

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. MP (M) No. 2679 of 2025****Reserved on: 16.1.2026****Date of Decision: 23.1.2026.**

Jitender Thakur**...Petitioner****Versus****State of Himachal Pradesh****...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Vacation Judge.******Whether approved for reporting?¹ No*****For the Petitioner : Mr Loveneesh Thakur,
Advocate.****For the Respondent/State : Mr Lokender Kutlehria,
Additional Advocate General.**

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in F.I.R. No. 233 of 2024, dated 19.10.2024, registered at Police Station, Nurpur, District Kangra, H.P., for the commission of offences punishable under Sections 20, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (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 a vehicle based on secret information on 18.10.2024 and recovered seven packets containing 3.575 Kg of charas. Bhupinder and Jitender (the present petitioner) were found to be occupying the vehicle at the time of the search. These allegations are false. The petitioner was arrested based on the statement made by the co-accused. The investigation is complete, and the police have filed the charge sheet before the Court. The matter was listed before the learned Additional Sessions Judge-I, Dharamshala, on 1.12.2025. The petitioner had no financial transaction with the co-accused. The petitioner has been in custody for more than one year, and his right to a speedy trial is being violated. The petitioner would abide by the terms and conditions that the Court may impose. Hence, 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 a patrolling duty on 18.10.2024. They received secret information at 12:30 am that a vehicle was transporting a commercial quantity of charas, and a huge quantity of charas could be recovered by its search. The police

reduced the information to writing and sent it to the Supervisory Officer. The police went to 24 miles near Jonta and found that a car bearing registration No. TO424CH6911A was parked on the road. The police checked the car in the presence of Mahinder Singh Up Pradhan. The driver revealed his name as Bhupinder Thakur, and the person sitting beside the driver revealed his name as Jitender Thakur (the present petitioner). The police recovered 7 packets containing black sticks wrapped in transparent polythene. The police checked the sticks and found them to be charas. The police weighed the packets and found their weight to be 3.575 kg. The police seized the charas and arrested the occupants of the vehicle. As per the report of analysis, the exhibit was an extract of cannabis and a sample of charas. Bhupinder Thakur revealed during the interrogation that Desh Raj had handed over the charas to him on Katola Batheri road with a direction to deliver it to Sonu. The charge sheet was prepared and filed before the Court on 09.04.2025. Supplementary challan was filed before the Court on 31.10.2025; hence, the status report.

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

5. Mr Lovneesh Thakur, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated based on a statement made by the co-accused. Mere presence in the vehicle is not sufficient to connect the petitioner with the commission of a crime. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Lokender Kuthelria, learned Additional Advocate General, for the respondent-State, submitted that the petitioner had earlier filed a bail petition which was dismissed by the Court. A subsequent bail petition only lies when there is a change in the circumstances. There is no change in the circumstances in the present case. Hence, 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 filed a bail petition, which was registered as Cr.MP(M) No. 804 of 2025 and was dismissed on 4.6.2025. It was held in the *State of Maharashtra. 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. A similar view was taken in *State of T.N. v. S.A. Raja*, (2005) 8 SCC 380, wherein it was observed:

9. When a learned Single Judge of the same court had denied bail to the respondent for certain reasons, and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of res judicata are not applicable to bail applications, but the repeated filing of bail applications without there being any change of circumstances would lead to bad precedents.”

11. This position was reiterated in *Prasad Shrikant Purohit v. State of Maharashtra* (2018) 11 SCC 458, wherein it was observed:

“30. Before concluding, we must note that though an accused has a right to make successive applications for



the grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds, which persuade it to take a view different from the one taken in the earlier applications.”

12. It was held in *Ajay Rajaram Hinge v. State of Maharashtra, 2023 SCC OnLine Bom 1551*, that a successive bail application can be filed if there is a material change in the circumstances, which means a change in the facts or the law. It was observed:

“7. It needs to be noted that the right to file successive bail applications accrues to the applicant only on the existence of a material change in circumstances. The sine qua non for filing subsequent bail applications is a material change in circumstances. A material change in circumstances settled by law is a change in the fact situation or law that requires the earlier view to be interfered with or where the earlier finding has become obsolete. However, a change in circumstance has no bearing on the salutary principle of judicial propriety that successive bail application needs to be decided by the same Judge on the merits, if available at the place of sitting. There needs to be clarity between the power of a judge to consider the application and a person's right based on a material change in circumstances. A material change in circumstance creates in a person accused of an offence the right to file a fresh bail application. But the power to decide such a subsequent application operates in a completely different sphere, unconnected with the facts of a case. Such power is based on the well-settled and judicially recognized principle that if successive bail applications on the same subject are permitted to be disposed of by different Judges, there would be



conflicting orders, and the litigant would be pestering every Judge till he gets an order to his liking resulting in the credibility of the Court and the confidence of the other side being put in issue and there would be wastage of Court's time and that judicial discipline requires that such matter must be placed before the same Judge, if he is available, for orders. The satisfaction of material change in circumstances needs to be adjudicated by the same Judge who had earlier decided the application. Therefore, the same Judge needs to adjudicate whether there is a change in circumstance as claimed by the applicant, which entitles him to file a subsequent bail application.”

13. Therefore, the present bail petition can only be considered on the basis of the change in the circumstances, and it is not permissible to review the order passed by the Court.

14. The Court had held in the earlier petition that the petitioner was travelling in the vehicle from which a commercial quantity of charas was effected. The petitioner was *prima facie* in possession of the charas, and he has failed to satisfy the twin conditions laid down under Section 37 of the NDPS Act. All these circumstances have not changed.

15. It was submitted that a charge sheet has been filed, and this is a change in circumstance. This submission cannot be accepted. It was laid down by the Hon’ble Supreme Court in *Virupakshappa Gouda v. State of Karnataka*, (2017) 5 SCC 406: (2017) 2 SCC (Cri) 542: 2017 SCC OnLine SC 295 that the filing of a

charge sheet does not amount to a change in circumstances. It was observed:

“12. On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the fact that when a charge sheet is filed, it amounts to a change of circumstance. Needless to say, the filing of the charge sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge sheet establishes that after due investigation, the investigating agency, having found materials, has placed the charge sheet for the trial of the accused persons.”

16. It was submitted that the petitioner was arrested on 19.10.2024. The prosecution has failed to complete the evidence, and the petitioner's right to a speedy trial is being violated. This submission will not help the petitioner. The petitioner has not filed the copies of the order sheets to demonstrate that the delay is attributable to the prosecution or the Court. Further, it was laid down by the Hon'ble Supreme Court in *Union of India vs. Vijin K. Varghese* 2025:INSC:1316 that bail cannot be granted on the prolonged incarceration without satisfying the twin conditions laid down under Section 37 of the NDPS Act. It was observed: -

“17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and



likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii), which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon the appreciation of evidence which would be in the domain of the trial court at first instance.

18. This Court ordinarily shows deference to the discretion exercised by the High Court while considering the grant of bail. However, offences involving a commercial quantity of narcotic drugs stand on a distinct statutory footing. Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure.

19. In the present case, the High Court has not undertaken the analysis of those twin requirements with reference to the material placed by the prosecution. The orders dated 22.01.2025 and 12.03.2025 do not advert to the allegation regarding the respondent's prior involvement in a seizure of narcotic drugs and psychotropic substances only days prior to the seizure forming the subject matter of the present complaint, nor do they engage with the prosecution's assertion as to the respondent's role in arranging, importing, clearing and supervising the consignments. The omission to consider these factors bears directly upon the statutory satisfaction required by Section 37(1)(b)."

17. A similar view was taken in *Union of India v Namdeo Ashruba Nakade SLP (Crl.) 9792/2025*, decided on 07.11.2025, wherein it was observed:

“11. In the present case, this Court finds that though the Respondent-accused was in custody for one year, four months, and charges have not been framed, yet the allegations are serious since not only is the recovery much in excess of the commercial quantity, but the Respondent-accused allegedly got the cavities ingeniously fabricated below the trailer to conceal the contraband.

12. Prima facie, this Court is of the opinion that the Respondent-accused is involved in drug trafficking in an organised manner. Consequently, no case for dispensing with the mandatory requirement of Section 37 of the NDPS Act is made out in the present matter.”

18. Therefore, the petitioner cannot claim to be entitled to bail because of the violation of his right to a speedy trial.

19. No other point was urged.

20. In view of the above, the present petition fails, and it is dismissed.

21. 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)
Vacation Judge

23rd January, 2026
(Chander)