

Reserved On: 18.06.2025 vs State Of Himachal Pradesh on 28 June, 2025

2025:HHC:20299 IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. MP(M) No. 1159 of 2025 Reserved on: 18.06.2025 .

Date of Decision: 28.06.2025.

Anku

...Peti

Versus

State of Himachal Pradesh

...Resp

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?1 No. For the Petitioner : Mr. Vijender Katoch, Advocate. For the Respondent : Mr. Jitender K. Sharma, Additional Advocate General.

Rakesh Kainthla, Judge The petitioner has filed the present petition for seeking regular bail in FIR No. 250 of 2024, dated 08.11.2024, registered for the commission of offences punishable under Sections 20, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the ND&PS Act') at Police Station Nurpur, District Kangra, H.P. Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2. It has been asserted that, as per prosecution, the police intercepted a vehicle bearing registration No. HP73-5581 at 7:30 .

p.m. The police checked the vehicle and recovered 3 kg and 400 grams of cannabis from the sacks of maize and peas. Anku and Bhupinder @Vipin Kumar ran away from the spot. Anku was arrested on 29.11.2024, and Bhupinder @ Vipin Kumar was arrested on 0.1.03.2025. Bhupinder revealed on inquiry that cannabis belonged to Anku and was to be supplied at Shahpur. The petitioner is innocent, and he was falsely implicated based on the statement made by Bhupinder. The investigation is complete, and no fruitful purpose would be served by detaining the petitioner in judicial custody. F.I.R. No. 55 of 2024, dated 11.03.2024, was registered against the petitioner for

the commission of offences punishable under Sections 20 and 29 of the NDPS Act at Police Station Baddi, H.P. The petitioner would abide by all the terms and conditions which 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 party signalled the driver of the vehicle bearing registration No. HP73-5581 on 07.11.2024 to stop during 2025:HHC:20299 Nakka. The driver turned his vehicle towards Nurpur; however, the vehicle stalled. The driver ran away from the spot. The police .

ran after the driver but could not apprehend him. The police searched the vehicle and recovered 3.40 kgs of cannabis concealed in sacks of maize and peas. The police seized the cannabis and conducted the investigation. The police checked the CCTV footage and interrogated the owner of the vehicle, who revealed that her son, Vipin Kumar, was driving the vehicle at the time of the incident. The petitioner, Anku, had loaded 36 bags of maize and peas into the vehicle. The police checked the call detail record and found that Vipin Kumar and Anku were in touch with each other.

The vehicle was driven on a route where no entry regarding its movement would be recorded. The police arrested Anku.

Cannabis was sent to SFSL, Junga, and it was found to be a sample of charas after the analysis. The sacks were released by Pammi, the brother of Anku. Bhupinder @ Vipin Kumar was arrested on 01.03.2025. F.I.R. No. 231 of 2019, dated 21.06.2019 for the commission of offences punishable under Sections 363, 366 and 120B of IPC at Police Station Pinjore, District Panchkulla, Haryana and F.I.R. No. 55 of 2024, dated 11.03.2024 for the commission of offences punishable under Sections 20, 25 and 29 of NDPS Act at 2025:HHC:20299 Police Station Baddi, District Solan, H.P. were registered against the petitioner. The mobile of the petitioner was sent to SFSL .

Dharamshala, and the result is awaited. The challan has been filed on 01.05.2025. Hence, the status report.

4. I have heard Mr. Vijender Katoch, learned counsel for the petitioner and Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

5. Mr. Vijender Katoch, learned counsel for the petitioner, submitted that the petitioner is innocent and was falsely implicated. There is nothing to connect the petitioner with the commission of the crime except the statement made by the co-

accused, which is inadmissible in evidence. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr. Jitender K. Sharma, learned Additional Advocate General for the respondent/State, submitted that the petitioner is involved in the commission of a heinous offence. He is the owner of the bags from which the commercial quantity of charas was recovered, and the rigours of Section 37 of the NDPS Act apply to the present case. Hence, he prayed that the present be dismissed.

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

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8. The parameters for granting bail were considered by the Hon'ble Supreme Court in *Ajwar v. Waseem* (2024) 10 SCC 768:

2024 SCC OnLine SC 974, wherein it was observed as under at page 783: -

"Relevant parameters for granting bail

26. While considering as to 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, the manner in which 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.* [Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974]; *Kalyan Chandra Sarkar v. Rajesh Ranjan* [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977]; *Masroor v. State of U.P.* [Masroor v. State of U.P., (2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368]; *Prasanta Kumar Sarkar v. Ashis Chatterjee* [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765]; *Neeru Yadav v. State of U.P.* [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527]; *Anil Kumar Yadav v. State (NCT of Delhi)* [Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425]; *Mahipal v. Rajesh Kumar* [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] .]

9. This position was reiterated in *Ramratan v. State of* .

M.P., 2024 SCC OnLine SC 3068, wherein it was observed as under: -

"12. The fundamental purpose of bail is to ensure the accused's presence during the investigation and trial. Any conditions imposed must be reasonable and directly related to this objective. This Court in *Parvez Noordin Lokhandwalla v. State of Maharashtra* (2020) 10 SCC 77 observed that though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437(3) and 439(1)(a) CrPC, the discretion of the court has to be

guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. The relevant observations are extracted herein below:

"14. The language of Section 437(3) CrPC, which uses the expression "any condition ... otherwise in the interest of justice" has been construed in several decisions of this Court. Though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437(3) and 439(1)(a) CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. Several decisions of this Court have dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail." (Emphasis supplied)

13. In *Sumit Mehta v. State (NCT of Delhi)* (2013) 15 SCC 570, this Court discussed the scope of the discretion of the Court 2025:HHC:20299 to impose "any condition" on the grant of bail and observed in the following terms: --

"15. The words "any condition" used in the provision should not be regarded as conferring absolute power on .

a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance, and effective in the pragmatic sense, and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such an extreme condition to be imposed." (Emphasis supplied)

14. This Court, in *Dilip Singh v. State of Madhya Pradesh* (2021) 2 SCC 779, laid down the factors to be taken into consideration while deciding the bail application and observed:

"4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for the realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration while considering an application for bail are the nature of the accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; the reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or

the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial."

(Emphasis supplied) 2025:HHC:20299

10. This position was reiterated in Shabeen Ahmed versus State of U.P., 2025 SCC Online SC 479.

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

12. The status report shows that the police found the bags of peas and maize in the vehicle bearing registration No. HP73- 5581. The owner of the vehicle stated that these bags were loaded by the petitioner in the vehicle. This is corroborated by the fact that the petitioner's brother got the bags released from the Court.

The recovery of charas was effected from the bags. Therefore, prima facie, there is sufficient material to connect the petitioner with the commission of a crime.

13. It was submitted that the prosecution's case is based upon the statement made by the co-accused. This is factually incorrect. The co-accused, Bhupinder @ Vipin Kumar, was arrested on 01.03.2024, whereas the petitioner was arrested on 29.11.204, much before the co-accused. The owner of the vehicle, who is not an accused, made a statement showing the involvement of the petitioner. She is the best person to know about the consignment loaded in her vehicle. Therefore, prima facie, there is 2025:HHC:20299 nothing to doubt the testimony of the owner that the bags belonged to the petitioner.

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14. The police recovered 3 kg 400 grams of charas, which is a commercial quantity. Therefore, the rigours of Section 37 of the ND&PS Act apply to the present case. Section 37 of the NDPS Act provides that in an offence involving commercial quantity, the Court should be satisfied that the accused is not guilty of the commission of an offence and is not likely to commit any offence while on bail. Section 37 of the NDPS Act reads as under:

"37. Offences are to be cognizable and non-bailable. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19, section 24, or section 27A, and also for offences involving commercial quantity, shall be

released on bail or his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail. (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the 2025:HHC:20299 limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

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15. This Section was interpreted by the Hon'ble Supreme Court in Union of India Versus Niyazuddin & Another (2018) 13 SCC 738 and it was held that in the absence of the satisfaction that the accused is not guilty of an offence and he is not likely to commit an offence while on bail, he cannot be released on bail. It was observed: r "7. Section 37 of the NDPS Act contains special provisions with regard to the grant of bail in respect of certain offences enumerated under the said Section. They are :

(1) In the case of a person accused of an offence punishable under Section 19, (2) Under Section 24, (3) Under Section 27A and (4) Of offences involving commercial quantity.

8. The accusation in the present case is with regard to the fourth factor, namely, commercial quantity. Be that as it may, once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under Section 37 of the NDPS Act, in case, the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment.

(1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such an offence;

2025:HHC:20299 (2) that person is not likely to commit any offence while on bail."

16. This position was reiterated in State of Kerala Versus .

Rajesh, AIR 2020 SC 721, wherein it was held:

"19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under the NDPS Act. In Union of India vs. Ram Samujh and Ors., (1999) 9 SCC 429, it has been elaborated as under:-

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits the murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. The reason may be the large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier vs. Chief Secy., Union Territory of Goa*, (1990) 1 SCC 95) as under:

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the 2025:HHC:20299 menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, .

causing deleterious effects and deadly impact on society as a whole, Parliament, in its wisdom, has made effective provisions by introducing Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence;

and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC but is also subject to the limitation placed by Section 37, which commences with the non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of the commission

of an offence under the Act unless twin conditions are satisfied.

2025:HHC:20299 The first condition is that the prosecution must be given an opportunity to oppose the application, and the second is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such an .

offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

21. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

17. A similar view was taken in Union of India v. Mohd.

Nawaz Khan, (2021) 10 SCC 100: (2021) 3 SCC (Cri) 721: 2021 SCC OnLine SC 1237 wherein it was observed at page 110:

"21. Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27- A and also for offences involving a commercial quantity are:

(i) The Prosecutor must be given an opportunity to oppose the application for bail; and

(ii) There must exist "reasonable grounds to believe"

that : (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

22. The standard prescribed for the grant of bail is "reasonable ground to believe" that the person is not guilty of the offence. Interpreting the standard of "reasonable 2025:HHC:20299 grounds to believe", a two-judge Bench of this Court in Shiv Shanker Kesari [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505], held that : (SCC pp. 801- 02, paras 7-8 & 10-11) .

"7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged, and this reasonable belief contemplated in turn points to the existence of such facts and circumstances as are sufficient in themselves to justify the recording of satisfaction

that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

'7. ... Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.' [See MCD v. Jagan Nath Ashok Kumar [MCD v. Jagan Nath Ashok Kumar, (1987) 4 SCC 497], SCC p. 504, para 7 and Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd., (1989) 1 SCC 532]] ***

10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis, it is a question of fact whether a particular act is reasonable or not, depends on the circumstances in a given situation.

2025:HHC:20299 (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. (2003) 6 SCC 315]

11. The court, while considering the application for .

bail with reference to Section 37 of the Act, is not called upon to record a finding of not guilty. It is for the limited purpose, essentially confined to the question of releasing the accused on bail, that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."

(emphasis supplied)

23. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.

18. In the present case, there is sufficient material to prima facie connect the petitioner with the commission of the crime.

There is nothing to show that the petitioner will not commit the crime in case of his release on bail. Hence, the twin conditions laid down in Section 37 of the NDPS Act are not satisfied.

19. Consequently, the bail petition fails, and the same is dismissed.

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20. The observations made hereinabove are regarding the disposal of this petition and will have no bearing whatsoever on .

the case's merits.

(Rakesh Kainthla)

Judge

28th June, 2025
(ravinder)

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