

IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

Cr. MP(M) No. 2721 of 2025

Reserved on : 25.11.2025

Decided on : 28.11.2025

Moti Sharma

...Applicant

Versus

State of H.P.

...Respondent

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting?

For the Applicant : Mr. T.K. Verma, Advocate.

For the Respondent : Mr. Mohinder Zharaick, Mr. H.S. Rawat and Mr. Varun Chandel, Addl. A.Gs. with Ms. Ranjna Patial and Mr. Rohit Sharma, Dy. A.Gs, assisted by LHC Rekha No. 113, Police Station, West, Shimla, H.P.

Virender Singh, Judge

Applicant Moti Sharma has filed the present application, under Section 483 of Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as 'the BNSS') for releasing him, on bail, during the

pendency of the trial, arising out of FIR No. 64 of 2025, dated 10.4.2025, registered under Sections 21, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the 'NDPS' Act), with Police Station, Boileauganj, District Shimla, H.P.

2. The applicant has pleaded the fact that he is innocent person and has falsely been implicated, in the present case and the contraband, which is stated to be 23.72 grams, does not fall within the definition of 'commercial quantity'. As such, according to the applicant, rigors of Section 37 of the NDPS Act are not applicable in the present case.

3. According to the applicant, investigation, in the present case, is complete and nothing is to be recovered, from his possession. All these facts have been pleaded to show that custodial interrogation of the applicant is no longer required by the Police.

4. Applicant has pleaded that he belongs to a respectable family and having deep roots in the society.

5. On the basis of above facts, the applicant, through his counsel, has undertaken to abide by the terms and conditions, to be imposed by this Court, in case, he is ordered to be released on bail, during pendency of the trial.

6. On these submissions, a prayer has been made to allow the bail application.

7. When put to notice, the police has filed the status report, disclosing therein, that on 10.4.2025, H.C. Puneet Sharma No. 54, I.O., SIU, Shimla has submitted a ruqua, disclosing therein that on 10.4.2025, he alongwith other police officials, under the leadership of ASI Sushil Kumar, was on patrolling duty, towards ISBT Shimla, Tutikandi and Sankat Mochan. When, he was at ISBT Shimla, then, he received a secret information from the reliable sources that in the house of Shiv Singh Thakur, in

village Tikkar, in the room of one Mamta, applicant Moti Sharma was staying and has brought large quantity of contraband, from the adjoining state and selling the same to the customers. As per the information, if the said room is searched, then, a large quantity of heroin/chitta could be recovered from applicant Moti Sharma.

7.1 The said information was found to be authentic and reliable. As per the Police, in the eventuality of obtaining the search warrant, delay could occur and contraband could be removed from there. The said information was found to be reliable, as such, he has complied with the provisions of Section 42(2) of the NDPS Act, and submitted the same to the Supervisory Officer.

7.2 Thereafter, a request was made to Police Station to depute one Lady Constable by sending her to ISBT, Shimla, upon which, Lady Const. Saroj No. 1592 reached at the spot, who was associated in the team. Thereafter, the police team proceeded towards

the spot and at about 12:00 at noon, they reached at village Tikkar. In the said village, one person was there in the carpenter shop, to which, the I.O. has given his personal identification and apprised him about the secret information. Thereafter, owner of the house Shiv Singh Thakur was called to the spot. Said Shiv Singh Thakur reached at the spot and he was associated in the investigation.

7.3 Apart from this, one Jagat Pal Singh was also associated in the investigation. Alongwith the police team and independent witnesses, the I.O. reached at the second floor of the house of Shiv Singh Thakur. The door of the room of Mamta was knocked, upon which, one person came out and the I.O. has inquired his name and address. He has disclosed his name as Moti Sharma (applicant). He has also disclosed that said room belongs to Mamta, with whom he is having a love affair. Thereafter, Moti Sharma (applicant) was directed to come out of the room and I.O., as well as, other police officials, had

given their personal search to him and in the presence of the witnesses, the said room was searched. When, the pillow of the double bed was checked, then the same was found containing a plastic pouch. On checking, the same was found containing granule and stone shaped substance.

7.4 Applicant Moti Sharma, on inquiry, disclosed that the said substance is chitta/heroin and he has got the same from Amritsar (Punjab). When, the said substance was checked, then, on the basis of experience, the same was found to be heroin. On weighing, the same was found to be 23.720 grams. Other codal formalities were completed. The contraband was taken into possession. Thereafter, ruqua was submitted, upon which, FIR has been registered. Further investigation was entrusted to H.C. Hemant Kumar No. 46, on 10.4.2025, who visited the spot and prepared the inventory of the case property and applicant Moti Sharma was taken into custody.

7.5 Spot map was prepared. Statements of witnesses were recorded under Section 180 of BNSS and applicant was arrested at 8 p.m.

7.6 The case property was produced before the Court of learned JMFC, Court No. 6, Shimla, for conducting the proceedings, under Section 52(A) of the NDPS Act. The sample was drawn and the same was sent to FSL Junga. The accused was produced before the Court and was remanded to police custody.

7.7. During police custody, the applicant has disclosed that he is addicted to consumption of chitta from the year 2011 and three other cases have been registered against him. He has further disclosed that on 24.2.2025, he has been released on bail from Patiala Jail and during his judicial custody, he came in contact with one Ashok Khajuria @ Billa, who has also been released on bail.

7.8 It has further been disclosed by applicant Moti Sharma that about two months ago, he received

a call from Ashok Sharma from mobile phone numbers 9086554145 and 8082400469 through whatsapp, and he allured him to supply chitta, for which, he will pay 1,00,000/- per month to him. At the instance of said Ashok Sharma, he had gone to Amritsar and brought heroin and handed over the same to one Sanjay.

7.9 As per his further revelations, on 5.4.2025, he brought 150 grams chitta from one Sandhu, out of which, he has supplied 130 grams of chitta to Sanjay. He has disclosed the mobile phone number of Sanjay as 7573651687.

7.10. The Police, on the basis of revelations made by applicant Moti Ram, has obtained the CDRs of mobile numbers 62307-11724, 9882585125, 9086554145, 8082400469, 7573651687 and 6005001636. The mobile phone numbers 9086554145 and 8082400469 were found to be issued in the name of Ashok Kumar Sharma.

7.11 As per the CDRs, applicant Moti Sharma had talked to Ashok Sharma at one occasion, whereas, he is found to have talked to Sanjay on 52 occasions. Applicant Moti Sharma and Sanjay were found to have talked 7 times. Ashok Kumar and Sanjay are found to have talked once and Ashok Kumar and Rahul are found to have talked to each other, on 171 occasions.

7.12 During investigation, it was found that applicant Moti Sharma, on the direction of accused Ashok Sharma, had gone to Atari border at a place known as 'Shata', from where, the applicant is stated to have got chitta from Sandhu for being supplied to Sanjay, and many transactions were made by Ashok Kumar himself.

7.13 Applicant Moti used to transfer the amount in the account of Ashok Sharma, through account of his sister Durga Katwal. Thereafter, correspondences were made with PNB and Bank of Maharashtra, for obtaining the bank statement of applicant and his

sister Durga Katwal. According to the bank statement of applicant Moti Sharma and his sister, from the bank account of Durga Katwal, a sum of Rs. 18,000/- on 4.3.2025, Rs. 40,000/- on 17.3.2025, Rs. 10,000/- on 8.4.2025, are stated to have transferred through G pay. On 29.3.2025, applicant Moti Sharma has deposited a sum of Rs. 49,000/- at the instance of Ashok Sharma, in the bank account of one Sarita, maintained with PNB, Akhnoor.

7.14 In order to verify the said fact, on 17.4.2025, under the leadership of Sub-Inspector Vijay Pal Singh, a police team was constituted, which proceeded to Jammu, from where Sarita and his son Rahul were associated in the investigation and brought to Police Station, West, Shimla, on 19.4.2025.

7.15 During investigation, Sarita Sharma disclosed that in the year 2020, she got opened a bank account No. 0986000100632308 with PNB Akhnoor. The said bank account was used by her son Rahul. Sim No.

6230711724 found to be used by applicant Moti Sharma, was registered in the name of his sister Durga Katwal. The other Sim No. 9882585125 was found to be registered in the name of father of applicant, but at the time of incident, the same was found to be used by applicant Moti Sharma.

7.16 During investigation, it has also been found that accused Moti Sharma, at the instance of accused Ashok Khajuria, used to deposit the money in the account of Sarita Sharma. Ashok Khajuria @ Billa is stated to be uncle (mosa) of Rahul Sharma.

7.17 During investigation, Sarita has disclosed that she is having no information with regard to the amount, being deposited in her account, and the same is in the knowledge of her son Rahul. As such, her statement was got recorded under Section 183 of BNSS, by producing her before the learned ACJM-2, Shimla.

7.18 During investigation from Rahul Sharma, mobile numbers 6005001636 and 6005083542 were found to be used in his mobile phone. The mobile phone was recovered and MI number was checked, upon which, it was found that he used to talk to Ashok Sharma for the last six months, on mobile phone number 8082400469. He has disclosed that when the amount was deposited in his mother's account by Ashok Khajuria @ Sharma, he used to inquire about the paymet by calling on his mobile number 6005001636. Some times a sum of Rs. 5000/- some times 10,000/-, 20,000/- 25,000/- and 40,000/- used to be transferred from account No. 098000100632308 on G Pay of mobile number of Anil by Ashok Sharma.

7.19 From 22.2.2025 to 8.4.2025 a sum of Rs. 2,27,000/- was found to be transferred by Rahul on the number of Anil through G pay, in the account of mother of Rahul. A sum of Rs. 7,70,502/- was found to be transferred w.e.f. 1.1.2025 to 14.4.2025, out of

which, a sum of Rs.6,71,797/- was found to be withdrawn.

7.20 During investigation, Rahul Sharma, also disclosed that an amount of Rs. 35,000/-, 47,000/-, 40,000/-, 49,000/- were found deposited in cash. Rahul also disclosed that his uncle Ashok Khajuria remained in jail for about 8 years at Patiala, in a case related to chitta/heroin. When, Ashok Khajuria was released on bail, he has assured Rahul that he will provide financial help to him, and due to his indigent circumstances, Rahul Sharma has hatched conspiracy with Ashok Khajuria and started using the bank account of his mother, for illegal activities.

7.21 From the above revelations, Section 27-A and 29 of the NDPS were added and accused Rahul was arrested on 19.4.2025.

7.22 During investigation, it has been found that Sanjay Sharma was arrested by Police at Hamirpur on 10.4.2025, alongwith 130 grams chitta and FIR No. 53 of 2025 was registered against him, under the

provisions of Section 21 of the NDPS Act. Presently, he is stated to be lodged in Sub-Jail Hamirpur.

7.23 In order to inquire from Sanjay Sharma, application for issuance of production warrant was moved. Consequently, on 25.4.2025, Sanjay Kumar was produced before the learned ACJM-II Shimla and was arrested in this case.

7.24 During investigation, Sanjay Sharma has disclosed that Moti Sharma and Ashok Khajuria @ Ashok Sharma met him in Patiala Jail, where they had decided that after being released on bail, all three of them will again do business of chitta. After being released on bail, in the month of January, 2025, Moti Sharma had talked to him on mobile numbers 7973651687 and 6230711724.

7.25 On 3.5.2025, in order to nab Anil Kumar and Ashok Khajuria, a police team was deputed. On 5.5.2025, Anil Kumar and Ashok Khajuria @ Ashok Sharma were brought to Police Station for inquiry. During investigation, Anil Kumar disclosed that in

his account, through account of Sarita, a sum of Rs. 2,37,000/- were transferred w.e.f. 12.2.2025 to 8.4.2025, at the instance of Ashok Khajuria. The said amount was given to him by Ashok Khajuria to invest the same in Dream-11, during IPL matches and after winning the said amount, he used to deposit, the same in the said account.

7.26 He was not aware about the fact that the said amount was earned by Ashok Khajuria by illegal business of selling heroin/chitta. However, at the instance of Ashok Khajuria, he used to invest the said amount in IPL matches in Dream-11. Thereafter, his statement was recorded under Section 183 of BNSS, by producing him before the learned ACJM-II, Shimla. Thereafter, Ashok Khajuria was also arrested in the said case.

7.27 Lastly, it has been pleaded in the status report that following cases have been registered against the applicant:

i) FIR No. 63/2019, dated 3.8.2019, under Section 21 of the NDPS Act, P.S. New Shimla;

ii) FIR No. 237/2021, dated 27.10.2021, under Section 21 of the NDPS Act, P.S. Boileauganj, Shimla, H.P.; and

iii) FIR No. 12 of 2022, dated 15.1.2022, under Sections 21,27 and 29 of the NDPS Act, with Police Station, Laldu, Punjab.

7.28 All the cases are stated to be pending adjudication.

7.29 On the basis of above facts, a prayer has been made to dismiss the application.

8. Initially, the present case has been registered under Section 21 of the NDPS Act and during investigation, when, the involvement of other accused persons was found, on the basis of financial transactions, Police has added Sections 27-A and 29 of the NDPS Act, in the present case. Meaning thereby, present case is now registered under Sections 21, 27-A and 29 of the NDPS Act.

9. Once, provisions of Section 27-A of the NDPS Act are attracted in the case, then, before releasing the accused on bail, in such type of cases, it is

incumbent upon the Court to record the findings, which would be more than prima-facie, qua the fact that accused is not guilty of such offence and while on bail, he will not commit any offence.

10. At this stage, there is nothing on record to demonstrate that the above twin conditions, as enumerated in Section 37(b)(ii) of the NDPS Act are existing in his favour.

11. In view of the decision of Hon'ble Supreme Court in *Criminal Appeal No.5544 of 2024*, titled as '*Narcotics Control Bureau versus Kashif*', Citation *No.2024 INSC 1045*, the satisfaction, which should be more than prima-facie finding, is sine qua non, for releasing such person on bail.

12. At this stage, from the stand taken by the Police, it cannot be stated that the applicant is not guilty of such offence and while on bail, he will not commit any offence.

13. The another fact, which has rightly been pointed out by the learned Addl. A.G. is that a

person, while approaching to the Court, for releasing him on bail, is bound to disclose each and every fact, which is material for the just adjudication of the case. However, in the present case, criminal antecedents of the applicant, have actively been concealed by the applicant, as in the bail application, the applicant has not given the material facts, with regard to registration of three cases, which have been mentioned in the status report.

14. Considering all these facts, this Court is of the view that the applicant is not able to make out a case, in his favour. As such, he is not entitled for bail.

15. Consequently, the bail application is dismissed.

16. Any of the observations, made herein above, shall not be taken, as an expression of opinion, on the merits of the case, as these observations are

confined, only to the disposal of the present bail application.

(Virender Singh)
Judge

November 28, 2025
Kalpana