. Severity of punishment, including reasonable apprehension of fleeing away from investigation and trial; and the character; past antecedents; behavior; means; position and standing of an accused; likelihood of offence being repeated; reasonable apprehension of witnesses being influenced and danger of justice being thwarted by grant of bail etc. are relevant factors for denying the concession of bail. The Hon'ble Supreme Court in **Criminal Appeal No. 3840 of 2023, Saumya Churasia versus Directorate of Enforcement**, decided on 14.12.2023 held that the claim for bail, is to be examined by a



Court, *without delving into the evidence on merits but by forming a prima-facie opinion on totality of facts in light of* broad-parameters referred to above.

**MANDATE OF LAW ON BAIL IN CASE OF
COMMERCIAL QUANTITY OF CONTRABAND:**

6. In NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a *sine qua non* for granting bail to the accused involved in the offences under the said Act. Apart from the granting opportunity of hearing to the Public Prosecutor, the other two conditions i.e., (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that (ii) he is not likely to commit any offence while



on bail, are the cumulative and not alternative conditions as per the mandate of law declared by Hon'ble Supreme Court in the case of **State of M.P. versus Kajad, (2001) 7 SCC 673 and** by Three Judge Bench in **NCB versus Mohit Aggarwal (2022) 18 SCC 374** and in **Narcotics Control Bureau versus Kashif, Criminal Appeal No. 5544 of 2024**, decided on 20.12.2024

ANALYSIS OF CLAIM FOR BAIL IN INSTANT CASE:

7. In backdrop of the mandate of law on bail in general and matters relating to accusation for offences under NDPS Act, involving commercial quantity of contraband and after taking into account entirety of facts and circumstances and the material on record as is borne out from Status Report(s), this Court is of the considered view, that the bail petitioner *[Damini]*, *is entitled to enlarged on bail, for the following reasons:-*

REASONABLE GROUNDS REVEALING PETITIONER PRIMA FACIE NOT GUILTY:

7(i). Perusal of Status Report(s) dated 13.11.2025 and dated 08.01.2026 indicates that police patrolling



party on receipt of secret information and after completing codal formalities reached near the vehicle No. HP-01K-5700 on 05.02.2025 at 11.45 A.M and found two persons namely Roop Lal and Raj Kumar sitting in the vehicle. On search, six packets containing Charas weighing 2.950 Kgs. was recovered from these two accused. Status Reports do not indicate that any recovery of contraband-Charas was recovered from the bail petitioner, Damini. Status Reports indicate that the bail petitioner was implicated on the basis of the confessional/disclosure statement made by main accused, namely Roop Lal. Reference to the bank transaction of Rs.20,000/- between the bail petitioner and Smt. Radha, wife of main accused Roop Lal cannot be made the basis for presuming the guilt of the bail petitioner. Moreover, the bail petitioner had neither travelled in the vehicle-conveyance with the main accused nor was any contraband recovered from the bail petitioner. Further, there is nothing on record to establish that the bail petitioner had purchased



or sold the contraband therefore, this Court in facts of instant case is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of the offence under Section 37(1)(b) of the NDPS Act.

**NOTHING ADVERSARIAL REGARDING
OBSTRUCTING OR ATTEMPTING TO THWARTLE
JUSTICE :**

7(ii). Status Reports filed by State Authorities have neither pointed out any adversarial circumstances nor placed on record any cogent and convincing material on record to infer that after release on bail, the petitioner may obstruct or thwart the cause of justice in any manner. In absence of any material, the plea for bail, deserves to be granted to the petitioner in the instant case.

In view of above discussion and in facts of instant case, the accusation under Section 37(1)(b) is not made out against the bail petitioner, at this stage.

**PRESUMPTION OF GUILT UNDER SECTIONS 21-25-
29 IMPERMISSIBLE:**

8. So far as the accusation under Section 21 of NDPS Act is concerned in the absence of any



cogent material in the Status Report(s) pointing out that the bail petitioner had either “sold or purchased” the contraband or had “manufactured drugs and preparation” within the ambit of Section 21 and Section 2(20) of the NDPS, therefore, at this stage, reasonable grounds exist to believe that the bail petitioner is not guilty of the offence. Moreover, the accusation under Section 20 is to be examined, tested and proved during the trial.

8(i). So far as the accusation under Section 25 of NDPS Act is concerned, since the bail petitioner was neither the owner or occupier nor the control or use of any conveyance [i.e. Vehicle No. HP-01K-5700 which was used by main accused, namely, Roop Lal and Raj Kumar] and the bail petitioner had no connection with the said conveyance/vehicle, then, the accusation under Section 25 of the NDPS Act, at this stage, is not made out. Further the accusation is to be examined, tested and proved during the trial.

8(ii). So far as the accusation under Section 29



of the NDPS Act is concerned, the factum of abetment and criminal conspiracy cannot be pre-judged, at this stage. Even, the two monetary transaction of a paltry sum of Rs.20,000/- by the petitioner to Smt. Radha, cannot point towards the culpable mental stage of the bail petitioner, for the reason, that mere preponderance of portability cannot lead to inference of abetment or criminal conspiracy against the bail petitioner.

8(iii). Even the accusation under Section 238 of the Bharatiya Nyaya Sanhita, 2023, alleging disappearance of evidence, is a matter, which is to be examined, tested and proved during trial.

In the light of the above factual matrix, reasonable ground exist for believing that the accused is not guilty of the accusation vis-à-vis the accusation against the two other main accused, from whom the alleged contraband was recovered.

BAIL PETITIONER IMPLICATED ON CONFESSIONAL STATEMENT OF MAIN ACCUSED:

9. Status Reports reveal that police arrested



the main accused, namely, Roop Lal and Raj Kumar, while conducting search of vehicle and recovered contraband weighing 2.950 Kgs. Status Reports indicate that *pursuant to the statement made before police by accused Roop Lal, the present petitioner [Damini] was arrested on 29.05.2025.* The incarceration of bail petitioner on the basis of the statement made by other accused, is contrary to the mandate of the Hon'ble Supreme Court in **Tofan Singh versus State of Tamil Nadu**, 2021 (4) SCC 1, in the following terms:

155. Thus, to arrive at the conclusion **that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20 (3) and 21 of the Constitution of India.**

158.2 That a **statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.**

9(i). Another Coordinate Bench of this Court, in Cr.MP (M) No. 916 of 2024, titled as **Vijay Kumar**



versus State of Himachal Pradesh, decided on 10.06.2024, has enlarged the petitioner on bail, who was arrested on the basis of a confessional statement made by another accused and when, there was no other cogent material to point towards the prima-facie accusation. Since in the present case, the petitioner has been implicated on the statement of accused, Roop Lal and nothing cogent exists to point towards the accusation therefore, the bail petitioner {Damini}, deserves to be enlarged on bail, as per mandate of law in case of **Tofan Singh** [supra].

9(ii). Taking into account the mandate of law in the case of **Tofan Singh** and **Vijay Kumar** [supra], this Court is of the view that confessional statement of main accused, namely, Roop Lal before the police cannot be the basis for arresting the petitioner when, neither any recovery nor any other cogent material exists so as to connect the petitioner with the accusation; and therefore, the petitioner deserves to be enlarged on bail, in the instant case.



RIGOURS IN SPECIAL ENACTMENTS [SECTION 37 OF NDPS] GIVE WAY FOR BAIL BASED ON PROLONGED INCARCERATION & TRIAL TO TAKE CONSIDERABLE TIME:

10. Though in facts of instant case, the accusation under Section 37(1)(b) is not made out yet while dealing with the claim for bail under Special Enactments and rigors of Section 45 (1) (ii) of MPLA and proviso to Section 43-D (5) of Unlawful Activities [Prevention] Act, 1967 and Section 37 of NDPS Act, the Hon'ble Supreme Court in ***Criminal Appeal No. 4011 of 2024, in V. Senthil Balaji versus The Deputy Director, Directorate of Enforcement***, has mandated that rigors in Special Enactments, including Section 37 of NDPS Act, will melt down where there is no likelihood of trial being completed in a reasonable time and prolonged incarceration so as to prevent the deprivation of curtailment of personal liberty and right to speedy trial in terms of Article 21 of Constitution of India, in the following terms:-



- “24. There are a few penal statutes that make a departure from the provisions of Sections 437, 438, and 439 of the Code of Criminal Procedure, 1973. A higher threshold is provided in these statutes for the grant of bail. ***By way of illustration, we may refer to Section 45(1)(ii) of PMLA, proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’).*** The provisions regarding bail in some of such statutes start with a non obstante clause for overriding the provisions of Sections 437 to 439 of the CrPC. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for Section 45(1)(ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty.
25. ***Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted*** considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. ***Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well settled principle of our criminal jurisprudence that “bail is the rule, and jail is the exception.” These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to***



incarcerate the accused without trial for an unreasonably long time.

26. ***There are a series of decisions of this Court starting from the decision in the case of K.A. Najeeb, which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an under-trial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.***
27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence.



Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. ***The extraordinary powers, as held in the case of K.A. Najeeb, can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions.*** The Constitutional Courts can always exercise its jurisdiction under Article 32 or Article 226, as the case may be. The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. ***The Constitutional Courts cannot allow provisions like Section 45 (1) (ii) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials under Article 21 of the Constitution of India will be defeated.*** In a given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. 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.

29. As stated earlier, ***the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial.***
31. ***Therefore, the appeal is allowed, and the appellant shall be enlarged on bail till the final*** disposal of CC No. 9 of 2023 pending before the Principal Session Judge, Chennai, on the following conditions

10(i). Reiterating that statutory embargoes in Special Enactments have to yield in case of prolonged incarceration when, weighed against the paramount importance of the right to life and liberty under Article 21 of the Constitution of India, by the Hon'ble Supreme Court in **Criminal Appeal No. 5266 of 2024 (Arising out of SLP (CRL.) No. 13870 of 2024, titled as Partha Chatterjee Versus Directorate of Enforcement**, decided on 13.12.2024, **2024 SCC**



Online SC 3729, by granting bail in the following

terms:-

“13. We have considered the rival submissions and carefully examined the material on record. At the outset, it is worth reiterating that this Court, through a catena of decisions, has consistently emphasized that prolonged incarceration of an accused awaiting trial unjustly deprives them of their right to personal liberty. ***Even statutory embargoes on the grant of bail must yield when weighed against the paramount importance of the right to life and liberty under Article 21 of the Constitution, particularly in cases where such incarceration extends over an unreasonably long period without conclusion of trial.***

17. ***We, however, cannot be oblivious to the settled principles that a suspect cannot be held in custody indefinitely and that undertrial incarceration should not amount to punitive detention.*** The Court would, nevertheless, ensure that affluent or influential accused do not obstruct the ongoing investigation, tamper with evidence, or influence witnesses, namely, actions that undermine the fundamental doctrine of a fair trial.

18. Striking a balance between these considerations and without expressing any opinion on the merits of the allegations, we deem it appropriate to dispose of this appeal with the following directions :

a to e

f. The Petitioner shall thereafter be released on bail on 01.02.2025, subject



to his furnishing bail bonds to the satisfaction of the Trial Court.....”

10(ii). Delay in trial has been held to be in violation of the right guaranteed under Article 21 of Constitution of India. Reliance is placed on judgment passed by the Hon'ble Supreme Court in case titled **Umarmia Alias Mamumia versus State of Gujarat, (2017) 2 SCC 731**, in the following terms:

“11. This Court has consistently recognised **the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India.** (See: Supreme Court Legal Aid Committee v. Union of India, (1994) 6 SCC 731; Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616) Accused, even in cases under TADA, have been released on bail on the ground that **they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest.** (See: Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 and Babba v. State of Maharashtra, (2005) 11 SCC 569).”

10(iii). The Hon'ble Supreme Court having taken note of inordinate delay in conclusion of trial ordered



enlargement of accused on bail in **Nitish Adhikary @**

Bapan v. The State of West Bengal, Special Leave to Appeal (Crl.) No. 5769 of 2022 decided on 1.8.2022 and in **Abdul Majeed Lone v. Union Territory of Jammu and Kashmir**, Special Leave to Appeal (Crl) No. 3961 of 2022, decided on 1.8.2022, who were framed under Narcotic Drugs and Psychotropic Substances Act and were behind the bars for almost two years and there was no likelihood of conclusion of trial in near future.

10(iv). The Hon'ble Three Judge Bench of the Supreme Court, in Criminal Appeal No. 668 of 2020, titled **Amrit Singh Moni v. State of Himachal Pradesh**, has enlarged the accused on bail whereby petitioner was facing trial for recovery of 3.285 kilograms charas from a vehicle, alongwith four other persons for having been in detention for more than 2 years and there is no further progress in the trial.

10(v). While dealing the claim for bail by a person involved in commercial quantity of contraband, Hon'ble Supreme Court has extended the benefit of



bail in ***Petition(s) for Special Leave to Appeal (Crl.) No(s).1904/2023,*** titled as ***Sunil Kumar Versus The State of Himachal Pradesh,*** decided on 29.03.2023, in the following terms:-

“It is noted that the ***petitioner has been in custody for more than one and a half years and the trial is yet to conclude.*** Earlier, the petitioner had been granted interim bail on two occasions and has not misused the liberty of interim bail or violated any of the bail conditions imposed upon him but has thereafter, surrendered back.

Therefore, keeping all these aspects in view, the petitioner is ordered to be released on bail subject to appropriate conditions being imposed by the Trial Court including the condition that the petitioner shall diligently participate in the trial. Ordered accordingly.”

10(vi). Accepting the prayer for bail by accused of commercial quantity in ***Petition(s) for Special Leave to Appeal (Crl.) No(s).4648/2024,*** titled as ***Ankur Chaudhary Versus State of Madhya Pradesh,*** decided on 28.05.2024, the Hon’ble Supreme Court extended benefit of bail, in a case, where the trial was not concluded within reasonable time having been elapsed and also by invoking



Article 21 of Constitution of India which mandates that the prolonged incarceration, defeats the precious fundamental rights; and fundamental rights override the statutory embargo in Section 37 (1) (b) of NDPS Act in the following terms:-

“Now, on examination, the panch witnesses have not supported the case of prosecution. On facts, we are not inclined to consider the Investigation Officer as a panch witness. It is to observe that ***failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.***

In view of the above, we are inclined to allow this petition and direct to enlarge the petitioner on bail on furnishing the suitable bail bonds and sureties and on such other terms and conditions as may be deemed fit by the trial Court.”

10(vii). The Hon’ble Supreme Court has extended the concession of bail to an accused allegedly involved in commercial quantity, who was facing incarceration of one year and four months and in ***Petition(s) for Special Leave to Appeal (Crl.) No(s).7115/***



2024, titled as **Sohrab Khan Versus The State of Madhya Pradesh**, decided on 13.08.2024, in the following terms:-

“The petitioner is an accused for the alleged offences punishable under Sections 8/22 and 29 of the Narcotic Drugs and Psychotropic Substances Act. His bail application was dismissed by the High Court. **He has already undergone about one year and four months in jail.** The petitioner and com accused were found in possession of 80 grams of MD powder each of which commercial quantity is 50 grams.

Considering the fact that the petitioner criminal antecedents and the entire facts and circumstances has no of this case, we are of the opinion that a case of bail is made out for the petitioner and therefore, **the prayer of the petitioner is allowed.**

Accordingly, the petitioner is directed to be released on bail forthwith on the usual terms and conditions to be decided by the concerned Court.”

10(viii). While dealing with the claim for bail where the incarceration was prolonged in **Petition(s) for Special Leave to Appeal (Crl.) No(s).9510/2024**, titled as **Ram Lal Versus The State of Rajasthan**, decided on 17.09.2024, as in this case, in the following terms:-



“The petitioner and the other accused persons are accused for the offences punishable under Sections 8/21 & 8/29 of the Narcotic Drugs and Psychotropic Substances Act and allegation is that 450 gm of smack has been recovered from them. The bail application of the petitioner was dismissed by the High Court. Hence, he approached this Court. He has already undergone about 1 year and 6 months in jail.

Heard learned counsel for the petitioner. As per office report dated 13.09.2024, the service is deemed complete on the sole respondent-State but no one has appeared for the state.

Considering the period of incarceration of the petitioner and the fact that the petitioner has no criminal antecedents, we are of the opinion that a case of bail is made out for the petitioner.

Accordingly, the petitioner is directed to be released on bail forthwith on the usual terms and conditions to be decided by the concerned Court.”

10(ix). While dealing with the claim for bail wherein the accused was alleged to have been involved with accusation for commercial quantity of Ganja under Section 20 of the NDPS Act, the Hon’ble Supreme Court has accepted the prayer for bail in **SLP (Criminal) No. 2401 of 2026, Satyajeet Bhoi versus State of Chhattisgarh and another**, decided on 16.03.2026 when nothing was brought on record to establish any



nexus between the bail petitioner and the alleged contraband coupled with the factum of prolonged incarceration and the fact that the trial was likely to be delayed, in the following terms:

Learned senior counsel appearing for the appellant submitted that the allegations under the provisions of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (“NDPS Act”) against the appellant herein are untrue; merely because the *appellant was a passenger in the truck which was detained and the contraband (150 Kilograms of Ganja was recovered)*, the same cannot be linked with the appellant herein. **There has been no material brought on record to establish any nexus between the appellant and the contraband substance.** But the appellant has been in jail since 25.03.2024 which is almost **two years; the trial has not progressed substantially** inasmuch fifteen witnesses have to be examined; **there would inevitably be a delay in the trial.** The appellant has a good case on merits. Hence, the impugned order may be set aside and the relief of bail may be granted to the appellant herein.



Per contra, learned Deputy Advocate General appearing for the State of Chhattisgarh with reference to the counter affidavit contended that the High Court was justified in declining to grant bail to the appellant herein; that the co-accused who was the driver of the truck from which the contraband substance was recovered is in jail; that if the appellant is granted the relief of bail, it will result in frustration of the trial. In the circumstances, he submitted that there is no merit in this appeal and the same may be dismissed.

Considering the facts on record, in our view, the case for bail is made out.

We, therefore, allow this appeal and direct as under: “The appellant shall be produced before the concerned Trial Court as early as possible and the Trial Court shall release him on bail, subject to such conditions as it may deem appropriate to impose to ensure his presence in the proceedings arising out of FIR No. 29/2024 dated 25.03.2024 mentioned above.”



It is directed that the appellant shall extend complete cooperation in the ensuing trial.

The appellant shall not misuse his liberty and shall not in any way influence the witnesses or tamper with the material on record.

The appellant shall ensure that he is present before the Special Court/Trial Court on every date of hearing unless he is able to seek exemption from appearance for a valid and reasonable cause.

Any infraction of the conditions may entail cancellation of bail granted to the appellant.

INFRINGEMENT OF PERSONAL LIBERTY UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA:

11. While reiterating the principle that *bail is a rule and jail is an exception* and no accused can be deprived of personal liberty on mere accusation and an accused is to be treated as innocent in the eyes of law, the Hon'ble Supreme Court has outlined the object of bail, in ***Guddan alias Roop Narayan Versus State of Rajasthan, 2023 SCC OnLine SC 1242***, in the following terms:-



“11. In the case of **Sanjay Chandra V. Central Bureau of Investigation, (2012) 1 SCC 40**, while hearing a bail Application in a case of an alleged economic offence, this court held that the **object of bail is neither punitive nor preventative**. It was observed as under:

- "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 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.
23. Apart from the question of prevention being the object of **refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct** whether the accused has been convicted for it or not or to **refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson**.
25. The provisions of Cr PC confer discretionary jurisdiction on criminal courts to grant bail to the accused



pending trial or in appeal against convictions; **since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general.** In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and **normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.**

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that **refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution."**

12. Further, in the case of Sandeep Jain v. National Capital Territory of Delhi, (2000) 2 SCC 66, this Court, while hearing a bail application held that **conditions for grant of bail cannot become so onerous that their existence itself is tantamount to refusal of bail.** This Court held as under:

"We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR



stage should pay a huge sum of Rs. 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs.2 lakhs? If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to the legal remedies provided by law.

Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the Court could have directed the appellant to substitute him with another surety. **But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper.** It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police."

REFORMATIVE INTENT AND CLAIM FOR BAIL:

12. While dealing with the concept of bail which has humanist and reformative intent coupled with the fact that the personal liberty of an accused under



Article 21 of the Constitution of India is sacrosanct, the Hon'ble Supreme Court, held in ***Criminal Appeal No. 2787 of 2024***, titled as ***Javed Gulam Nabi Shaikh Versus State of Maharashtra and Another.***

ADHERANCE TO PRINCIPLE:- BAIL IS RULE:

13. In facts of instant case, since the accusation under Section 37(1)(b) is not made out, at this stage, therefore, depriving the petitioner of the concession of bail shall negate the principle that 'bail is a rule and jail is an exception', as outlined by the Hon'ble Supreme Court, in **Manish Sisodia vs Directorate of Enforcement, SLP (Criminal) No.8781 of 2024.**

PAST CRIMINAL ANTECEDENTS:

14. Learned State Counsel has opposed the claim for bail on the ground that as per the Status Reports, the petitioner has criminal antecedents, who has been involved in one criminal cases i.e. F.I.R No. 68 of 2023 under Section 20 and 29 of the NDPS Act at Police Station Damtal registered on 28.04.2023.



14(i). Before analyzing the contention of the Learned State Counsel it is necessary to have a ***recap of the mandate of law***, in broader sense, as to whether the past criminal antecedents are relevant and in what circumstances and extent thereof and in what circumstances and to what extent and while considering the claim of an accused for bail, which are detailed here-in-below.

14(ii). While negativating the plea that the past criminal antecedents {i.e. 36 criminal cases of serious nature} cannot solely be the ground for denying bail or in interfering with the bail order granted by a Court, when, an accused was undergoing incarceration coupled with the fact that no cogent material was placed on record revealing that during bail there is possibility of accused fleeing away from the trial or an accused is likely to threaten witnesses or is likely to thwart justice, has been outlined by the Hon'ble Supreme Court, in **Maulana Mohammed Amir Rashidi versus State of Uttar Pradesh, (2012)**



2 SCC 382.

14(iii). While granting bail to an accused having criminal antecedents, who was facing incarceration for 7 months and when, no prima-facie accusation or reasonable grounds existed, the Hon'ble Supreme Court in ***Prabhakar Tewari Versus State of Uttar Pradesh and another, (2020) 11 SCC 648.*** Further despite the past criminal antecedents, benefit of bail, was granted by applying the principle that accused is presumed to be innocent and merely in the guise of pending cases, the presumption of guilt could not be inferred and when, the accused is facing incarceration for long, as has been outlined by the Hon'ble Supreme Court in ***Union of India vs Mrityunjay Kumar Singh, 2024 SCC OnLine SC 852.*** This principle has been reiterated in ***Ayub Khan versus State of Rajasthan, 2024 SCC OnLine SC 3763.*** Moreover, the pendency of other criminal cases cannot be invoked for denying bail, when, no *prima facie* case exists and prolonged incarceration was



writ large, in **Prem Prakash versus Union of India**
through Directorate of Enforcement, 2024 SCC
OnLine SC 2270.

**NOTHING ADVERSARIAL REGARDING TAMPERING
WITH EVIDENCE OR WITNESSES ETC:**

15. Status Reports filed by State Authorities have neither pointed out cogent and convincing material revealing adversarial circumstances that after release on bail, the petitioner is likely to tamper with evidence or may cause inducement, threat or promise to any person or persons acquainted with the facts of the case. However, the apprehension if any, of the State Authorities are being safeguarded, by imposing stringent conditions in this bail order.

**NOTHING ADVERSARIAL LIKELIHOOD OF FLEEING
AWAY FROM TRIAL OR JURISDICTION OF COURT:**

16. In order to safeguard the rights of bail petitioner and to take care of apprehensions of State that bail petitioner may flee away [notwithstanding the fact that no such apprehension has been pointed out in Status Report] yet, in peculiar facts of this



case, this Court stringent conditions in the bail orders, in later part of this order.

CONCLUSION:

17. In facts of instant case, as discussed above, the plea of petitioner for bail carries weight, *for the reason*, that *firstly*, there are reasonable grounds to believe that the bail petitioner is not guilty and is not likely to commit any offence while on bail, as no recovery was made and the petitioner had neither sold nor purchased the alleged contraband and the petitioner was neither the owner or occupier nor had used the conveyance [alleged vehicle in question] and accusation under Section 37(1)(b) is not made out at this stage as discussed hereinabove; and *secondly*, the Status Report reveals that bail petitioner is in custody since 29.05.2025 and is undergoing **incarceration for about ten months**; and *thirdly*, **conclusion of trial is likely to take considerable time, when, the charge against the accused still to be framed and PWs are to be examined as yet**



and the trial is likely to take considerable time ; *and*
fourthly, the **delay in trial is not attributable** to the
petitioner ; *and fifthly*, reasonable grounds exist to
believe that bail petitioner is not guilty and is not
likely to commit any offence while on bail; *and*
sixthly, the continued **detention can neither be**
punitive nor preventative and *seventhly*, the continued
detention in guise of penalizing the petitioner by
presuming guilt cannot be permitted; and *eighthly*,
nothing cogent and convincing has been placed on
record that there is possibility of accused fleeing
away from the trial or an accused is likely to threaten
witnesses or is likely to thwart justice; and *ninthly*,
nothing incriminating material has been found
from exclusive possession of petitioner and the
accusation is yet to be tested, examined and proved
during the trial; and *lastly*, in order to safeguard
the interest of State vis-à-vis the right of petitioner,
this Court imposes stringent condition in this order
and in case of any violation of or misuse of the



concession-liberty, the State Authority can seek cancellation of the concession extended to the petitioner. Denial of bail shall deprive and curtail the sacrosanct fundamental rights of personal liberty and right of speedy trial under Article 21 of the Constitution of India of the petitioner at this stage. On totality of facts and circumstances and the mandate of law as referred to above, the claim of the petitioner [*Damini*] for enlargement on bail, carries weight, in the peculiar facts-situation of this case, as discussed above.

DIRECTIONS:

18. Taking into account the entirety of the facts and the material on record and the mandate of law and the reasons recorded hereinabove and in the peculiar facts of case, the **instant petition is allowed;** and the *State Authorities are directed to release the petitioner [*Damini*] on bail*, subject to the observance of following conditions:-

- (i) Respondent-State Authorities shall release bail petitioner [*Damini*] on furnishing personal bond of Rs.75,000/- {Rs Seventy Five



Thousand} with two sureties of the like amount, to the satisfaction of the Learned Trial Court concerned, ***if not required in any other case;***

- (ii) Petitioner shall undertake and shall also appear on every date of trial hereinafter;
- (iii) Petitioner shall abide by all or any other condition(s), which may be imposed by the Learned Trial Court, in view of this order;
- (iv) Petitioner shall neither involve herself nor shall abet the commission of any offence hereinafter. Involvement in any offence whatsoever or abetting thereof shall entail automatic cancellation of bail granted in terms of this order ;
- (v) Petitioner shall disclose her functional E-Mail IDs/ WhatsApp number and that of her surety to the Learned Trial Court;
- (vi) Petitioner after release, shall report to the Investigating Officer or SHO of Police Station concerned, on 2nd Sunday of every month at 11.00 a.m., only for having an update on good conduct and behaviour;
- (vii) Petitioner shall not jump over the bail and also shall not leave the country without the prior information of the Court;
- (viii) Petitioner shall not tamper with the evidence in any manner;
- (ix) Petitioner shall not cause any inducement, threat or promise {directly or indirectly} to witnesses of any other person acquainted with the case;



- (x) Petitioner is free to seek modification of any condition contained hereinabove, if need arises;
- (xi) State Authorities are free to move this Court for seeking alteration/modification of any of the condition contained in this order or any condition imposed by the Learned Trial Court as a sequel to this order, in fact situation of instant case or circumstances so necessitate, at any time herein-after;
- (xii) State Authorities are free to move this Court for seeking cancellation of the concession of bail, in case, the petitioner violates any of the conditions contained in this order.;

19. Observations made in this judgment shall not be construed in any manner as an indictive of findings, for or against the parties herein, either for the purpose of investigation or for trial, which shall proceed in-accordance with law, irrespective of any of the observations contained hereinabove.

20. Petitioner is permitted to produce/use copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned, and the said authorities shall not insist for production of a certified copy, but if required, may



verify about the passing of this order from the *Website* of this Court.

21. Registry is directed to forward a copy of this order to Superintendent of Police, Kangra at Dharamshala, for information and with a direction to intimate the SHO, Police Station, Nurpur to keep an update on good conduct and behaviour of the bail petitioner *[Damini]* in terms of this order.

Pending miscellaneous application(s), if any, shall also stand disposed of.

(Ranjan Sharma)
Judge

25th March, 2026
(*tn*)