

Vikram vs State Of Himachal Pradesh on 10 January, 2025

2025:HHC:2977 IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA Cr.MP(M)
No.2364 of 2024 a/w Cr.MP(M) Nos.2427, 2553 and 2992 of 2024 Reserved on: 08.01.2025
A n n o u n c e d o n : 1 0 . 0 1 . 2 0 2 5

1. Cr.MP(M) No.2364 of 2024 VikramPetitioner Versus State of Himachal Pradesh
.....Respondent For the petitioner: Mr. Ravi Tanta, Advocate. For the respondent: Mr. Vishav Deep
Sharma, Additional Advocate General.

2. Cr.MP(M) No.2427 of 2024 Rakshit ChauhanPetitioner Versus State of Himachal Pradesh
.....Respondent For the petitioner: Mr. Vikas Chauhan, Advocate. For the respondent: Mr. Vishav
Deep Sharma, Additional Advocate General.

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|---------------------------|--------|-----------------|
| Sahil Kumar | |Petitioner |
| | Versus | |
| State of Himachal Pradesh | |Respondent |

For the petitioner: Mr. Jagjeet Singh Bagga, Advocate. For the respondent: Mr. Vishav Deep
Sharma, Additional Advocate General.

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_____ Rahul
SharmaPetitioner Versus State of Himachal PradeshRespondent For the petitioner: Mr.
Basant Pal Thakur, Advocate. For the respondent: Mr. Vishav Deep Sharma, Additional Advocate
General.

_____ Coram
Hon'ble Mr. Justice Ranjan Sharma, Judge 1 Whether approved for reporting? Yes Ranjan Sharma,
Judge Since bail petitioners-[Vikram, Rakshit Chauhan, Sahil Kumar and Rahul Sharma], have been
implicated in the same FIR No.21 of 2024, dated 14.2.2024, under Sections 21 and 29 of the
Narcotic Drugs and Psychotropic Substances Act [hereinafter referred to as NDPS Act], therefore,
with the consent of learned counsel for the petitioners and Learned State Counsel, all four bail
applications are taken up for adjudication by common order.

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

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2. Bail petitioners [Vikram],being in custody 26.07.2024, [in Cr.MP(M) No.2364 of 2024], Rakshit
Chauhan,being in custody since 26.7.2024, [in Cr.MP(M) No. 2427 of 2024], Sahil Thakur, being in
custody since 5.4.2024 [in Cr.MP(M) No. 2553 of 2024] and Rahul Sharma, being in custody since

7.8.2024 [in Cr.MP(M) No.2992 of 2024] have come up before this Court, seeking regular bail, under Section 483 of Bharatiya Nagarik Suraksha Sanhita [hereinafter referred to as BNSS] origination from FIR No.21 of 2024, dated 14.2.2024, under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act [in short the NDPS Act] registered at Police Station Theog, District Shimla, Himachal Pradesh.

FACTUAL MATRIX IN CR.MPM NO.2364 OF 2024 [VIKRAM VERSUS STATE OF HIMACHAL PRADESH:

3. Case as set by Mr. Ravi Tanta, Learned Counsel for bail petitioner [Vikram], who is in custody since 26.07.2024 is that he has been falsely implicated and there is no evidence on record to connect the bail 2025:HHC:2977) petitioner with the accusation. It is submitted that bail petitioner is a young man of 34 years and belongs to a respectable family and is sole bread earner of the family. It is further averred in bail application that the investigation has been completed by police and Challan-

Final Police Report has been presented before jurisdictional Court i.e. Learned Special Judge-II, Shimla. It is averred that nothing is to be recovered from bail petitioner by the Investigating Agency. It is averred that rigours of Section 37 of the NDPS Act are not attracted in instant case. It is averred that bail petitioner has no criminal antecedents. It is stated that bail petitioner has filed a Bail Application No.435 of 2024, before the Learned Special Judge Rohru, which was rejected on 30.09.2024, Annexure P-1. It is averred that bail petitioner is a shopkeeper, who earns his livelihood by selling groceries for daily needs and the family of bail petitioner has adversely suffered due to detention which is prolonging, as on day. It is averred that bail 2025:HHC:2977) petitioner has been arrested merely on the basis of call details and monetary-bank transactions between him and main accused [Prakshit Dhani]. Bail petitioner has undertaken that he shall not cause any inducement, threat or promise to any person acquainted with the facts of the case, with further undertaking that he shall abide by all the terms and conditions as may be imposed by this Court.

In this background, bail petitioner has filed the instant application for bail.

FACTUAL MATRIX IN CR.MPM NO.2427 OF 2024 [RAKSHIT CHAUHAN VERSUS STATE OF HIMACHAL PRADESH]

4. Case as set by Mr. Vikas Chauhan, Learned Counsel for bail petitioner [Rakshit Chauhan] who is in custody since 26.07.2024 states that while the police party was patrolling and checking drug menace on 14.2.2024 and reached Ekant Vatika near bye pass road Theog, at about 2:30 PM, one vehicle bearing Registration No.HP-63C-5463, was parked on the road and two persons were standing adjacent to the car. In 2025:HHC:2977) the meanwhile, one boy came on foot from Premghat side towards bye pass road and after noticing the policy party, aforesaid boy, who came out to be alleged main accused [Priksht Dhani] panicked and threw the packet away. Consequently, on inquiry, aforesaid boy disclosed his name as Priksht Dhani. Thereafter, the packet was picked by police, knot was untied and two polythene pouches were recovered from Priksht Dhani, which contained 16 bundles (pudias), 12 other bundles (pudias) wrapped in foil paper, which on weighing

came out to be 12.06 Grams. Thereafter sampling was done, photographs were taken on the spot, Seizure Memo was prepared Rukka was prepared and pursuant to Rukka, FIR No. 21 of 2024 dated 14.2.2024 was registered against main accused [Prikshit Dhani]. 4(i) In the above background, the case of bail petitioner [Rakshit Chauhan] is that the main accused [Prikshit Dhani] disclosed that he was residing in Chandigarh alongwith his friend Ashutosh Sanolta, 2025:HHC:2977) who was dealing in Heroin. Based on disclosures made by Prikshit Dhani, Police Authorities, started the investigation. The CDRs and Bank Account details of main accused Prikshit Dhani were collected by the police. Based on the CDRs and Bank Statements of main accused Prikshit Dhani, police authorities, implicated the bail petitioner [Rakshit Chauhan] in aforesaid FIR. 4(ii) In above background, case of bail petitioner is that investigation is complete, charge-sheet, undertaking, Supplementary Charge sheet, invoking Section 29 of Act has also been presented before Competent Court. Pursuant to charge-sheet, the charge has also been framed and matter is fixed for prosecution evidence on 14.10.2024. It is averred in the bail petition that bail petitioner [Rakshit Chauhan] has been falsely implicated for the reason that notice under Section 179 BNSS, Annexure P-2 which is a notice sought to be issued for witnesses was issued by police authorities but in response to the said notice, bail petitioner 2025:HHC:2977) was arrested as aforesaid. It is further averred that rigours of Section 37 of the NDPS Act are not applicable in the instant case. It is further averred that no recovery has been affected from bail-petitioner [Rakshit Chauhan] by the police. It is specifically averred that the bank transactions and CDRs cannot be made basis for inferring the accusation when there is no connection that the aforesaid CDRs and bank transactions relate to the act or omission as mandated in Section 21 of NDPS Act. It is further averred that there are no past criminal antecedents against him. Bail petitioner has furnished undertaking before this Court, that he shall join the trial and shall not abscond or jump over the bail, in case the same is granted. The bail petitioner has furnished undertaking that he shall not cause any threat, inducement, promise to any person or persons acquainted with the facts of the case. It is averred that bail petitioner [Rakshit Chauhan] has filed a Bail Application No.436 of 2024, before the Learned Special 2025:HHC:2977) Judge, Rohru, Camp at Theog, District Shimla, [H.P]. but the same was dismissed on 19.10.2024, Annexure P-3.

In these circumstances, a prayer for grant of bail has been made before this Court.

FACTUAL MATRIX IN CR.MPM NO.2553 OF 2024 [SAHIL KUMAR VERSUS STATE OF HIMACHAL PRADESH]

5. Case as set by Mr. Jagjeet Singh Bagga, Learned Counsel for the bail petitioner Sahil Kumar, who is in custody since 05.04.2024 states that bail petitioner is innocent and he has not committed any act and he has falsely been implicated in the instant case. It is further averred that investigation is complete and the challan-police report stands presented before the Jurisdictional Court. It is averred that no recovery of alleged contraband has been made by the police from bail petitioner. It is averred that bail petitioner is the only bread earner of the family and has two children of two years besides parents and there is none else to lookafter them who are facing hardship. Petitioner has furnished the undertakings that he shall join trial

2025:HHC:2977) without fail and shall not jump over the bail, in case the same is accorded and shall not cause any inducement, threat or promise to any person acquainted with the facts of the case. It is stated that bail petitioner has filed an application for bail before the Learned Special Judge, (CBI Court) Shimla, but the same was dismissed on 29.06.2024, Annexure P-1. It is further averred that no recovery of contraband has been made by the police from the bail petitioner. It is further averred that prolong incarceration punitive and illegal.

In this background, the prayer for release of bail petitioner has been made.

FACTUAL MATRIX IN CR.MPM NO.2992 OF 2024 [RAHUL SHARMA VERSUS STATE OF HIMACHAL PRDESH:

6. Case as set by Mr. Basant Pal Thakur, Learned counsel for bail petitioner [Rahul Sharma] who is in custody since 7.8.2024, is that bail petitioner reiterates the prosecution story dated 14.2.2024.

In addition, it is averred that wife of bail petitioner [Rahul Sharma] give birth to daughter on 20.10.2023 and since

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2025:HHC:2977) then the child faced serious health issues, [kidney problems] and was admitted in IGMC Shimla and then referred to PGIMER, Chandigarh, succumbed on 01.11.2023. It is averred that in view of unexpected ailment of bail petitioner's child, he has borrowed an amount of Rs.90,000/- in cash from the main accused [Priksht Dhani] and based on the aforesaid monetary transaction and the call details, in the context of asking for money and repayment of money, petitioner has falsely been implicated in the instant case. It is further averred that bail petitioner has no previous criminal history and he has been falsely named in FIR. It is averred that bail petitioner is 31 years of age and has to take care of his old parents and a wife, who has suffered a trauma post the demise of new born baby and also due to false implication of bail petitioner. It is averred that no recovery has been effected by the police, from the bail petitioner. It is further averred that the bail petitioner has filed an application for bail before Learned Additional

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2025:HHC:2977) Sessions Judge-II, Special Judge-II Shimla, but the same was rejected on 22.4.2024, Annexure P-1, thereafter the bail petitioner filed another application for bail before this Court i.e. Cr.MP(M) No.951 of 2024, which was dismissed by this Court on 31.07.2024, Annexure P-2. After dismissal of bail by this Court, bail-petitioner again filed bail application before Learned Special Judge Rohru, Camp at Theog, District Shimla, H.P. which was also dismissed on 30.09.2024, Annexure P-3.

In this background, it is averred that bail petitioner has been unnecessarily implicated and he has undertaken to join the trial and to abide by all the conditions as may be imposed by this Court. It is

averred that bail petitioner shall not cause any inducement, threat or promise to any person or persons acquainted with the facts of the case.

In this background, the prayer for bail has been made.

STAND OF STATE AUTHORITIES IN STATUS REPORT(S) in CRMPM No.2364 of 2024-VIKRAM
VERSUS STATE OF HIMACHAL PRADESH

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7. Pursuant to issuance of notice on 25.10.2024, State Authorities have filed Status Report dated 14.11.2024 and then Status Report dated 08.01.2025. Both the Status Reports contain pari materia averments.

Perusal of the Status Report indicates that on 14.2.2024, while police party was on patrolling then, at about 2:30 PM, a vehicle bearing No.HP-63C-5463 reached near Ekant Vatika, on the bye-pass, from where two persons de-boarded the said vehicle. It is averred that while police was inquiring about their whereabouts at that time, one person, namely [Priksht Dhani] who turned out to be main accused, after noticing the police party felt perplexed and on seeing police party, the accused [Priksht Dhani] threw the polythene from his pocket which was taken into custody by police, opened and the same was found to be containing 28 bundles (pudia), wrapped in foil paper which on weighing, turned out to be 12.06 Grams of Chitta/Heroin. Pursuant to recovery, contraband was seized leading to arrest of main

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2025:HHC:2977) accused [Priksht Dhani] on 14.02.2024. 7(i) Pursuant to registration of FIR, police started the investigation and recorded statement under Section 161 Cr.P.C. Main accused [Priksht Dhani] was interrogated by the police and he was made to undergo the medical examination at Civil Hospital Theog. The seized contraband recovered from Priksht Dhani weighing 12.06 grams of Chitta/Heroin was sent by the police authority, for examination by RFSL. Status Report reveals that on 19.2.2024, the inventory was prepared under Section 52A of NDPS Act. 7(ii) Status Report further reveals that during investigation, main accused [Priksht Dhani], disclosed that his friend Ashutosh Sanolta was residing in Chandigarh with main accused Priksht Dhani who resort to sale and purchase of Chitta/Heroin. On 17.4.2024, SFSL report was received whereby recovered contraband from [Priksht Dhani] was certified to be Heroin/Chitta.

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2025:HHC:2977) 7(iii) Status Report further indicates that CDRs and bank transactions of main accused [Priksht Dhani] were scrutinized during the investigation by the police. It is further averred that pursuant to the aforesaid investigation, it has been found that bail petitioner [Vikram] had

resorted 199 calls and there was bank transactions amounting to Rs.46,200/- between the bail petitioner Vikram and Prikshit Dhani during the period from October, 2023 to February, 2024. 7(iv) Status Report indicates that bail petitioner has joined investigation and now the Challan-Final Police Report has been presented before jurisdictional Court and the matter is fixed for Prosecution Evidence on 15.01.2025.

STAND OF STATE AUTHORITIES IN STATUS REPORT in CRMPM No.2427 of 2024:RAKSHIT CHAUHAN VERSUS STATE OF HIMACHAL PRADESH

8. Pursuant to issuance of notice on 25.10.2024, State Authorities have filed Status Report dated 08.01.2025.

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2025:HHC:2977) 8(i) Perusal of Status Report indicates that on 14.2.2024, while police party was patrolling then, at about 2:30 PM, a vehicle bearing No.HP-63C-5463 reached near Ekant Vatika, on the bye-pass, from where two persons de-boarded the said vehicle. It is averred that while police was inquiring about their whereabouts at that time, one person, namely [Prikshit Dhani] who turned out to be main accused, after noticing the police party felt perplexed and on seeing police party, [Prikshit Dhani] threw out the polythene from his pocket which was taken into custody by police, opened and the same was found to be containing 16+32 bundles (pudia) wrapped in counter foils, which on weighing turned out to be 12.06 Grams Heroin. Pursuant to the recovery, contraband was seized leading to the arrest of main accused [Prikshit Dhani] on 14.02.2024. 8(ii) Pursuant to registration of FIR, the police started the investigation and recorded the statement under Section 161 Cr.P.C. Main accused [Priksht Dhani]

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2025:HHC:2977) was interrogated by the police and he was made to undergo the medical examination at Civil Hospital Theog. The seized contraband recovered from Prikshit Dhani weighing 12.06 grams of Chitta/Heroin was sent by the police authority for examination by RFSL. Status Report reveals that on 19.2.2024, the inventory was prepared under Section 52A of the NDPS Act. 8(iii) Status Report further reveals that during investigation, main accused [Prikshit Dhani], disclosed that his friend Ashutosh Sanolta was residing in Chandigarh with main accused Prikshit Dhani and Ashutosh Sanolta used to resort to sale and purchase of Chitta/Heroin. On 17.4.2024, SFSL report was received whereby recovered contraband from [Prikshit Dhani] was certified to be Heroin/Chitta. 8(iv) Status Report further indicates that CDRs and bank transactions of main accused [Prikshit Dhani] were scrutinized during the investigation by the police. It is averred that pursuant to aforesaid investigation,

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2025:HHC:2977) it has been found that bail petitioner [Rakshit Chauhan] had resorted 67 calls and there was a bank transaction of total amounting to Rs.55,000/-, between bail petitioner Rakshit

Chauhan and Prikshit Dhani during the period from October, 2023 to February, 2024. 8(v) Status Report indicates that bail petitioner was arrested and thereafter the petitioner joined investigation and now the Challan-Final Police Report stands presented before jurisdictional Court and the matter is fixed for Prosecution Evidence on 15.01.2025.

STAND OF STATE AUTHORITIES IN STATUS REPORT in CRMPM No.2553 of 2024:SAHIL KUMAR VERSUS STATE OF HIMACHAL PRADESH

9. Pursuant to issuance of notice on 25.10.2024, State Authorities have filed the Status Report dated 04.12.2024 and dated 08.01.2025. Both the Status Reports contain pari materia averments, as in cases of other bail petitioners, Vikram and Rakshit Chauhan, as referred to above.

9(i) Status Report further indicates that CDRs and

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2025:HHC:2977) Bank Transactions of main accused [Prikshit Dhani] were scrutinized during investigation by police and pursuant to aforesaid investigation, it has been found that bail petitioner [Sahil Kumar] had resorted 469 calls and there was a bank transaction of total amounting to Rs.4,16,243/- with main accused Prikshit Dhani from October, 2023 to February, 2024.

9(ii) Status Report indicates that after arrest, the bail petitioner joined investigation and pursuant to the Challan-Final Police Report filed before jurisdictional Court, matter is fixed for Prosecution Evidence on 15.01.2025.

STAND OF STATE AUTHORITIES IN STATUS REPORT in CRMPM No.2992 of 2024:RAHUL SHARMA VERSUS STATE OF HIMACHAL PRADESH

10. Pursuant to issuance of notice on 31.12.2024 State Authorities have filed Status Report dated 08.01.2025. Both the Status Reports contain pari materia averments, as in case of other bail petitioners, namely Vikram, Rakshit Chauhan and Sahil Kumar, as

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2025:HHC:2977) referred to above.

10(i) Status Report indicates that CDRs and bank transactions of main accused [Prikshit Dhani] were scrutinized during investigation by police. It is averred that pursuant to aforesaid investigation, it has been found that bail petitioner [Rahul Sharma] resorted to 2 calls and there was a bank transaction amounting to Rs.2,08,000/- between the bail petitioner Arun Kumar and Prikshit Dhani during the period from October, 2023 to February, 2024 and that the matter is fixed for Prosecution Evidence on 15.10.2025.

In the background of the Status Report(s), the Learned State Counsel has prayed for the dismissal of the bail application(s).

REBUTTAL BY LEARNED COUNSELS FOR PETITIONERS:

11. Stand of State Authorities in Status Report(s) was rebutted, during arguments by Learned Counsel(s) for bail petitioners, stating that bail petitioners are suffering incarceration since long and prolonged

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2025:HHC:2977) incarceration has certainly violated the personal liberty enshrined in Article 21 of the Constitution of India. It is further submitted that once matter relates to chance recovery, then, non-compliance of Section 50 is writ large, which illegality may be considered for grant of bail. It is contended that out of total 31 PW's only 3 PW's have been examined up to 6.1.2025. It is averred that though rigours of Section 37 of NDPS Act are not attracted but the prolonged incarceration of bail petitioners will not effectuate any cause when, no recovery was made from bail petitioners and even investigation is complete and trial is likely to take considerable time for conclusion. It is reiterated that mere CDRs and bank transactions, cannot form the basis for prolonged incarceration by way of penalty when, the fact as to whether the CDRs and bank transactions were in fact relateable to alleged act or omissions qua violation of Section 21 of NDPS Act is matter to be tested, examined and proved during the trial and then, in these

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2025:HHC:2977) circumstances, the prayer for bail has been made.

12. Heard Mr. Ravi Tanta, Mr. Vikas Chauhan, Mr. Jagjeet S. Bagga, and Mr. Basant Pal Thakur with Mr. Shivam Sharma, learned counsel(s) for petitioner(s) and Mr. Vishav Deep Sharma, Learned Additional Advocate General for the Respondent-State.

STATUTORY PROVISIONS:

13. In order to test, the claim for enlargement on bail, it is necessary to have a recap of the provisions of Section 21 and 29 of the NDPS Act, which reads as under :-

"Section 21 of the NDPS Act reads as under:

21. Punishment for contravention in relation to manufactured drugs and preparations-

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any

manufactured drug shall be punishable ,--

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial

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quantity but greater than small

quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

29. Punishment for abetment and criminal conspiracy.-

(1) Whoever abets or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which-

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to

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2025:HHC:2977) constitute it an offence punishable under this Chapter, if committed within India.
MANDATE OF LAW ON BAILS:

14. In background of statutory provisions of Sections 21 and 29 of the NDPS Act, as referred to above, and the broad parameters mandated by the Hon'ble Supreme Court, regulating bail 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, mandating that the bail is to be granted as an exception where the case alleged is frivolous or groundless and incase the prima facie or reasonable grounds lead to believe or point towards accusation then, the refusal of regular bail does not amounts to denial of Article 21 of the Constitution of India ; Sushila Aggarwal versus State-NCT Delhi,

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2025:HHC:2977) (2020) 5 SCC 01 ; CBI versus Santosh Karnani (2023) 6 SCALE 250 ; which have been reiterated by the Hon'ble Supreme Court in the case of State of Haryana versus Dharamraj, 2023 SCC Online SC 1085, which read as under:

- (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.

14(i). In normal parlance, the principle of law is that bail is a rule and jail is an exception. However, this Court is conscious of the fact that the power under Section 439 is an extraordinary power and the same has to be exercised sparingly and is to be granted in exceptional cases. It is trite law that regular bail is not to be granted as a rule and cannot be claimed as of right.

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2025:HHC:2977) It is trite law that while considering the prayer for bail {pre-arrest bail or regular bail}, factum of prolonged pre-conviction incarceration is also to be taken into account. While considering the prayer for bail, the balance has to be carved out between the liberty of an accused vis-à-vis the societal interest, including the danger of the justice being thwarted in case the bail is granted.

14(ii) This Court is also conscious of the fact that as per the mandate of law, in Criminal Appeal No 3840 of 2023, titled as Saumya Churasia versus Directorate of Enforcement, decided on 14.12.2023, while considering the prayer for bail, the Court is not required to weigh the evidence collected by the Investigating Agency meticulously, nonetheless, the Court should keep in mind the nature of accusation, the nature of evidence collected in support thereof, the severity of punishment prescribed for alleged offences, the character of the accused, the circumstances which are peculiar to

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2025:HHC:2977) the accused, reasonable possibility of securing the presence of the accused during trial, reasonable apprehension of the witnesses being tampered with and the larger public/state interests.

In this background, while testing the claim for bail, the Court is required to form a prima-facie opinion in the context of the broad-parameters referred to above, without delving into the evidence on merits, as it may tend to prejudice the rights of the accused as well as the prosecution.

14(iii). Even a suspect or an accused under NDPS Act does not have any vested right or an automatic claim for pre-arrest bail or regular bail, merely on the ground, that the quantity of contraband, allegedly involved, is either small or intermediate. However, while considering the prayer for bail, even in offences under the NDPS, relating to small or intermediate quantity, still the claim is required to be tested in the backdrop of Section(s) 438 or 439 of Code of Criminal Procedure

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2025:HHC:2977) {herein, Cr.P.C.}, and also in the context of the broad parameters mandated by the Hon'ble Supreme Court, as referred to above.

14(iv). In the above backdrop, the general principle is that when, a bail petitioner approaches a Court for bail {pre-arrest or regular bail} under NDPS Act and a Court, forms a prima facie opinion on the basis of available material, that there is a prima facie case or reasonable grounds pointing towards the accusation of an offence, be it relating to a small or intermediate quantity of contraband therefore, such an accused has neither any automatic right nor can the privilege of bail be extended as a rule.

The exception to this principle is that the enlargement on bail {be it relates to either small or intermediate quantity of contraband} can be extended, on case to case basis, after taking into account that the prima facie accusation does not points out towards involvement and the past

conduct being unblemished

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2025:HHC:2977) coupled with the fact that such bail applicant fulfils the broad parameters mandated by Hon'ble Supreme Court referred to above.

CASES OF BAIL:INTERMEDIATE QUANTITY WHEN NO RECOVERY FROM BAIL PETITIONERS AS IN INSTNAT CASE:

14(v). While dealing with the issue relating to an intermediate quantity of contraband of Heroin (charas), which was not recovered from petitioner, Hon'ble Supreme Court in Sami Ullaha versus Superintendent, Narcotic Central Bureau, (2008) 16 SCC 471 has held as under:

3. Before, however, we advert to the said question, we may notice the factual matrix involved in the matter.

On or about 14.08.2004, the luggage of two persons, viz., Abdul Munaf and Zahid Hussain who were traveling in a bus were searched and allegedly contraband weighing 2 kgs. was recovered. A purported statement was made by the said accused persons that the said contraband (heroin) was meant to be delivered to the appellant. Nothing was recovered from him. Apart from the said statements of the said accused persons, no other material is available on record to sustain a charge against him. On the basis of the said statement, the appellant was arrested on 15.08.2004. Allegedly, a statement was made by him in terms of Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act"). Appellant contends that he was tortured and the statement was obtained forcibly from him on some

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2025:HHC:2977) blank documents. He later on retracted there from. Indisputably, the seized articles were sent for chemical examination to the Government Opium and Alkaloid Works, Neemuch. A report was sent to the investigating officer on 23.09.2004 stating that the sample did not contain any contraband substance. Appellant thereafter filed an application for discharge. The prosecution moved the court for sending the substance 2 allegedly recovered from the co-accused persons for its examination by the Central Revenue Control Laboratory, New Delhi. It was rejected by the court opining that there was no provision in the Act for sending the sample to another laboratory. The court, however, did not pass an order of discharge in favour of the appellant but released him on bail, stating:

"Accordingly, as mentioned above, there is no ground that by accepting the application of the complainant and order be passed for sending the second sample for examination to another laboratory. If the investigating officer so desires, then in accordance with the ruling expounded as above, he is free to send the second sample

to any of the laboratories for its examination at his own level. On the basis of the abovementioned observations, the application of the complainant is rejected."

However, even a distinction is made as regards grant of bail in relation to a commercial quantity and a small quantity. Commercial quantity has been defined in Section 2(vii-a) of the Act to mean "any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette".

12. We will advert to the question of the definition of "Chemical Examiner" a little later. The question, however, as to whether the contraband found came within the purview of the commercial quantity within the meaning of Section 2(vii-a) or not is one of the factors which should be taken into consideration by the courts in the matter of grant or refusal to grant bail. Even, according to the Central Revenue Control Laboratory, New Delhi, only 2.6% of the sample sent was found to be containing heroin. Small quantity in terms of the notification issued under Sections 2(vii-a) and 2(xxiii-a) is as under:

Sl. Name of Narcotic drug or Chemical Small Commercial

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2025:HHC:2977) No. psychotropic substance [International name quantity quantity
N o n - p r o p r i e t a r y N a m e (I N N)]

77. Morphine Morphine 5 gm 250 gm The quantity, thus, alleged to have been recovered from the co-accused persons could be said to be intermediate quantity and, thus, the rigours of the provisions of Section 37 of the Act relating to grant of bail may not be justified.

13. In Ouseph alias Thankachan v. State of Kerala [(2004) 4 SCC 446], this Court held:

"8. The question to be considered by us is whether the psychotropic substance was in a small quantity and if so, whether it was intended for personal consumption. The words 'small quantity' have been specified by the Central Government by the notification dated 23-7-1996. Learned Counsel for the State has brought to our notice that as per the said notification small quantity has been specified as 1 gram. If so, the quantity recovered from the appellant is far below the limit of small quantity specified in the notification issued by the Central Government. It is admitted that each ampoule contained only 2 ml and each ml contains only 3 mg. This means the total quantity found in the possession of the appellant was only 66 mg. This is less than 1/10th of the limit of small quantity specified under the notification.

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11. On account of the aforesaid fact situation, we are inclined to believe that the small quantity of buprenorphine (Tidigesic) was in the possession of the appellant for his personal consumption and, therefore, the offence committed by him would fall under Section 27 of the NDPS Act."

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2025:HHC:2977) 14(vi). In State of West Bengal versus Rakesh Singh alias Rakesh Kumar Singh 2022 SCC Online SC 828, the Hon'ble Supreme Court, has observed as under:

20. After having considered the rival submissions, the High Court formed the opinion that the restriction of Section 37 NDPS Act would not apply to this case and the respondent, who was in custody since 23.02.2021, qualified for grant of bail with stringent conditions. Accordingly, the High Court ordered release of the accused-

respondent on bail with heightened conditions like: (a) he would furnish a bond in the sum of rupees one lakh with four sureties of rupees fifty thousand each, two of whom must be local persons; (b) he shall report to the Officer- in Charge of the concerned police station once in a week; (c) he would not travel outside the State of West Bengal without prior leave of the Trial Court; and (d) he would surrender his passport before the Trial Court immediately. Having regard to the submissions made in this case, we may take note of the relevant part of the discussion and reasoning of the High Court as under: -

"4. We have considered the rival contentions of the parties. We have also perused the material in the memo of evidence filed on behalf of the State.

5. Certain things are clear. Firstly, there was no recovery of contraband items from the physical possession of the petitioner. Nothing was recovered from the person of the petitioner or any place over which the petitioner had exclusive control. We are conscious that mere non-recovery of contraband from a person's possession may not per se dilute the rigours of Section 37 of the NDPS Act.

6. However, even assuming that the petitioner had dominion or control over the contraband in question, admittedly intermediate quantity (76 gms) of cocaine was seized. It was urged on behalf of the State that the statements of witnesses would indicate that the petitioner was a regular

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2025:HHC:2977) purchaser of contraband items. However, the fact remains that in the present case only 76 gms of cocaine is involved. As observed by the Hon'ble Apex Court in the case of Sami Ullaha (Supra), where intermediate quantity of narcotics is involved, it may not be justified to apply the rigours of the provisions of Section 37 of the NDPS Act relating to grant of bail.

53. Once the veracity of prosecution case against the respondent is in serious doubt, further analysis on the other factors about financing the drug trafficking and harbouring of offender need not be undertaken because, when the story of planting of contraband is removed out of consideration, all other factors by which respondent is sought to be connected with such alleged planting could only be regarded as false and fanciful, at least at this stage.

54. Hence, suffice it to observe for the present purpose that in the given set of facts and circumstances, the High Court has rightly found that applicability of Section 27A NDPS Act is seriously questionable in this case. That being the position; and there being otherwise no recovery from the respondent and the quantity in question being also intermediate quantity, the rigours of Section 37 NDPS Act do not apply to the present case."

14(vii) Likewise, this Court, in case titled Roshan Lal versus State of Himachal Pradesh in Cr.MP(M) No.307 of 2024 decided on 04.03.2024, has held as under:

13(i). Admittedly, in the present case, as per the Status Report filed by the State Authorities, the alleged contraband was recovered from Hem Raj-accused, who had kept it in his bag.

13(ii). No alleged recovery of contraband was made from the bail petitioner (Roshan Lal) herein and the bail petitioner was nowhere involved and had no connection with the alleged offence.

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2025:HHC:2977)

15. Even the status Report does not point out anything adverse regarding past conductor blemished criminal history/records of the bail petitioner. While dealing with a matter, relating to an intermediate quantity of contraband coupled with the fact that the antecedents and past conduct was satisfactory the Coordinate Bench of this Court enlarged the accused on bail, in Hari versus State of Himachal Pradesh, 2023 SCC Online HP 142, decided on 21st February, 2023, this Court held as under:

8. It can also be noticed from the facts of the case that there is no allegation of petitioner involving himself in similar offences repeatedly. No criminal history has been attributed to him. Petitioner is a young man of 25 years. His further pre-trial incarceration will not serve any fruitful purpose.

15(i). Likewise, in the case of Rohit Versus State of Himachal Pradesh, 2023 SCC Online HP 315, decided on 11.04.2023 while granting the bail, this Court has held as under:

4. This Court is of the considered view that as the alleged recovery from the petitioners is of the intermediate quantity and further taking into consideration the fact that the petitioners are stated to be having no previous criminal history of being indulged in offences relatable to NDPS Act, it will be in the interest of justice in case the petitioners are allowed and the petitioners are ordered to be released on bail.

ANALYSIS

15. Taking into account the entirety of facts and circumstances and material on record as borne out from Status Report(s), this Court is of the considered view, that the bail petitioners [Vikram, Rakshit Chauhan,

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2025:HHC:2977) Sahil Kumar and Rahul Sharma], are entitled to be enlarged on bail, for the following reasons:-

NO PRIMA-FACIE ACCUSATION AGAINST, BAIL PETITIONERS:

15(i) Status Report(s) and the material on record do not point out any prima-facie case or reasonable grounds to believe the accusation against the bail petitioner(s), as referred to above.

15(ii) Status Report(s) filed by State Authorities, does not indicate anything to show that the bail petitioners are involved in offence under Section 21 of the NDPS Act. Even Learned State Counsel has not placed on record any material to show that bail petitioners are involved in commission of offence under Section 21 of NDPS Act. In these circumstances, plea of the bail petitioners for bail has carries weight and the same is accordingly accepted.

BAIL WHEN NO RECOVERY FROM BAIL
PETITIONERS:

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15(iii) Status Report(s) unambiguously admits that

contraband weighing 12.06 grams of Chitta/Herion was recovered from the main accused [Priksht Dhani].

Once even as per the Status Report(s) neither any recovery was affected from bail petitioners nor any material has been placed on record to reveal that the bail

petitioners have indulged in acts or omissions under Section 21 of NDPS Act, therefore, the plea for bail has merit and the same is accordingly accepted.

CDR'S AND BTRS CANNOT FORM BASIS OF PROLONGING INCARCERATION WHEN INVESTIGATION COMPLETE AND CHALLAN FILED AND RECORDING OF PROSECUTION EVIDENCE COMMENCED:

15(iv) CDRs and Bank Transactions as indicated in Status Report(s), cannot form the basis for prolonged incarceration or to involve accusation under Section 21 or Section 29 of NDPS Act which is to be tested, examined and proved during the trial. Thus, the CDRs and Bank Transactions, cannot be made basis for prolonging incarceration by detaining the bail petitioners

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2025:HHC:2977) despite the fact, that the investigation is complete, Challan-Final Police Report has been presented and trial has commenced, which in facts of instant case, is likely to take considerable time for its conclusion. Since the prolongation of the detention, shall not serve any fruitful purpose but, the same shall certainly amount to violating the personal liberty of bail petitioners as mandated in Article 21 of the Constitution of India, therefore in facts of this case, the further detention cannot be permitted to be prolonged and the plea for bail needs to be accepted and is ordered accordingly. 15(v) So far as accusation under Section 29 of NDPS Act is concerned, the Status Report(s) do not point out any material, to suggest, the abatement or criminal conspiracy which is considered view of this Court, is to be tested, examined and proved on the basis of evidence led during trial. Detention, alleging, abatement or criminal conspiracy on mere conjectures, without any material on record certainly amount to incarcerating

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2025:HHC:2977) the petitioner by way punishment is impermissible and therefore, the prayer for bail has merit and same is accordingly accepted.

PROLONGED INCARCERATION AND INFRINGEMENT OF PERSONAL LIBERTY UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA:

16. 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

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2025:HHC:2977) 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

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2025:HHC:2977) 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

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2025:HHC:2977) 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."

BAIL TO ENSURE AND SAFEGUARD PERSONAL LIBERTY IN ARTICLE 21:

16(i). While dealing with the concept of bail and personal liberty of an accused under Article 21 of the Constitution of India, the Hon'ble Supreme Court, in Criminal Appeal No.2787 of 2024, titled as Javed Gulam Nabi Shaikh Versus State of Maharashtra and Another, as under:-

"18 Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond

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2025:HHC:2977) redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21 We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution. 22 In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned

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2025:HHC:2977) order passed by the High Court is set aside."

16(ii). While dealing with a matter relating to the prolonged incarceration and the right to speedy trial and right of liberty to be sacrosanct right and while deprecating that the bail is not to be withheld as punishment, so as to operate de hors the principle that bail is rule and jail is an exception, the Hon'ble Supreme Court, in Manish Sisodia vs Directorate of Enforcement, SLP (Criminal) No.8781 of 2024, decided on 09.08.2024, has held as under :-

"49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

52. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:

"10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court

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2025:HHC:2977) reported in (1978) 1 SCC 240. We quote:

"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial"

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well- settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

55. As observed by this Court in the case of Gudikanti Narasimhulu (supra), the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

56. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the

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2025:HHC:2977) country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant."

16(iii). While adjudicating the claim for bail, even under Special Enactments, like PMLA [akin to NDPS Act], the Hon'ble Apex Court in Criminal Appeal No._____ of 2024 [Arising out of SLP (Criminal) No. 10778 of 2024], titled as Kalvakuntla Kavitha Versus Directorate of Enforcement and connected matter has mandated that fundamental right of liberty provided under Article 21 of the Constitution of India is superior to the statutory restrictions, in the following terms:-

"13. We had also reiterated the well-established principle that "bail is the rule and refusal is an exception". We had further observed that the fundamental right of liberty

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2025:HHC:2977) provided under Article 21 of the Constitution is superior to the statutory restrictions."

16(iv). 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 the Unlawful Activities [Prevention] Act, 1967 and Section 37 of NDPS Act, the Hon'ble Supreme Court in Criminal Appeal No.4011 of 2024, in re: 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 period of incarceration already undergone has prolonged in trial, may be exposed to vice of being violative 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

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2025:HHC:2977) (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

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2025:HHC:2977) 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,

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2025:HHC:2977) 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

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2025:HHC:2977) 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:

a. The appellant shall furnish bail bonds in the sum of Rs.25,00,000/ (Rupees twenty five lakhs only) with two sureties in the like amount;

b. The appellant shall not directly or indirectly attempt to contact or communicate with the prosecution witnesses and victims of the three scheduled offences in any manner. If it is found that the appellant directly or indirectly made even an attempt to contact any prosecution witness or victim in the scheduled as well as offences under the PMLA, it will be a ground to cancel the bail granted to the appellant;

c. The appellant shall mark his attendance every Monday and Friday between 11 am and 12 noon in the office of the Deputy Director, the Directorate of Enforcement at Chennai. He shall also appear on the first Saturday of every calendar month before the investigating officers of the three scheduled offences;

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2025:HHC:2977) d. Before the appellant is enlarged on bail, he shall surrender his passport to the Special Court under the PMLA at Chennai;

e. The appellant shall regularly and punctually remain present before the Courts dealing with scheduled offences as well as the Special Court and shall cooperate with the Courts for early disposal of cases; and f. If the appellant seeks adjournments on non- existing or frivolous grounds or creates hurdles in the early disposal of the cases mentioned above, the bail granted to him shall be liable to be cancelled.

32. The appeal is allowed on the above terms." 16(v). While reiterating the grant of bail, despite statutory embargoes in Special Enactments, 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, has been reiterated by treating it to be of paramount importance of right to life and liberty under Article 21 of the Constitution of India, that the incarceration is unreasonably prolonged for conclusion of trial, such incarceration amounts to punitive detention and by granting bail in the following terms:-

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2025:HHC:2977) "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;

g to i....."

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2025:HHC:2977) Keeping in view the factual matrix that no reasonable grounds exist against the bail petitioner, as referred to above, coupled with the fact the bail petitioner has suffered incarceration for more than 11 months [since 06.03.2024] and even trial is likely to take considerable time for the reason that out of total 22 PWs only 2 PWs have been examined as yet, therefore, further detention shall certainly amount to depriving and curtailing the personal liberty of the petitioner on mere accusation or conjectures or surmises, which are yet to be tested, examined and proved during the trial. Detention of the petitioner can neither be punitive nor preventative, so as to make the petitioner to taste imprisonment as a lesson. Denial of bail shall certainly violates the principle that "bail is rule and jail is an exception". Even, the State Authorities, have failed to ensure speedy trial and still considerable time is likely to be taken for conclusion of trial, then, in view of mandate of law in the cases of Guddan alias

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2025:HHC:2977) Roop Narayan, Javed Gulam Nabi Shaikh, Manish Sisodia, Kalvakuntla Kavitha, Senthil Balaji and Partha Chatterjee [supra], the petitioner deserves to be released on bail.

NO PAST CRIMINAL ANTECEDENTS:

17. Status Reports do not indicate any past criminal incident against the bail petitioners and once no cogent reasons-material and evidence exists against him, at this stage, therefore, prolonging the detention shall certainly violate the personal liberty of the petitioner mandated under Article 21 of the Constitution of India.

MANDATE OF HON'BLE SUPREME COURT IN GRANTING BAIL IN CASES OF COMMERCIAL QUANTITY WHERE THERE WAS NO LIKELIHOOD OF ITS COMPLETION:

18. Narration hereinbelow, would reveal, that the Hon'ble Supreme Court has enlarged accused bail even in cases of accusation relating to commercial quantity then, once in facts of this case, the bail petitioners [Vikram, Rakshit Chauhan, Sahil Kumar and Rahul

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2025:HHC:2977) Sharma] are alleged to be implicated in Intermediate Quantity, which was even not recovered from the bail petitioners herein, then, the prolongation of detention and deprivation of speedy trial results in curtailing the Fundamental Rights of bail petitioners [Vikram, Rakshil Chauhan, Sahil Kumar and Rahul Sharma] who are allegedly implicated in contraband relating to Intermediate Quantity need to be enlarged on bail, by applying principles as enunciated by the Hon'ble Supreme Court, which are reproduced hereinbelow. 18(i). While dealing the involvement of accused of commercial quantity of contraband, Hon'ble Supreme Court has extended the benefit of bail to the bail petitioner 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

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2025:HHC:2977) 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."

18(ii). 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, Hon'ble Supreme Court extended benefit of bail by invoking Article 21 of Constitution of India as prolonged incarceration defeats the precious fundamental rights and such fundamental rights have to 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

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2025:HHC:2977) 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."

18(iii). 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, the Hon'ble Supreme Court has extended the benefit of concession of bail to an accused, who was facing incarceration of one year and four months and had no criminal antecedents as in this case, 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

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2025:HHC:2977) 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."

18(iv). 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, similar benefit of bail was extended where the incarceration was prolonged and the accused had no criminal antecedents, 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

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2025:HHC:2977) 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."

MANDATE OF THIS COURT IN GRANTING BAIL IN CASES OF COMMERCIAL QUANTITY WHERE TRIAL WAS PROLONGED AND THERE WAS NO LIKELIHOOD OF ITS COMPLETION IN REASONABLE PERIOD:

18(v). While dealing with claim for bail in commercial quantity of 1.004 Kgs. charas and taking into account prolonged incarceration for about 13 months, the Co-

ordinate Bench of this Court, has extended the concession of bail to the accused, in Cr.MP(M) No. 1003 of 2024, titled as Vijay Singh Versus State of Himachal Pradesh, decided on 24.05.2024, in the following terms:-

"10. Though, the case at hand is to be decided by learned trial Court, in the totality of evidence collected on record by the investigating agency, but having noticed aforesaid glaring aspects of the matter, there appears to be no justification for this Court to let the bail petitioner incarcerate in jail, for an indefinite period during trial, especially when rigours of

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2025:HHC:2977) S.37 of the Act are not attracted on account of recovery of small quantity.

11. Learned counsel for the petitioner while inviting attention of this court to judgments dated 4.3.2023 and 15.3.2023 passed in Cr.MP(M) No. 62 and 570 of 2023, titled Puran Chand v. State of HP and Prem chand v. State of HP., submitted that in similar facts and circumstances, coordinate Bench of this Court as well as this Court enlarged the accused on bail on the ground of inordinate delay. Having perused aforesaid judgments passed by the coordinate Bench of this Court, this Court finds that in both the cases, commercial quantity of contraband was recovered from the accused, but yet court having taken note of the fact that they were behind the bars for more than three years, proceeded to enlarge them on bail.

12. Hon'ble Apex Court having taken note of inordinate delay in conclusion of trial in similar facts ordered for 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 also framed under Narcotic Drugs and Psychotropic Substances Act and were behind the bars for approximately two years and there was no likelihood of conclusion of trial in near future, subject to certain conditions.

13. Learned Counsel appearing for the petitioner, to substantiate his plea for enlarging the petitioner on bail, has referred order dated 12.10.2020 passed by a three judges Bench of the Supreme Court, in Criminal Appeal No. 668 of 2020, titled

Amrit Singh Moni v.

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2025:HHC:2977) State of Himachal Pradesh, whereby petitioner therein, facing trial for recovery of 3.285 kilograms charas from a vehicle, alongwith four other persons, was enlarged on bail, for having been in detention for 2 years and 7 months, as till then out of 14 witnesses, 7 witnesses were yet to be examined and last witness was examined in February, 2020 and, thereafter, there was no further progress in the trial.

14. Recently, Hon'ble Apex Court in SLP(Crl) No. 1904 of 2023 titled Sunil Kumar v. The State of Himachal Pradesh, decided on 29.3.2023, has ordered enlargement of petitioner therein, who was behind bars for one and half years, on the ground of delay in trial and conduct of the petitioner.

15. Learned Additional Advocate General, referring to judgment of a three Judges Bench of Supreme Court, passed on 19.7.2022 in Narcotics Control Bureau v. Mohit Aggarwal contends that period of detention cannot be a ground for enlarging the petitioner on bail, especially in the cases where rigors of Section 37 are attracted.

16. In the instant case, bail petitioner is behind bars for more than 13 months and till date trial has not been completed and there are very bleak chances of conclusion of the same in near future, as such, there appears to be no justification to keep the bail petitioner behind the bars for an indefinite period, during trial."

18(vi). Recently, the Co-ordinate Bench of this Court in Cr.MP(M) No.2656 of 2024, titled as Kamal Singh Versus State of Himachal Pradesh, decided on 11.12.2024, has enlarged the accused on bail even

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2025:HHC:2977) in case relating to commercial quantity of charas, i.e. 1.209 Kgs. where the accused was facing incarceration for about 12 months, in the following terms:-

"2.Allegedly, police recovered one rucksack (pithu bag) from the vehicle containing huge quantity of contraband. On weighing, police found that 1.209 Kgs. of charas/sulfa was being transported by the occupants in the vehicle, as detailed hereinabove. Since, no plausible explanation ever came to be rendered on record qua possession of aforesaid commercial quantity of contraband....."

21. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, petitioner has carved out a case for grant of bail, accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR....."

19 Status Report(s) does not reveal or points out any adversarial circumstance, reflecting that there is likely of the bail petitioners fleeing from limits of police station or the State. Status Report(s) does not point out any apprehension or material, reflecting likelihood of the bail petitioners tampering with the evidence or the witnesses.

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2025:HHC:2977)

20. Once neither any prima facie case nor any reasonable grounds to sustain the accusation and the alleged contraband has not been recovered from bail petitioners and there is no material to connect the bail petitioners with the accusation, which is not made out coupled with the fact that the bail petitioners have already given an undertaking that the bail petitioners shall participate in trial, therefore, in order to carve out a balance between the personal liberty and speedy trial vis-à-vis the societal interests, the claim for bail in facts of instant cases is accepted and the ends of justice would be served, in case, the bail petitioners are enlarged on bail as per undertaking(s) furnished to this Court.

21. Taking into account the entirety of the facts and the material on record and the mandate of law, as referred to above and in the peculiar facts of the instant matters, the instant petitions are allowed, and the State Authorities are directed to release the petitioners [Vikram, Rakshit Chauhan, Sahil Kumar

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2025:HHC:2977) and Rahul Sharma] on bail, subject to observance of the following conditions:-

(i) Respondent-State Authorities shall release bail petitioners [Vikram, Rakshit Chauhan, Sahil Kumar and Rahul Sharma] on furnishing personal bond of Rs.75,000/- {Rs Seventy Five Thousand} with two sureties on furnishing similar bond amount each, to the satisfaction of Learned Trial Court concerned;

(ii) Petitioners shall undertake and shall also appear on every date of trial hereinafter;

(iii) Petitioners shall abide by all or any other condition(s), which may be imposed by the Learned Trial Court, in view of this order;

(iv) Petitioners shall neither involve himself 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) Petitioners shall disclose his functional E-Mail IDs/ WhatsApp number and that of his surety to the Learned Trial Court;

(vi) Petitioners after release, shall report to the Investigating Officer or SHO of Police Station concerned, nearest to his native place, i.e. Theog [Shimla], on 2nd Sunday of every month at 08.00 a.m., only for having an update on good conduct and behaviour;

(vii) Petitioners shall not jump over the bail and also shall not leave the country without the prior information of the Court;

(viii) Petitioners shall not tamper with the evidence in any manner;

(ix) Petitioners shall not cause any inducement, threat or promise {directly or indirectly} to

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2025:HHC:2977) witnesses of any other person acquainted with the case;

(x) Petitioners 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 petitioners violates any of the conditions contained in this order.; 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.

22. Petitioners are 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

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2025:HHC:2977) production of a certified copy, but if required, may verify about the passing of this order from the Website of this Court.

23. The Registry is directed to forward a copy of this order to Superintendent of Police, Shimla, District Shimla, Himachal Pradesh, for information and necessary action in terms of this order.

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

(Ranjan Sharma) Judge January 10, 2025 (himani)