

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr.MP(M) No. : 1632 of 2025****Reserved on : 18th July, 2025****Decided on : 31st July, 2025**

Nanak Chand

...Applicant

Versus

State of Himachal Pradesh

...Respondent

*Coram***The Hon'ble Mr. Justice Virender Singh, Judge.***Whether approved for reporting?*¹ **Yes.**

For the applicant : Mr. Mukesh Sharma, Advocate.

For the respondent : Mr. Anup Rattan, Advocate General with Mr. Mohinder Zharaick, Additional Advocate General & Mr. Rohit Sharma, Deputy Advocate General, assisted by HC Rohit Sharma, Police Station Sadar, Shimla, District Shimla.

Virender Singh, Judge

Applicant-Nanak Chand, has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as the 'BNSS'), seeking the relief of bail, during the pendency of the trial,

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

in a case, arising out of FIR No.112/2024, dated 21.08.2024, registered with Police Station, Sadar Shimla, District Shimla, H.P., under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the 'NDPS Act').

2. According to the applicant, he is innocent person and has falsely been implicated, in this case, by the police. He is stated to be in custody from the date of his arrest.

3. The applicant has further pleaded that he has earlier moved similar application, before this Court, which, later on, was dismissed as withdrawn.

4. Highlighting the fact that there is inordinate delay in the trial, as the charges have not yet been framed, the applicant has pleaded that the twin conditions, as enumerated under Section 37 of the NDPS Act, exist in his favour.

5. As per the case of the applicant, he has been named as accused, in this case, on the basis of the confessional statement made by co-accused and call

records. According to the applicant, nothing has been recovered from him or at his instance.

6. Apart from this, the learned counsel appearing on behalf of the applicant, has given certain undertakings, on behalf of the applicant, for which, the applicant is ready to abide by, in case, ordered to be released, on bail, during the pendency of the trial.

7. On the basis of the above facts, a prayer has been made to dismiss the application.

8. When put to notice, police has filed the status report, disclosing therein that on 21.08.2024, HC Manoj Kumar No.195, I.O. Special Cell, Shimla, submitted a rukka to Police Station Sadar Shimla, for registration of FIR, mentioning therein, that on 21.08.2024, he, along with other police official, was on patrolling duty to detect the crime relating to narcotics, towards Old Bus Stand, Chhota Shimla and Sanjauli side, in their private vehicle.

8.1. At about 12.15 p.m., when, the police party reached at Sanjauli Chowk, then, the I.O., received a secret information that on the road near Cancer Hospital IGMC one Indra Devi and one Aneesh are present and both of

them, in connivance with each other, have indulged in the business of selling/purchasing cannabis.

8.2. As per the information, the said lady Indra Devi is having a light yellow coloured carry bag, containing large quantity of Bhang/cannabis and both of them are there to sell the same. As per the information, in case of delay, the possibility of removal of the contraband is also there.

8.3. The information was found to be authentic and reliable, as such, the I.O. has complied with the provisions of Section 42(2) of the NDPS Act and submitted the same to his superior officer.

8.4. Thereafter, the I.O. proceeded towards IGMC Hospital. He has informed the police of Police Post Lakkar Bazar, to send one Lady Constable towards IGMC. Thereafter, Lady Constable Nisha No.403, reached at the spot. Two persons were found in taxi parking, who, on enquiry, disclosed their names as Lalit Kumar son of Shyam Lal and Lalit Kumar son of Amar Singh, respectively. They were apprised about the secret information, which the I.O. had received and were

requested to be the independent witnesses. Both of them had given their consent to be the independent witnesses.

8.5. Thereafter, the police party proceeded towards the Cancer Hospital. On the left side of the road, one lady and one man were found present. Lady was having the light yellow coloured carry bag in her hand. The I.O. has given his introduction, as well as, that of the police party and also apprised them about the secret information, which the I.O. had received.

8.6. On enquiry, the lady disclosed her name as Indra Devi and other person disclosed his name as Aneesh Malik. Thereafter, the carry bag, which the said lady was having, was searched and found containing cannabis/Bhang, which, on weighment, was found to be 1.100 kgs.

8.7. After completing other codal formalities, the FIR in question, was registered and the contraband, so recovered, was taken into possession. The accused were arrested.

8.8. Thereafter, the accused persons, as well as, the contraband was produced before the SHO, who has

resealed the same with his seal having impression 'T'. Thereafter, the case property was handed over to Malkhana Incharge.

8.9. On 22.08.2024, accused Indra Devi and Anish Malik were produced before Court of learned Chief Judicial Magistrate, Shimla, from where, they were directed to be produced before the Court of learned Judicial Magistrate First Class, Court No.4, Shimla. They were were remanded to the judicial custody for six days.

8.10. Thereafter, the inventory proceedings were to be conducted, under Section 52-A of the NDPS Act, however, due to the defect in the grinder machine, those proceedings could not be conducted. Those were conducted only on 2.8.2024. The samples, so drawn in the inventory proceedings, were sent to SFSL Junga and the remaining contraband was deposited in the Malakhana NDPS, Police Line Kaithu.

8.11. During investigation, accused Indra Devi, has disclosed that on 16.8.2024, when, Anish Malik had visited her house on Jachh, on the occasion of Rakhi festival, then accused Anish Malik, disclosed to her that his friend

Lucky, to whom, he had supplied the charas earlier on two occasions is demanding one kilogram charas and also told her that the said contraband is to be delivered to Lucky at Shimla.

8.12. Accused Indra Devi has further disclosed that thereafter, she had telephonically requested Nanak Chand (applicant), who is stated to be the son of her god-sister, to provide charas, upon which, Nanak Chand assured them that he will arrange the charas within 3-4 days. Applicant Nanak Chand oftenly requested them to find customer for him for selling the charas. Applicant Nanak Chand telephonically informed accused Indra on 20.08.2024, that he has arranged the charas and also apprised them that on 21.08.2024, they will proceed to Shimla, along with the Charas.

8.13. Accused Indra Devi and Anish Malik, have come to Shimla along with applicant Nanak Chand and one another person, in a vehicle. At about 9.30 p.m., when, they reached at Dhalli, applicant Nanak Chand had handed over a black coloured carry bag, containing Charas, to accused Indra Devi and requested her that now,

they are about to reach in City and checking could be done there and chances of search of a lady are less. As such, the carry bag containing charas was given to her.

8.14. Thereafter, at Sanjauli Bypass, accused Indra Devi and Anish Malik de-boarded from the vehicle and applicant Nanak Chand requested them to hand over the carry bag to Lucky after receipt of Rs.1,00,000/-. Applicant Nanak Chand also apprised them about the place where, he will meet them later and assured to give them the commission of Rs.10,000/- each.

8.15. Thereafter, accused Indra Devi and Anish Mallik had proceeded towards IGMC, on foot. Accused Anish called Lucky to IGMC and requested accused Indra Devi to proceed towards Cancer Hospital. After waiting for sometime, Lucky reached there. Accused Indra Devi, along with carry bag was moving ahead of them and she was followed by Lucky and Anish Malik. However, near Cancer Hospital, accused Indra Devi and Anish Malik were nabbed by the police, whereas, Lucky fled away from there.

8.16. During investigation, accused Indra Devi and Anish Malik also disclosed that the cannabis was given to

them by applicant Nanak Chand and the vehicle, in which, they had come to Shimla, was also arranged by applicant Nanak Chand. However, they are not aware about the registration number and owner of the said vehicle. Accused Indra Devi has also disclosed that applicant Nanak Chand is son of her god-sister Banti Devi. Due to this fact, accused Indra Devi has not disclosed his name earlier and in order to mislead the police, she has named one Khem Singh, whereas, she does not know any person namely Khem Singh.

8.17. It is the further case of the police that the Customer Application Form of mobile phone of applicant Nanak Chand bearing No.89888-06200 was obtained and photo affixed on the same was shown to both the accused i.e. Indra and Anish, upon which, both of them had identified him as applicant Nanak Chand, as the person, who had handed over the Charas to them, which they had brought to Shimla on 21.08.2024. They have also disclosed that applicant Nanak Chand and the other person came in the said vehicle till Sanjauli Bypass. Thereafter, CDRs of mobile No.89888-06200 were obtained

from the service providers and as per the same, location of applicant Nanak Chand was found at Sanjauli, Lakkar Bazar on 21.08.2024.

8.18. Thereafter, location of the said phone was ascertained and it was found that applicant Nanak Chand is changing his location from one place to another. Sometimes his location was found at Shimla Sunni, Baddi and Chandigarh. When, the Customer Application Form of Lucky, pertaining to mobile No.62309-20602, was obtained and the photograph affixed on the same was shown to the accused persons, they have disclosed that the said photo is not of Lucky and the said phone number was found to be registered in the name of Manoj Kumar, son of Shri Gopal Singh, resident of Narayandass Building, Gali No.14, Lower Bazar Shimla, Himachal Pradesh.

8.19. Thereafter, on inquiry, said Manoj has disclosed that he has purchased the said SIM in the year 2022. Thereafter, he had given the SIM to Dinesh Chauhan, his brother-in-law, who had gone to Punjab. Thereafter, he had shown the photograph of said Dinesh Chauhan to the accused persons. They had identified the same as

photograph of Lucky, to whom, they had given the cannabis about two months ago and on 21.08.2024, they had planned to hand over the cannabis to Lucky at IGMC.

8.20. During investigation, Customer Application Form of mobile phone No.89888-06200, allegedly issued in the name of applicant Nanak Chand was obtained and his identification was conducted from the accused. Thereafter, mobile number of applicant Nanak Chand was put under surveillance and as per the same, his location was found to be Punjab, Haryana, Sunni and Karsog, but he could not be nabbed.

8.21. Thereafter, on 02.09.2024, as per the location of mobile phone of applicant Nanak Chand, when, the police reached at Auckland, near new OPD Parking of IGMC, Gate No.1, then they had noticed a person on the cart road coming from IGMC side, having carry bag in his right hand and as per the Customer Application Form of applicant Nanak Chand, his description tallied with the said person. On seeing the police party, he, at once, turned back and tried to move towards IGMC. Consequently, he was nabbed and from his possession

Charas, weighing 426 grams, was recovered. Consequently, FIR No.115 of 2024, dated 02.09.2024, under Section 20 of the NDPS Act was registered against him with Police Station Sadar Shimla.

8.22. Since applicant Nanak Chand was also wanted in the present case, as such, his production warrants were obtained and he was remanded to police custody for two days.

8.23. During investigation, he has disclosed that he used to prepare cannabis and used to sell the same to the consumers at the rate of Rs.70,000/- - Rs.80,000/- per kilogram. On 21.08.2024, he has booked an Alto Car bearing registration No.HP30-6315, owned by Prem Chand son of Bhima Ram, on rent at the rate of Rs.3,000/- per day. Thereafter, on 21.08.2024, at about 6.00 a.m., applicant Nanak Chand and accused Indra Devi and Anish Malik started from Choridhar to Shimla. After reaching near Dhalli, applicant Nanak Chand had handed over the black coloured carry bag, containing Charas to Indra, by apprising her that the chances of search of a female are less. At Sanjauli Bypass accused Indra and Anish Malik

deboarded the car and bag containing charas was directed to be given to Lucky, after receiving one lac rupees and also apprised them that he will pay their commission. On 21.08.2024, applicant Nanak Chand met Anish Malik, for the first time.

8.24. After completion of other codal formalities and after receipt of positive report from SFSL Junga, the police has filed the charge-sheet against the accused persons, including the applicant, in the Court of learned Special Judge, Shimla, on 4.11.2024 and the case is now listed before the Court on 19th July, 2025, for evidence.

9. On the basis of the above facts, a prayer has been made to dismiss the application.

10. Admittedly, the contraband, allegedly recovered, in this case, falls within the definition of 'commercial quantity. In view of the law laid down by Hon'ble Supreme Court in ***Criminal Appeal No.5544 of 2024***, titled as '***Narcotics Control Bureau versus Kashif***', ***Citation No.2024 INSC 1045***, before releasing the person, involved in the crime, it is obligatory upon the Court to record the findings, which should be more than *prima-facie* findings,

regarding existence of the twin conditions, as enumerated under Section 37(b)(ii) of the NDPS Act. In other words, it can be said that before releasing the person, involved in the crime in issue, findings have to be recorded by the Court, about the fact that accused is not guilty of such offence, and while on bail, he will not commit any offence.

11. Admittedly, in this case, involvement of the applicant, was found by the Police, on the basis of alleged revelation, made by accused Indra Devi and Anish Malik. Meaning thereby, whatsoever disclosed by accused Indra Devi and Anish Malik, that has been disclosed by them, when they were in the custody of the police. The custody and arrest are two different terms.

12. Hon'ble Apex Court in **Vikram Singh and ors versus State of Punjab; AIR 2010 Supreme Court 1007** titled as have distinguish between the word 'arrest' and the word 'custody' as used in Section 27 of the Evidence Act. Relevant Paras-12 & 16 of the judgment, are reproduced, as under:-

"12. Mr. Sharan has, however, referred us to Section 46(1) of the Code of Criminal Procedure to argue that till the appellants had been arrested in accordance with the aforesaid

provision they could not be said to be in police custody. We see that Section 46 deals with 'Arrest how made'. We are of the opinion that word "arrest" used in Section 46 relates to a formal arrest whereas Section 27 of the Evidence Act talks about custody of a person accused of an offence. In the present case the appellants were undoubtedly put under formal, arrest on the 15th February 2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused is an offence at the time of their apprehension on the 14th February 2005. Moreover, in the light of the judgment in the Constitution Bench and the observation that the words in Section 27 "accused of any offence" are descriptive of a person making the statement, the submission that this Section would be operable only after formal arrest under Section 46(1) of the Code, cannot be accepted. This argument does not merit any further discussion.

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16. It is also significant that Jasvir Singh also disclosed that he had kept concealed the dead body in the fields of village Daulatpur and that it had been removed from Darshan Kaur's house in the Chevrolet car belonging to him and the three appellants had further revealed that the dead body had been disposed of in the fields of village Daulatpur and the dead body was recovered and taken into possession by Memo Ex.PGGG signed by Manohar Lal as also Sub-Inspector Jeevan Kumar. We are unable to accept Mr. Sharan's bare submission that the evidence of Manohar Lal and Sub-Inspector Jeevan Kumar should not be believed as they were interested in the successful outcome of the prosecution, as no other material adverse circumstance has been brought to our notice."

13. Full Bench of Hon'ble Lahore High Court in **Hakam Khuda Yar versus Emperor; AIR 1940 Lahore 129**, have also defined the word 'custody' and held that the police custody does not necessarily means custody after formal arrest. Relevant portion of the judgment, is reproduced, as under:-

"..... As regards the first point, the term "custody" is not defined either in the Criminal Procedure Code or in the Evidence Act. There is, of course, no doubt that an accused person will be in the "custody" of the police after his arrest; but the question is whether he can be considered to be in "custody" at any time earlier, when he has not been formally arrested, but is merely detained by the police for the purpose of the investigation. Section 27 is anomalous in so far as it applies only to information leading to a discovery when received from an accused person in the custody of the police, but not if he is not in the custody of the police. If the information is relevant when it comes from a person in the custody of the police, there seems no good reason why it should not be so when it comes from an accused person, who is not in the custody of the police and therefore not under the influence of the police. The real intention of the Section very probably is to make information from an accused person which leads to discovery relevant even when the person is in police custody. But the language of, the Section makes such information relevant only when it comes from an accused person in the custody of the police.

The language used in the Section thus leads to the curious result probably never intended--that when such information is given by an accused

person, who is not in the "custody" of the police it will not be covered by the Section. However, apart from the above anomaly, the intention of the Section seems, I think, clear enough and that is to make information leading to a discovery relevant, even when it comes from an accused person who is in the custody of the police and thus subject to police influence. Ordinarily information coming from an accused person, who is liable to be influenced by the police will be open to suspicion. But if the information leads to the discovery of a relevant fact, that discovery is considered to be a guarantee of the truth of the information as has been pointed out already and hence such information is made relevant by Section 27. Now there can be little doubt, that even before his formal arrest, an accused person, who is detained by the police owing to suspicion against him, is liable to be influenced by the police. This Court has therefore put a wide interpretation on the word "custody" as used in Section 27. In AIR 1933 Lah 609, it was held by a Division Bench of this Court consisting of Sir Shadi Lal and Coldstream J. that 'police custody' does not necessarily mean custody after formal arrest and that it also includes 'some form of police surveillance and restriction on the movements of the person concerned by the police.

14. In view of the above, whatsoever disclosed by accused Indra Devi, was disclosed by her, when, she was in police custody. In view of the law laid down by the Hon'ble Supreme Court in **'Tofan Singh versus State of Tamil Nadu', (2021) 4 Supreme Court Cases 1**, the said statement cannot be taken into account, in order to convict

the accused, under the provisions of NDPS Act. Relevant paragraph 158.1 of the judgment is reproduced as under:

“158.1 That the officers who are invested with powers under Section 53 of the NDPS Act are ‘police officers’ within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.”

15. As such, the objections of the learned Additional Advocate General, qua the fact that Indra Devi had disclosed about applicant Nanak Chand, prior to his arrest is liable to be rejected.

16. Moreover, whatsoever has been disclosed by the accused during the investigation, is also not liable to be taken into consideration, in view of the fact that no one can be compelled to be the witness against himself, as the same is violative of Article 20(3) of the Constitution of India.

17. No financial transaction has been placed on record to show the involvement of the applicant, in the crime in question, along with accused Indra Devi and Anish Malik, nor CDRs have been produced.

18. The cumulative effect of the above discussion is that on the basis of the stand, so taken by the Police, in this case, it can be said that the applicant is guilty of such offence and keeping in view his age, it can be said, at this stage, that in case, he is ordered to be released on bail, he may not commit any offence.

19. Even otherwise, for the second condition, as enumerated under the provisions of Section 37(b)(ii) of the NDPS Act that the applicant will not commit any offence, while on bail, reasonable conditions, can be imposed upon him. Consequently, the twin conditions, are found to be existing in favour of the applicant.

20. Considering all these facts, this Court is of the view that the bail application is liable to be allowed and is accordingly allowed.

21. Consequently, the applicant is ordered to be released on bail in case FIR No. 112 of 2024 dated 21.08.2024, registered under Sections 21 and 29 of the NDPS Act, with Police Station, Sadar Shimla, District Shimla, H.P. on his furnishing personal bond in the sum of

Rs.1,00,000/-, with two sureties, in the like amount, to the satisfaction of learned trial Court.

22. This order, however, shall be subject to the following conditions:-

a) Applicant shall 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) Applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

c) Applicant shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer, and

d) Applicant shall not leave the territory of India without the prior permission of the Court.

f) The applicant shall furnish affidavit, in the first week of every month, before the learned trial Court, disclosing therein that he has not been named, as accused, in any crime, during that period.

23. Any of the observations, made herein above, shall not be taken, as an expression of opinion, on the merits of the case, as these observations are confined, only to the disposal of the present application.

24. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions is found to be violated by the applicant.

25. The Registry is directed to forward a soft copy of the bail order to the Superintendent Jail, District Jail, Kaithu, District Shimla, through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

26. In case, the applicant is not released within a period of seven days from the date of grant of bail, the Superintendent Jail, District Jail, Kaithu, District Shimla, is directed to inform this fact to the Secretary, DLSA, Shimla. The Superintendent Jail, District Jail, Kaithu, District Shimla, is further directed that if the applicants fail to furnish the bail bonds, as per the order passed by this Court within a period of one month from today, then, the said fact be submitted to this Court.

(Virender Singh)
Judge

July 31, 2025 (*ps*)