

## Rajesh Kumar vs State Of Himachal Pradesh on 5 February, 2025

Neutral Citation No. ( 2025:HHC:3027 ) IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. MP (M) Nos. 181 and 182 of 2025 Reserved on: 03.02.2025 Date of Decision: 05.02.2025

1. Cr.MP(M) No. 181 of 2025 Rajesh Kumar ...Petitioner Versus State of Himachal Pradesh ...Respondent \_\_\_\_\_

2. Cr.MP(M) No. 182 of 2025 Sunita Bodh ...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(s) : Mr. Piyush Verma, Sr. Advocate with Mr. Lalit K. Sehgar, Advocate, in both the petitions.

For the Respondent : Mr Sidharth Jalta, Deputy Advocate General in both the petitions with Dy.

SP K.D. Sharma, SDPO, Manali with Ct. Pritam Singh No. 199, O/o SDPO, Manali, District Kullu, H.P. Rakesh Kainthla, Vacation Judge The petitioners have filed the present petitions for seeking regular bail in FIR no. 139 of 2024 dated 12.08.2024 registered with Police Station Manali, District Kullu, H.P, for the Whether reporters of Local Papers may be allowed to see the judgment? Yes Neutral Citation No. ( 2025:HHC:3027 ) commission of offences punishable under Sections 140(3), 238, 239, 61(2) and 105 of Bhartiya Nyaya Sanhita (BNS), Sections 27, 20, 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act') and Section 181 of Motor Vehicles Act. It has been asserted that, as per the prosecution, the petitioners had sold heroin to deceased Ms. Precilia Chenux and her friend Nishant Thakur on 07.08.2024. The deceased died due to the heroin overdose. The petitioners are innocent and have been falsely implicated. The petitioner-Rajesh Kumar is engaged in the business of Tour and Travel and has two commercial vehicles. These vehicles are hired by the tourists and local persons and the payment is made in cash or through UPI. The police arrested the petitioner based on the statement made by one of the co-accused. The police have completed the investigation and no recovery is to be effected from the petitioners. The petitioners have roots in the society and would join the investigation as and when directed to do so. They would abide by all the terms and conditions, which the Court may impose; hence, the petition.

2. The petitions are opposed by filing status reports asserting that the informant made a report to the police that Neutral Citation No. ( 2025:HHC:3027 ) deceased Precilia and Nishant Thakur went to Manali on 07.08.2024. She could not be contacted. The police registered a missing report and conducted an investigation. It was found during the investigation that Precilia and Nishant had stayed in Room No. 202 of Black Magic Hotel, Shanag. Precilia consumed heroin and died due to the heroin overdose. Her dead body was thrown in the Beas River by Nishant and Archit Sharma. Subsequently, the dead body of Precilia was recovered. The involvement of Ajay Kumar and Ankit Sharma was also found in the commission of crime. They were arrested and were subsequently

released on bail. As per the report of analysis, various drugs i.e. Tapentadol, Ketamine, Tramadol, Dextromethorphan, Codeine, Diazepam, 6- Monoacetylmorphine, Norhydrocodone and Cannabinoids were found in the blood of the deceased. As per the report of the Medical Officer, the death occurred due to pulmonary oedema caused by the cumulative effect of multiple intoxicating substances found in the blood of the deceased. The accused-Nishant Thakur revealed on inquiry that Precilia had purchased heroin from one man and woman sitting in a vehicle for Rs. 4,000/-. This amount was transferred through UPI. The account details were ascertained and it was found that the accounts belonged to the petitioners. They Neutral Citation No. ( 2025:HHC:3027 ) had supplied heroin to Precilia on different dates; hence, they were arrested for the commission of offences punishable under Sections 21 and 29 of the NDPS Act. The petitioner-Rajesh revealed on inquiry that he had purchased heroin from Sukhwinder. He used to sell the heroin to various persons in Manali. The account number of Sukhwinder was also ascertained. It was found that an amount of Rs.27,67,879/- was received by petitioner Rajesh Kumar w.e.f. 01.01.2024 till 31.12.2024 and he had transferred Rs.27,10,575/- to various persons. Petitioner Sunita Bodh received Rs.15,53,410/- between 01.03.2024 and 12.08.2024 and transferred Rs.13,64,994/- to various persons. The petitioners were aware of the fact that the heroin could cause death; hence, an offence punishable under Section 105 of Bhartiya Nyaya Sanhita, 2023 was added. The petitioners are drug peddlers who are selling heroin to various persons. They can indulge in the commission of the offence in case of their release on bail; hence, the status report.

3. I have heard Mr. Piyush Verma, learned Senior Counsel assisted by Mr. Lalit K. Sehgal, and Mr. Sidharth Jalta, learned Deputy Advocate General, for the respondent/State.

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4. Mr Piyush Verma, learned Senior Counsel for the petitioners submitted that the petitioners are innocent and they were falsely implicated. There is no evidence against them except the statement made by the co-accused which is legally inadmissible. No recovery was effected from them and the prosecution version that they had supplied heroin to the deceased is not established by any material on record; hence, he prayed that the present petitions be allowed and the petitioners be released on bail. He relied upon the judgment of Hon'ble Supreme Court in Rakesh Kumar Raghuvanshi versus State of Madhya Pradesh, 2025 INSC 96 and judgments of this Court in Vishal Kumar versus State of H.P, 2024:HHC:5396 and Roshan Lal versus State of H.P. in Cr.MP(M) No. 170 of 2024 decided on 09.02.2024 in support of his submission.

5. Mr. Sidharth Jalta, learned Deputy Advocate General for the respondent/State submitted that the petitioners are involved in the commission of a heinous offence. They had supplied heroin to the deceased. They had told the police that Sukhwinder had supplied heroin to them. Sukhwinder is yet to be arrested; hence, he prayed that the present petitions be dismissed.

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6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. The parameters for granting bail were considered by the Hon'ble Supreme Court in Manik Madhukar Sarve v. Vitthal Damuji Meher, 2024 SCC OnLine SC 2271, wherein it was observed as under:-

"19. Courts, while granting bail, are required to consider relevant factors such as the nature of the accusation, the role ascribed to the accused concerned, possibilities/chances of tampering with the evidence and/or witnesses, antecedents, flight risk, et al. Speaking through Hima Kohli, J., the present coram in Ajwar v. Waseem, 2024 SCC OnLine SC 974, apropos relevant parameters for granting bail, observed:

"26. While considering whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, how the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. (Refer: Chaman Lal v. State of U.P. (2004) 7 SCC 525; Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav (supra) (2004) 7 SCC 528; Masroor v. State of Uttar Pradesh (2009) 14 SCC 286; Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496; Neeru Yadav v. State of Uttar Pradesh (2014) 16 SCC 508; Anil Kumar Yadav v. State (NCT of Delhi) (2018) 12 SCC 129; Mahipal v. Rajesh Kumar @ Polia (supra) (2020) 2 SCC

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27. It is equally well settled that bail, once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the Superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a Superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In P v. State of Madhya Pradesh (supra) (2022), 15 SCR 211 decided by a three- judge bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must be weighed with the Court for interfering in an order granting bail to an accused under Section 439(1) of the CrPC in the following words:

"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive

to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237]. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail, but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court." (emphasis supplied)

20. In State of Haryana v. Dharamraj, 2023 SCC OnLine SC 1085, speaking through one of us (Ahsanuddin Amanullah, J.), the Court, while setting aside an order of the Punjab and Haryana High Court granting (anticipatory) bail, discussed and reasoned:

Neutral Citation No. ( 2025:HHC:3027 ) "7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide the grant of bail in Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528. In Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496, the relevant principles were restated thus:

'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.'" (emphasis supplied) Neutral Citation No. ( 2025:HHC:3027 )

8. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

9. The police arrested the petitioners based on the statement made by the co-accused Nishant. It was laid down by the Hon'ble Supreme Court in Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547: (2020) 2 SCC (Cri) 361: 2019 SCC OnLine SC 588 that a statement made by co-accused during the investigation is hit by Section 162 of Cr.P.C. and cannot be used as a piece of evidence. Further, the confession made by the co-accused is inadmissible because of Section 25 of the Indian Evidence Act. It was observed at page 568:-

44. Such a person, viz., the person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned, and the statement is taken by the police officer. A confession that is made to a police officer would be inadmissible having regard to Section 25 of the Evidence Act.

A confession, which is vitiated under Section 24 of the Evidence Act, would also be inadmissible. A confession, unless it fulfils the test laid down in Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66: AIR 1939 PC 47] and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC."

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10. Similarly, it was held in Surinder Kumar Khanna vs Intelligence Officer Directorate of Revenue Intelligence 2018 (8) SCC 271 that a confession made by a co-accused cannot be taken as a substantive piece of evidence against another co-accused and can only be utilised to lend assurance to the other evidence. The Hon'ble Supreme Court subsequently held in Tofan Singh Versus State of Tamil Nadu 2021 (4) SCC 1 that a confession made to the police officer during the investigation is hit by Section 25 of the Indian Evidence Act and is not saved by the provisions of Section 67 of the NDPS Act. Therefore, no advantage can be derived by the prosecution from the confessional statement made by the co- accused implicating the petitioners.

11. A similar situation arose before this Court in Dinesh Kumar @ Billa Versus State of H.P. 2020 Cri.L.J.4564, and it was held that a confession of the co-accused and the phone calls are not sufficient to deny bail to a person.

12. It was laid down by this Court in Saina Devi vs State of Himachal Pradesh 2022 Law Suit (HP) 211 that where the police have no material except the call details record and the disclosure Neutral Citation No. ( 2025:HHC:3027 ) statement of the co-accused, the petitioner cannot be kept in custody. It was observed:-

"[16] In the facts of the instant case also the prosecution, for implicating the petitioner, relies upon firstly the confessional statement made by accused Dabe Ram and secondly the CDR details of calls exchanged between the petitioner and the wife of co-accused Dabe Ram. Taking into consideration the evidence with respect to the availability of CDR details involving the phone number of the petitioner and the mobile phone number of the wife of coaccused Dabe Ram, this Court had considered the existence of a prime facie case against the petitioner and had rejected the bail application as not satisfying the conditions of Section 37 of NDPS Act.

[17] Since the existence of CDR details of accused person(s) has not been considered as a circumstance sufficient to hold a prima facie case against the accused person(s), in Pallulabid Ahmad's case (supra), this Court is of the view that petitioner has made out a case for maintainability of his successive bail application as also for grant of bail in his favour.

[18] Except for the existence of CDRs and the disclosure statement of the co-accused, no other material appears to have been collected against the petitioner. The disclosure made by the co-accused cannot be read against the petitioner as per the mandate of the Hon'ble Supreme Court in Tofan Singh Vs State of Tamil Nadu, 2021 4 SCC 1. Further, on the basis of aforesaid elucidation, the petitioner is also entitled to the benefit of bail.

13. A similar view was taken by this Court in Dabe Ram vs. State of H.P., Cr.MP(M) No. 1894 of 2023, decided on 01.09.2023, Parvesh Saini vs State of H.P., Cr.MP(M) No. 2355 of 2023, decided on Neutral Citation No. ( 2025:HHC:3027 ) 06.10.2023 and Relu Ram vs. State of H.P. Cr.MP(M) No. 1061 of 2023, decided on 15.05.2023,

14. Therefore, the petitioners cannot be detained in custody based on a statement made by the co-accused, as the same does not constitute a legally admissible piece of evidence.

15. In the present case, the petitioners were not found in possession of any heroin and there is no legally admissible evidence on record to show that the petitioners had supplied the heroin to the deceased Precilia. It was laid down by the Hon'ble Supreme Court in Rakesh Kumar (supra) that the prosecution is required to prove the possession before the accused can be held guilty of the offence punishable under the NDPS Act. It was observed:

"14. Thus, before the Court holds the accused guilty of the offence under the NDPS Act, possession is something that the prosecution needs to establish with cogent evidence. If the accused is found to be in possession of any contraband which is a narcotic drug, it is for the accused to account for such possession satisfactorily, if not, the presumption under Section 54 comes into place."

16. In the present case, in the absence of any evidence of the possession, the prosecution version that petitioners are involved in the commission of offences punishable under Sections 21 and 29 of

the NDPS Act cannot be accepted.

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17. It was submitted that the account statements of the petitioners show the receipt and transfer of a large amount of money. The deceased had also transferred the money to the account of the petitioner. This prima facie shows the involvement of the petitioner in the commission of the crime. This submission is not acceptable. Mere transfer of money without anything more cannot implicate a person for the commission of an offence punishable under the NDPS Act. The petitioners have explained that petitioner Rajesh is running a business of tours and travels and supplying the vehicle to various persons. This explanation cannot be said to be false at this stage; hence, the mere transfer of money is not sufficient to detain the petitioners in custody.

18. Reliance was placed upon the statement made by the brother of the deceased, however, that statement also shows that accused Nishant had disclosed the involvement of the petitioners to the police in his presence. A statement of the accused in police custody is inadmissible in view of Section 23 of Bhartiya Sakshya Adhiniyam, 2023, therefore, no advantage can be derived from the statement made by the brother of the deceased.

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19. There is no other evidence to connect the petitioners with the commission of a crime; hence, they cannot be detained in custody.

20. It was submitted on behalf of the State that Sukhwinder is yet to be arrested and the petitioners should not be released on bail, as they can alert Sukhwinder. This plea is stated to be rejected. The petitioners can only be detained in custody if prima facie, a case is made out against them. The police should have collected the evidence against the petitioners before arresting them and they cannot seek the detention of the petitioners on the ground that they are yet to collect the evidence against the petitioners and other persons.

21. Consequently, the present petitions are allowed, and the petitioners are ordered to be released on bail subject to their furnishing bail bonds in the sum of 1,00,000/- each with one surety each in the like amount, to the satisfaction of the learned Trial Court. While on bail, the petitioners will abide by the following conditions:

(i) The petitioners will not intimidate the witnesses, nor will they influence any evidence in any manner whatsoever.

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(ii) The petitioners shall attend the trial and will not seek unnecessary adjournments.

(iii) The petitioners will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the concerned Police Station and the Court.

(iv) The petitioners will furnish their mobile number and social media contacts 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.

22. It is clarified that if the petitioners misuse their liberty or violate any of the conditions imposed upon them, the investigating agency shall be free to move the Court for cancellation of the bail.

23. The observations made hereinabove are regarding the disposal of the petitions and will have no bearing, whatsoever, on the case's merits.

24. The petitions stand accordingly disposed of. A copy of this order will be sent to the Superintendent, District Jail Kullu, H.P., and the learned Trial Court by FASTER.

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

(Rakesh Kainthla) Vacation Judge 5th February, 2025 (saurav pathania)