

**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

Cr.MP(M) No. 1062 of 2025

Reserved on.: 25.07.2025

Announced on: 31.07.2025

Davinder alias ChhindaPetitioner

Versus

State of Himachal PradeshRespondent

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting?* No.

For the petitioner: Mr. Prikshit Rathour, Advocate.

For the respondent: Mr. Pranay Pratap Singh, Additional
-State Advocate General

Ranjan Sharma, Judge

Bail petitioner [Davinder alias Chhinda], **being in custody since 30.04.2024** has come up before this Court, *seeking regular bail*, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, (*referred to as BNSS*) originating from the *FIR No. 11 of 2024 dated 10.02.2024*, registered at Police Station Parwanoo, District Solan [H.P.], under *Section 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act* (referred to as

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

the NDPS Act).

FACTUAL MATRIX

2. Case set up by Mr. Prikshit Rathour, Learned Advocate, is that on 10.02.2024, two boys namely Rishab Sehgal and Anish Sonker were allegedly found to have been indulged in the business of selling of Chitta/herion at Parwanoo market. The police intercepted aforesaid two boys and recovery of Chitta/heroin was made from the aforesaid persons. Consequently, an FIR No.11 of 2024, dated 10.02.2024 [Annexure P-1] was registered against these two boys by the police.

2(i) The case of the bail petitioner-accused is that, he has been falsely implicated. It is further averred that on 09.01.2024, one police official came to the house of the bail petitioner-accused and started quarreling with him and he was also given beatings by the aforesaid police official. It is also borne out from [Annexure P-3 in file Cr.MP(M) No.273 of 2024] that the visit and the unwarranted action of the alleged police official is recorded in the video as per Annexure P-3. It is further averred that the mobile phones of the petitioner and

his family were illegally taken in custody by the aforesaid police official. It is further stated that in view of the above background and the role of the alleged police official, the petitioner is sought to be implicated falsely.

2(ii). Earlier the bail petitioner came up before this Court seeking pre-arrest bail in Cr.MP(M) No.273 of 2024 but the same was rejected on 10.04.2024. Thereafter, bail application filed before the Ld. Special Judge-III, Solan on 28.02.2025 was dismissed on 26.03.2025 and thereafter filed the instant application for regular bail.

2(iii). Case of the petitioner-accused is that, he has been falsely implicated. It is averred that there is no evidence to connect the petitioner with the accusation and he has been wrongly and falsely implicated with alleged contraband. Bail petitioner submits that rigours of Section 37 are not attracted in instant case. It is further averred that no recovery has been affected from the petitioner, so far it relates to the accusation in instant case. Petitioner has furnished an undertaking that he will abide by all the terms and conditions as will be imposed by this Court. Bail petitioner

has averred that he shall not cause any inducement, threat or promise to any person or persons acquainted with the facts of the case and shall not flee away from investigation and trial. It is averred that personal liberty of petitioner under Article 21 of the Constitution of India could neither be curtailed or taken away by way of penalty by prolonging the detention by presuming the guilt against the petitioner. Instant bail petition has been filed by bail petitioner, through his daughter with the prayer for releasing the petitioner on bail.

STAND OF STATE AUTHORITIES

3. Upon issuance of notice by this Court on 09.05.2025, the respondents filed Status Report dated 06.06.2025 in the Court and the matter reserved on 25.07.2025.

3(i) A perusal of the Status Report reveals that the bail petitioner [Davinder @ Chhinda] had conspired with one Nigerian namely [TIDJ MAMANE], who was living in Delhi. The Status Report further reveals that the bail petitioner had been in contact with the aforesaid Nigerian [TIDJ MAMANE] for the last about three years.

The Status Report further reveals that on 09.02.2024 and 10.02.2024, the petitioner had spoken with the aforesaid Nigerian on the phone No.9394558970 and as a result of the aforesaid criminal conspiracy, the bail petitioner had deputed two persons namely Rishab Sehgal and Anish Sonker from Parwanoo/Kalka to Delhi, for bringing the contraband for the bail petitioner. It is the case of the prosecution that these two persons went to Delhi who met the Nigerian and then brought the contraband to Parwanoo, where they were nabbed by the police on 10.02.2024. On being nabbed, the contraband i.e. heroin/chitta weighing 39.70 gms was recovered from Rishab Sehgal and heroin/chitta weighing 9.33 gms was recovered from Anish Sonker. The Status Report further reveals that the aforesaid two persons [Rishab Sehgal and Anish Sonker] were deployed by the bail petitioner to Delhi, to meet the Nigerian and to get the contraband for sale/purchase etc. who have also admitted before the police that they had gone to Delhi at the instance of the bail petitioner [Davinder @ Chhinda]. The Status Report further reveals that the bail petitioner [Davinder @ Chhinda]

has further stated that, in case, he was taken to Delhi, he would recognize the Nigerian, accordingly, the bail petitioner was taken to Delhi by the police team and near Akash Hospital, Delhi, the Nigerian was identified and was nabbed by the police. It has also come in Status Report that the bail petitioner had been contacting/calling the Nigerian from phone No.97291-96267, which was in her daughters name. Even the daughter of bail petitioner [Davinder @ Chhinda], has also stated that his father i.e. bail petitioner used to make calls from her cell. The Status Report further reveals that the bail petitioner has been involved in 4 NDPS cases, and out of 4 cases, he has been acquitted in two cases. In the above background, the State Authorities have prayed for rejection of the bail application.

4. Heard, Mr. Prikshit Rathour, Learned Counsel for petitioner and Mr. Pranay Pratap Singh, Additional, Advocate General for Respondent(s).

MANDATE OF LAW ON BAIL:

5. Broad parameters have been mandated by the Hon'ble Supreme Court, regulating the bail in the

cases of **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, **Sushila Aggarwal versus State-NCT Delhi**, (2020) 5 SCC 01; **CBI versus Santosh Karnani** (2023) 6 SCALE 250; which have been reiterated by the Hon'ble Supreme Court in **State of Haryana versus Dharamraj**, **2023** SCC Online SC 1085, that *bail is to be granted* where the allegations are frivolous or groundless and incase neither any prima facie case nor reasonable grounds exists to believe or point towards the accusation. However, depending upon the facts of each case, the bail can be refused, in case, the prima facie case or reasonable grounds exists and if an offence is serious. Severity of punishment including reasonable apprehension of fleeing away

from investigation and trial and the character, past antecedents, behavior, means, position and standing of an accused; likelihood of offence being repeated; reasonable apprehension of witnesses being influenced and danger of justice being thwarted by grant of bail etc. are relevant factors for denying the concession of bail.

5(i). The Hon'ble Supreme Court in **Criminal Appeal No. 3840 of 2023, Saumya Churasia versus Directorate of Enforcement**, decided on 14.12.2023 held that the claim for bail, is to be examined by a Court, *without delving into the evidence on merits but by forming a prima-facie opinion on totality of facts in the light of* broad-parameters referred to above.

ANALYSIS OF CLAIM FOR BAIL IN INSTANT CASE:

6. Taking into account the entirety of facts and circumstances and the material on record as is borne out from Status Report(s), this Court is of the considered view, that the bail petitioner [*Davinder*

@ Chhinda], is entitled to enlarged on bail, for the following reasons:-

NO PRIMA-FACIE ACCUSATION AGAINST THE BAIL PETITIONER:

6(i). Status Report(s) indicate that H.C. Shubham received information on 10.02.2024 at about 3.30 p.m that Rishab Sehgal and co-accused *Anish Sonker* were coming from Kali Mandir Kalka towards Parwanoo on foot and were carrying contraband. Based on the information received, the police party headed by H.C Shubham, stopped them near Shivalik Hotel, Parwanoo at about 3.55 p.m on 10.02.2024. Status report further indicates that at about 4.20 P.M the police party associated Lakhwinder Singh a Ward Member as an Independent Witness. Status Report indicates that before carrying out the necessary search, the Gazetted Officer-SDPO, Pranav Chauhan, reached the spot at about 5.20 P.M on 10.02.2024; whereafter, the search was conducted. On weighing the contraband of 39.70 grams of Heroin/Chitta

recovered from *[Rishab Sehgal]* and the contraband weighing 9.33 grams of Heroin/Chitta, recovered from co-accused *[Anish Sonker]* other codal formalities was completed and Rukka was sent to concerned Police Station, leading to registration of F.I.R. On being nabbed by the police on 10.02.2024 these two persons {Rishab Sehgal and Anish Sonker} admitted that they were sent to Delhi at the behest of bail petitioner Davinder @ Chhinda for bringing the contraband for the bail petitioner. These two persons went to Delhi and met one Nigerian [TIDJ MAMANE], who was in contact with the bail petitioner over mobile phone i.e. 9729196267. Thereafter, bail petitioner was taken to Delhi by the police team and near Akash Hospital, Delhi the Nigerian was identified and was nabbed by the police. The disclosure made by the main accused cannot be the basis for prolonged incarceration of the bail petitioner when nothing was recovered from him.

6(ii). Though the CDRs, may be, to some extent relevant for purposes of advancement of investigation but the same cannot be the basis for presuming the guilt unless it was proved during the trial. There is no cogent and convincing material on record to connect bail petitioner with the accusation. Even no recovery, in instant case has been effected from the bail petitioner. In above backdrop, the accusation under Section 21 of the NDPS Act, alleging sale, purchase, transportation, etc. is a matter to be tested, examined and proved, during the trial.

6(iii). Likewise, the accusation under Section 29 of NDPS Act alleging abatement or criminal conspiracy is a matter which is to be tested, examined and proved on by way of evidence during the trial. The continued detention alleging abatement or criminal conspiracy without there being any cogent material on record, certainly amount to incarcerating the petitioner by way punishment, is impermissible; and in these circumstances, the prayer for bail has merit.

6(vi). Perusal of Status Report indicate that the contraband weighing 39.70 gm. of Heroin-Chitta was allegedly recovered from bail petitioner [*Rishab Sehgal*] and contraband weighing 9.33 gm. of Chitta was recovered from co-accused [*Anish Sonker*] by the Police on 10.02.2024. Admittedly, the alleged contraband falls within the ambit of Intermediate Quantity in instant case and therefore, the rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 are not applicable in the instant case. Moreso, nothing was recovered at the instance of the bail petitioner.

6(v). *Status Report* indicates that the petitioner has been implicated on the behest of a confessional statement made by main accused, Rishab Sehgal and Anish Sonker, who were apprehended by the police on 10.02.2024, from whom, contraband weighing 39.70 gram and 9.33 gram of Chitta was recovered by the Police. In absence of any recovery having being made from the petitioner, he is entitled to be

enlarged on bail in these proceedings.

6(vi). While enlarging an accused on bail in relation to an Intermediate Quantity and from whom no recovery was made, the Hon'ble Supreme Court has held, in **Sami Ullaha versus Superintendent, Narcotic Central Bureau, (2008) 16 SCC 471** 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 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. No. of narcotic drug or psychotropic substance [International name quantity Non-proprietary Name (INN)]	Chemical	Small	Commercial
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.”

6(vii). While granting bail to an accused implicated in Intermediate Quantity, from whom no recovery was made, the Hon’ble Supreme Court, in **State of West Bengal versus Rakesh Singh alias Rakesh Kumar Singh 2022 SCC Online SC 828**, 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 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.***"

6(viii). Granting bail to an accused from whom no recovery was made this Court, in **Roshan Lal versus State of Himachal Pradesh, in Cr.MP (M) No. 307 of 2024** decided on 04.03.2024, held:

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.*

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.

**INFRINGEMENT OF PERSONAL LIBERTY UNDER
ARTICLE 21 OF THE CONSTITUTION OF INDIA:**

7. 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 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 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 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."

REFORMATIVE INTENT AND CLAIM FOR BAIL:

8. While dealing with the concept of bail which has humanist and reformative intent coupled with the fact that the personal liberty of an accused under Article 21 of the Constitution of India is sacrosanct, the Hon'ble Supreme Court, held in ***Criminal Appeal No. 2787 of 2024***, titled as ***Javed Gulam Nabi Shaikh Versus State of Maharashtra and Another***.

ADHERANCE TO PRINCIPLE:- BAIL IS RULE:

9. Depriving the petitioner of the concession of bail shall negate the principle that 'bail is a rule and jail is an exception', as outlined by the Hon'ble Supreme Court, in ***Manish Sisodia vs Directorate of Enforcement, SLP (Criminal) No.8781 of 2024***.

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

10. 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 the right to life and liberty under Article 21 of the Constitution of India to be of paramount importance and action of prolonging the incarceration so as to make such incarceration punitive has been deprecated by granting bail. Prolonged detention of petitioner, in facts of this case, 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 violate 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. In these circumstances, since the

trial has not commenced and the same is likely to take considerable time for conclusion, therefore, the claim of the petitioner for bail carries weight.

PAST CRIMINAL ANTECEDENTS:

11. Learned State Counsel has opposed the claim for bail on the ground that as per the Status Reports, the petitioner has criminal antecedents, who has been involved in four other criminal cases i.e. [i] F.I.R No. 104 of 2014 under Section 20-61-85 of the NDPS Act at Police Station-State CID Bharari, Shimla, [ii] FIR No. 152 of 2018 under Section 21 of Police Station Parwanoo, Himachal Pradesh [iii] FIR No. 40 of 2023 under Section 20 of the NDPS Act, Police Station Kalka, Haryana [iii] FIR No. 537 of 2022 under Section 21 of the NDPS Act Police Station Chandi Mandir, Panchkula, Haryana.

11(i). Before analyzing the contention of the Learned State Counsel it is necessary to have a ***recap of the mandate of law***, in broader sense, as to whether the past criminal antecedents are

relevant and in what circumstances and extent thereof and in what circumstances and to what extent and while considering the claim of an accused for bail, which are detailed here-in-below.

11(ii). While negativating the plea that the past criminal antecedents {i.e. 36 criminal cases of serious nature} cannot solely be the ground for denying bail or in interfering with the bail order granted by a Court, when, an accused was undergoing incarceration coupled with the fact that no cogent material was placed on record revealing that during bail there is possibility of accused fleeing away from the trial or an accused is likely to threaten witnesses or is likely to thwart justice, has been outlined by the Hon'ble Supreme Court, in **Maulana Mohammed Amir Rashidi versus State of Uttar Pradesh, (2012) 2 SCC 382.**

11(iii). While granting bail to an accused having criminal antecedents, who was facing incarceration for 7 months and when, no prima-facie accusation

or reasonable grounds existed, the Hon'ble Supreme Court in ***Prabhakar Tewari Versus State of Uttar Pradesh and another, (2020) 11 SCC 648***. Further despite the past criminal antecedents, benefit of bail, was granted by applying the principle that accused is presumed to be innocent and merely in the guise of pending cases, the presumption of guilt could not be inferred and when, the accused is facing incarceration for long, as has been outlined by the Hon'ble Supreme Court in ***Union of India vs Mrityunjay Kumar Singh, 2024 SCC OnLine SC 852***. This principle has been reiterated in ***Ayub Khan versus State of Rajasthan, 2024 SCC OnLine SC 3763***. Moreover, the pendency of other criminal cases cannot be invoked for denying bail, when, no *prima facie* case exists and prolonged incarceration was writ large, in ***Prem Prakash versus Union of India through Directorate of Enforcement, 2024 SCC OnLine SC 2270***.

PARITY BETWEEN CO-DELINQUENTS:

12. As an offshoot of F.I.R No. 11 of 2024 dated 10.02.2024, registered at Police Station Parwanoo, District Solan [H.P.], under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, though four accused, were alleged to have been involved, out of which one of the co-accused, Rishab Sehgal from whom recovery was made, was granted bail by this Court in Cr.M.P.(M) No. 2296 of 2024 on 13.03.2025 in view of his prolonged incarceration and the fact that the detention cannot be preventative nor punitive. Conversely, the case of the present bail petitioner Davinder @ Chhinda stands on the better footing as there is neither any direct evidence nor any recovery of contraband was made by the police from him in the instant case. In these circumstances, once a co-accused has been extended the concession of bail, therefore, the present bail petitioner deserves parity and similar concession of bail, therefore, the present bail petitioner, deserves concession of bail on the principle of parity.

**NOTHING ADVERSARIAL REGARDING TAMPERING
WITH EVIDENCE OR WITNESSES ETC:**

13. Status Reports filed by State Authorities have neither pointed out cogent and convincing material revealing adversarial circumstances that after release on bail, the petitioner is likely to tamper with evidence or may cause inducement, threat or promise to any person or persons acquainted with the facts of the case. However, the apprehension if any, of the State Authorities are being safeguarded, by imposing stringent conditions in this bail order.

**NOTHING ADVERSARIAL REGARDING
OBSTRUCTING OR ATTEMPTING TO THWARTLING
JUSTICE :**

14. Status Reports filed by State Authorities have neither pointed out any adversarial circumstances nor placed on record any cogent and convincing material on record to infer that after release on bail, the petitioner may obstruct or thwart the cause of justice in any manner. In absence of any material, the plea for bail, deserves to be granted to the petitioner in the instant case.

**NOTHING ADVERSARIAL LIKELIHOOD OF FLEEING
AWAY FROM TRIAL OR JURISDICTION OF COURT:**

15. In order to safeguard the rights of bail petitioner and to take care of apprehensions of State that bail petitioner may flee away [notwithstanding the fact that no such apprehension has been pointed out in Status Report] yet, in peculiar facts of this case, this Court stringent conditions in the bail orders, in later part of this order.

CONCLUSION:

16. In the facts of instant case, the plea of petitioner for bail carries weight, *for the reason*, that *firstly, prima facie* **prosecution story appears to be highly doubtful and improbable** at this stage as discussed hereinabove; and *secondly*, the Status Report reveals that bail petitioner is in custody since 30.04.2024 and is undergoing **incarceration for about one year and three months**; and *thirdly*, **conclusion of trial is likely to take considerable time when out of total 30 PWs none has been examined**

as yet and the trial is likely to take considerable time ;
and fourthly, the **delay in trial is not attributable** to
the petitioner ; *and fifthly*, *an accused is presumed to*
be innocent unless proven guilty ; *and sixthly*, the
continued **detention can neither be punitive nor**
preventative and *seventhly*, the continued **detention**
in guise of penalizing the petitioner by presuming guilt
cannot be permitted; and *eighthly*, even the State
Authorities have not placed any cogent and convincing
material that after release on bail there is possibility
of accused fleeing away from the trial or an accused
is likely to threaten witnesses or is likely to thwart
justice; and *ninthly*, even the State Authorities have
not placed anything on record to **show that petitioner**
has misused liberty granted to him earlier; and
tenthly, nothing incriminating material has been found
from the exclusive possession of petitioner and the
accusation is yet to be tested, examined and proved
during the trial; and *lastly*, in order to safeguard the
interest of State vis-à-vis the right of petitioner, this

Court imposes stringent condition in this order and in case of any violation of or misuse of the concession-liberty, the State Authority can seek cancellation of the concession extended to the petitioner. Denial of bail shall deprive and curtail the sacrosanct fundamental rights of personal liberty and right of speedy trial under Article 21 of the Constitution of India of the petitioner at this stage. On totality of facts and circumstances and the mandate of law, referred to above, the claim of the petitioner *[Davinder @ Chhinda]* for enlargement on bail carries weight, in the peculiar facts-situation of this case, as discussed above.

DIRECTIONS:

17. Taking into account the entirety of the facts and the material on record and the mandate of law and the reasons recorded hereinabove, and in the peculiar facts of case, the **instant petition is allowed;** and the *State Authorities are directed to release the petitioner [Davinder @ Chhinda] on bail,* subject to the observance of following conditions:-

- (i) Respondent-State Authorities shall release bail petitioner [Davinder @ Chhinda] 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 the Learned Trial Court concerned;
- (ii) Petitioner shall undertake and shall also appear on every date of trial hereinafter;
- (iii) Petitioner shall abide by all or any other condition(s), which may be imposed by the Learned Trial Court, in view of this order;
- (iv) Petitioner 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) Petitioner shall disclose his functional E-Mail IDs/ WhatsApp number and that of his surety to the Learned Trial Court;
- (vi) Petitioner after release, shall report to the Investigating Officer or SHO of Police Station concerned, on 2nd Sunday of every month at 11.00 a.m., only for having an update on good conduct and behaviour;
- (vii) Petitioner shall not jump over the bail and also shall not leave the country without the prior information of the Court;
- (viii) Petitioner shall not tamper with the evidence in any manner;
- (ix) Petitioner shall not cause any inducement, threat or promise {directly or indirectly} to

witnesses of any other person acquainted with the case;

- (x) Petitioner 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 petitioner violates any of the conditions contained in this order.;

18. 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.

19. Petitioner is 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 production of a certified copy, but if required, may verify about the passing of this order from the *Website* of this Court.

20. Registry is directed to forward a copy of this order to Superintendent of Police, Panchkula, Haryana, for information and with a direction to intimate the SHO, Police Station, Panchkula to keep an update on good conduct and behaviour of the bail petitioner *[Davinder @ Chhinda]* in terms of this order.

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

(Ranjan Sharma)
Judge

31st July, 2025
(tm)