

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**CrMP(M) No. 2457 of 2022**  
**Decided on: November 30, 2022**

Anmol	Versus	.....Petitioner
State of Himachal Pradesh		....Respondent

Coram:

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**

Whether approved for reporting? <sup>1</sup>No.

**For the Petitioner** : Mr. Sanjeev Kumar Suri, Advocate.

**For the Respondents** : Mr. Sudhir Bhatnagar and Mr. Narinder Guleria, Additional Advocates General with Mr. Sunny Dhatwalia, Assistant Advocate General.  
Inspector Sanjeev Kumar, Station House Officer, Police Station Sadar, Una, Himachal Pradesh

**Sandeep Sharma, Judge (oral):**

Bail petitioner Anmol Thakur who is behind the bars since 11.6.2022 has approached this Court by way of instant proceedings filed under S.439 CrPC, for grant of regular bail in FIR No. 187, dated 2.6.2022 registered at Police Station Sadar, Una, Himachal Pradesh under Ss. 21 and 29 of the Narcotic Drugs & Psychotropic Substances Act.

2. Pursuant to order dated 16.11.2022, respondent-State has filed status report and Investigating Officer has come present with the record. Record perused and returned.

3. Close scrutiny of the record reveals that on 1.6.2022, at 5.40 pm, police while on patrolling duty stopped motor cycle bearing

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<sup>1</sup> Whether the reporters of the local papers may be allowed to see the judgment?

registration No. HP-20G-3069, being driven by the bail petitioner near Valmiki Mohalla. Since above named person, after having seen police tried to run away, police after apprehending him deemed it necessary to conduct his personal search and search of his motor cycle, as such, after associating independent witnesses, police conducted his search and recovered 2.36 grams of Chitta/heroin from the dickey of the motor cycle. Since no plausible explanation came to be rendered on record by the bail petitioner qua possession of aforesaid quantity of contraband, police after completing necessary codal formalities, registered FIR against the bail petitioner and since then he is behind the bars. Since during investigation, police found that the motor cycle used by the bail petitioner belongs to one Gagan Deep Singh, police also arrested him and found that the present bail petitioner alongwith Gagan Deep Singh and Jasbir had been indulging in illegal trade of narcotics. Co-accused Gagan Deep Singh already stands enlarged on bail because he was not apprehended with the contraband, whereas, present bail petitioner alongwith co-accused Jasbir is behind the bars since 1.6.2022. Since investigation is complete and *Challan* stands filed in the competent Court of law, petitioner has approached this Court for grant of regular bail.

4. While fairly admitting factum with regard to filing *Challan* in the competent court of law, Mr. Narinder Guleria, learned Additional Advocate General submits that though nothing remains to be recovered from the bail petitioner, but keeping in gravity of offence alleged to have been committed by the bail petitioner, he does not

deserve leniency and his prayer for bail deserves outright rejection. Mr. Guleria, learned Additional Advocate General further submits that there is overwhelming evidence available on record suggestive of the fact that bail petitioner alongwith co-accused named in the FIR had been indulging in illegal trade of narcotics, as such he does not deserve any leniency. Lastly learned Additional Advocate General states that petitioner has indulged in a serious offence having an adverse impact upon the society, as such, it may not be in the interest of justice to enlarge him on bail, as in that event, he may not only flee from justice but may indulge in such activities again and may tamper with prosecution evidence.

5. Having heard learned counsel for the parties and perused the material available on record, this court finds that an intermediate quantity of contraband came to be recovered from the motor cycle being driven by the petitioner in the presence of independent witnesses as such, this court is not persuaded to agree with learned counsel for the petitioner that the bail petitioner has been falsely implicated. However, having taken note of fact that the bail petitioner is behind the bars for six months and in the past, there is no case registered against him under Narcotic Drugs and Psychotropic Substances Act, prayer of the bail petitioner deserves to be considered.

6. Though, the police has stated in the status report that the bail petitioner alongwith co-accused named in the FIR indulges in illegal trade of narcotics but there is no cogent and convincing evidence to establish such allegation rather it appears that bail petitioner with co-

accused have become drug addicts, as such, no fruitful purpose will be served by keeping the bail petitioner behind the bars, rather, he is required to be taken to rehabilitation centre, at the first instance, to bring them back into main stream.

**2.** Learned counsel for the petitioner on the instructions of father of the bail petitioner, who is present in the court, states that as soon as bail petitioner is enlarged on bail, he will be taken to a Hospital for treatment. Otherwise also, rigors of S. 37 are not attracted in the present case in view of the fact that only an intermediate quantity of contraband came to be allegedly recovered from the bail petitioner. Moreover, the motor cycle, from which alleged recovery was made, belongs to Gagan Deep Singh, who stands enlarged on bail. Though, aforesaid aspects are to be considered by the learned trial Court in the totality of evidence led on record by Investigating Agency but having taken note of aforesaid glaring aspects of the matter, this court sees no reason to let the bail petitioner incarcerate in jail, for an indefinite period during trial.

**3.** Hon'ble Apex Court and this Court in a catena of cases have repeatedly held that one is deemed to be innocent, till the time, he/she is proved guilty in accordance with law. Apprehension expressed by learned Additional Advocate General, that in the event of being enlarged on bail, bail petitioner may flee from justice or indulge in such offences again, can be best met by putting the bail petitioner to stringent conditions.

4. Hon'ble Apex Court in Criminal Appeal No. 227/2018, **Dataram Singh vs. State of Uttar Pradesh & Anr** decided on 6.2.2018 has held that freedom of an individual can not be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has been further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty.

5. Hon'ble Apex Court in **Sanjay Chandra versus Central Bureau of Investigation** (2012)<sup>1</sup> Supreme Court Cases 49 has held that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that 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 preventative.

6. In **Manoranjana Singh alias Gupta versus CBI**, (2017) 5 SCC 218, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of bail and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

7. The Apex Court in **Prasanta Kumar Sarkar versus Ashis Chatterjee and another** (2010) 14 SCC 496, has laid down various principles to be kept in mind, while deciding petition for bail viz. prima facie case, nature and gravity of accusation, punishment involved, apprehension of repetition of offence and witnesses being influenced.

8. In view of above, bail petitioner has carved out a case for himself, as such, present petition is allowed. Bail petitioner is ordered to be enlarged on bail, subject to furnishing bail bonds in the sum of Rs.1.00 Lakh with one local surety in the like amount each, to the satisfaction of the learned trial Court, besides the following conditions:

- (a) He shall make himself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;
- (b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- (c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer; and
- (d) He shall not leave the territory of India without the prior permission of the Court.

9. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

10. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined

to the disposal of this petition alone. The petition stands accordingly disposed of.

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

**(Sandeep Sharma)**  
**Judge**

**November 30, 2022**  
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