

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 190 of 2025

Date of Decision: 31.01.2025.

Gopal Singh

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Vacation Judge.

Whether approved for reporting?¹ No.

For the Petitioner : Mr. Atul Sharma, Advocate.

For the Respondent/State : Mr Manoj Chauhan,
Additional Advocate General,
with ASI Anil Kumar, IO, Police
Station Chopal, District
Shimla, HP.

Rakesh Kainthla, Judge (Oral)

The petitioner has filed the present petition for seeking pre-arrest bail in FIR No. 08 of 2025, dated 24.01.2025, for the commission of an offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, (ND&PS Act), registered at the Police Station, Chopal, District Shimla, H.P. It has been asserted that the petitioner was falsely

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

implicated. He is not involved in the commission of the offence. The allegations against the petitioner are false. No recovery was effected from the petitioner and there is no witness to the recovery of the charas. The petitioner is a permanent resident of Gram Panchayat Lingzar. He has deep roots in the society and there is no possibility of his absconding. The petitioner would abide by the terms and conditions, which the Court may impose. Hence, the petition.

2. The petition is opposed by filing a status report asserting that the police were on patrolling duty on 24.01.2025 when they received secret information at about 4.10 PM at Nakoda bridge that Gopal Singh (present petitioner) was involved in the sale and purchase of charas. The police reduced the information into writing and kept it with themselves due to insufficient number of police officials. The police proceeded towards the petitioner's village. The petitioner was found coming from the village towards the police party carrying a micron bag with him. He returned after seeing the police and started running away. The police followed him. The petitioner threw the bag and absconded. The police could not catch hold of him. The police checked the bag in the presence of independent

witnesses and found charas weighing 443.230 grams. The police seized the charas and conducted the investigation. The inventory of the charas was prepared, which was certified by learned Judicial Magistrate First Class, Chopal. The charas was sent to the Forensic Science Laboratory, Junga for chemical examination. The petitioner has absconded and could not be apprehended despite best efforts. The petitioner is to be interrogated to know the source of the charas. Hence, the status report.

3. I have heard Mr. Atul Sharma, learned counsel for the petitioner and Mr. Manoj Chauhan, learned Additional Advocate General for the respondent-State.

4. Mr. Atul Sharma, learned counsel for the petitioner submitted that the petitioner is innocent and he was falsely implicated. There is no eye witness to the incident. The police reduced the secret information to writing but chose not to send it to the superior officer, which is a violation of Section 42 of the ND&PS Act. The petitioner does not have any criminal antecedents. He would join the investigation and abide by all the terms and conditions which the Court may impose. Hence, he

prayed that the present petition be allowed and the petitioner be released on pre-arrest bail. He relied upon the judgment of the Hon'ble Supreme Court in *Sahil Firoz Shaikh Vs. State of Maharashtra, Cr. Appeal No. 4905 of 2024, decided on 29.11.2024* in support of his submissions.

5. Mr Manoj Chauhan, learned Additional Advocate General for the respondent-State submitted that two independent witnesses were associated. The petitioner is to be interrogated by the police to determine the source of the charas. The custodial interrogation of the petitioner is required. Therefore, he prayed that the present petition be dismissed.

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

7. It was laid down by the Hon'ble Supreme Court in *P. Chidambaram vs. Directorate of Enforcement 2019 (9) SCC 24* that the power of pre-arrest is extraordinary and should be exercised sparingly. It was observed:

“67. Ordinarily, arrest is a part of the procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of pre-arrest bail

should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; the possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for the grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

8. This position was reiterated in *Srikant Upadhyay v. State of Bihar*, 2024 SCC OnLine SC 282 wherein it was held:

“25. We have already held that the power to grant anticipatory bail is extraordinary. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of the imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion of the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to a miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases.”

9. It was held in *Pratibha Manchanda v. State of Haryana*, (2023) 8 SCC 181: 2023 SCC OnLine SC 785 that the Courts should balance individual rights, public interest and fair investigation while considering an application for pre-arrest bail. It was observed:

“21. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tightrope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each case becomes crucial to ensure a just outcome.”

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

11. The status report clearly shows that the police had received a secret information that the petitioner was involved in the sale and purchase of charas. The petitioner was found carrying a micron bag and ran away from the spot. These averments *prima facie* show the involvement of the petitioner.

12. It was submitted that the police did not associate any independent witness despite the receipt of the secret information and this is fatal to the prosecution case. This submission cannot be accepted. It is trite to say that the testimonies of the police officials cannot be discarded on the ground that they happened to be the police officials. Their credibility shall be tested at the time of trial and is not to be adjudicated at this stage while deciding the application for grant of pre-arrest bail. Hence, the fact that no independent witness was associated despite the receipt of the information by the police will not help the petitioner at this stage.

13. It was submitted that the police have not complied with the requirement of Section 42 of the ND&PS Act because it was specifically mentioned in the status report that the information was kept by the police officials. This submission will not help the petitioner. As per the status report, the petitioner was coming towards the police walking on the road. He threw the bag when the police followed him. There was no search inside the building, conveyance or enclosed place mentioned in Section 42 of the ND&PS Act. It was laid down by the Hon'ble Supreme Court in *SK Raju @ Abdul Haque @ Jagga vs*

State of West Bengal (2018) 9 SCC 708 that Section 42 of the ND&PS Act does not apply to the search made of a person walking on the road or in an open place. Therefore, even if there is a violation of Section 42 of the ND&PS Act, the same will not affect the prosecution case. Further, as per Section 42 (2) of the ND&PS Act, the information is not required to be sent immediately but within 72 hours to the immediate official superior. Thus, even if the information was not sent immediately, the same is protected under Section 42(2) of the ND&PS Act and the petitioner cannot take any advantage of this fact at this stage.

14. The petitioner was found to be in possession of 443.230 grams of charas which is a huge quantity. The narcotics are adversely affecting the younger generation and the cases of narcotics cannot be dealt with lightly. Therefore, it will not be proper for this Court to grant pre-arrest bail in a case involving such a huge quantity of charas.

15. The judgment in *Sahil Firoz Shaikh* (supra), does not show the amount of the narcotics. Further, it appears from the judgment that one accused was aged only 18 years and another

accused was a woman. They are entitled to special consideration as per Section 480 of Bharatiya Nagrik Suraksha Sanhita and the case of the petitioner cannot be equated to them. Hence, the cited judgment does not apply to the present case.

16. It was stated in the status report that the custodial interrogation of the petitioner is required to determine the source and destination of the charas. Keeping in view the quantity of charas, the plea of the police appears to be justified. It was laid down by the Hon'ble Supreme Court in *State Versus Anil Sharma (1997) 7 SCC 187* that where custodial interrogation is required, pre-arrest bail should not be granted. It was observed:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-orientated than questioning a suspect who is well-ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for,

such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offender”

17. A similar view was taken by the Delhi High Court in *Mukesh Khurana v. State (NCT of Delhi)*, 2022 SCC OnLine Del 1032 wherein it was observed: -

“13. One of the significant factors in determining this question would be the need for custodial interrogation. Without a doubt, custodial interrogation is more effective to question a suspect. The cocoon of protection, afforded by a bail order insulates the suspect and he could thwart interrogation reducing it to futile rituals. But it must be also kept in mind, that while interrogation of a suspect is one of the basic and effective methods of crime solving, the liberty of an individual also needs to be balanced out.”

18. It was held in *P Chidambaram* (supra) that the grant of pre-arrest bail may hamper the investigations. It was observed:

“83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knew that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the

investigation, we are of the view that it is not a fit case to grant anticipatory bail.”

19. In view of the above, the petitioner does not deserve the concession of pre-arrest bail; hence, the present petition fails and the same is dismissed.

20. The observation made hereinabove shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Vacation Judge

31st January, 2025
(Chander)