

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MP (M) No. 1169 of 2025****Reserved on: 9.7.2025****Date of Decision: 16.7.2025.**

Amar Nath**...Petitioner****Versus****State of Himachal Pradesh****...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ Yes.***

For the Petitioner : Mr. Ajay Kochhar, Senior Advocate, with Mr. Varun Chauhan, Advocate.

For the Respondent/State : Mr. Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No. 172 of 2024, dated 20.10.2024, registered at Police Station, Ghumarwin, District Bilaspur, H.P. for the commission of offences punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the ND&PS Act').

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

2. It has been asserted that the petitioner was arrested along with two other persons. The petitioner is a taxi driver, and he was hired by the co-accused to take them to Chandigarh. The Investigating Officer did not provide the grounds for arrest to the petitioner. The petitioner has no past criminal history, and he has been in custody since 20.10.2024. The petitioner would abide by all the terms and conditions which the Court may impose. Hence, the petition.

3. The petition is opposed by filing a status report asserting that the police party was on Nakabandi duty on 20.10.2024. A taxi bearing registration No. HP-01K-4679 came from Mandi at 8.10 PM. The police signalled the driver to stop the vehicle. The driver stopped the vehicle. The police started checking the documents. The person sitting beside the driver tried to conceal a bag. The police asked him the reason for doing so, but he could not give a satisfactory answer. The driver identified himself as Amarnath, the person sitting beside the driver identified himself as Vidya Nath, and the person sitting on the rear seat identified himself as Duni Chand. The police checked the bag kept by Vidya Nath and found 1.511 kgs. of charas in it. The police seized the charas and arrested the

occupants. The charas was sent to FSL and was confirmed to be the extract of cannabis and a sample of charas. The police checked the call detail record and the bank statements, but could not find the involvement of any other person. All the people were known to each other. Vidya Nath and Amar Nath are remotely related to each other. The police filed the charge sheet before the learned Special Judge on 22.1.2025. The matter was listed before the learned Additional Sessions Judge, Bilaspur on 16.6.2025. Hence, the status report.

4. I have heard Mr. Ajay Kochhar, learned Senior Counsel, assisted by Mr. Varun Chauhan, learned counsel for the petitioner and Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent-State.

5. Mr. Ajay Kochhar, learned Senior Counsel for the petitioner, submitted that the petitioner is innocent and was falsely implicated. As per the status report, the petitioner is a taxi driver. His taxi was hired by the co-accused. As per the prosecution, the bag was kept by the co-accused, who had tried to conceal it. The petitioner did not know anything about the transportation of the charas. Grounds of arrest were not

supplied to the petitioner, and his arrest is illegal; therefore, he prayed that the present petition be allowed and he be released on bail. He relied upon the following judgments in support of his submission:-

- (i) *Madhu Limaye and others* (1969) 1 SCC 292;
- (ii) *Harikisan Vs. State of Maharashtra and others* 1962 SCC OnLine SC 117;
- (iii) *Lallubhai Jogibhai Patel Vs. UOI and others* (1981) 2 SCC 427;
- (iv) *Ashish Kakkar Vs. UT of Chandigarh* 2025 LiveLaw (SC) 367;
- (v) *Prabir Purkayastha Vs. State (NCT Delhi)* (2024) 8 SCC 254;
- (vi) *Vihaan Kumar Vs. State of Haryana and another* 2025 INSC 162;
- (vii) *Mihir Rajesh Shah Vs. State of Maharashtra, Special Leave to Appeal (Crl.) No(s). 17132 of 2024, decided on 22.4.2025*;
- (viii) *Kasireddy Upender Reddy Vs. State of Andhra Pradesh and others* 2025 INSC 768;
- (ix) *Ram Kishor Arora Vs. Directorate of Enforcement* (2024) 7 SCC 599;

- (x) *State of Karnataka Vs. Hemanth Datta @ Hemantha @ Baby and another, Special Leave to Appeal (Crl.) No(s). 9295 of 2025, decided on 26.6.2025;*
- (xi) *Sri Shankar Dongarisabeb Bhosale Vs. State of Karnataka, Crl. Appeal No. 1221 of 2017, decided on 9.1.2025;*
- (xii) *Minnas Ali Vs. State of Aassm 2025 SCC OnLine Gau 2597;*
- (xiii) *Ashok Kumar Sharma Vs. State of Punjab 2025 PHHC 062550;*
- (xiv) *Ajir Ali @ Badu Vs. State of Assam GAHCo10016982025;*
- (xv) *Azibur Rahman @ Aziz @ Ajibur Vs. State of Aasam 2025:GAU-AS:5385;*
- (xvi) *Sudhar Mangar Vs. State of West Bengal; Cr.M(NDPS) No. 146 of 2025, decided on 11.6.2025;*
- (xvii) *Hemanth Data Vs. State of Karnataka 2025 KHC 16018;*
- (xviii) *Kamal Lama Vs. State of West Bengal; Cr.M (NDPS) No. 153 of 2025, decided on 11.6.2025; and*
- (xix) *Kabel Uddin and another Vs. State of Assam, 2025 GAU-AS 4663.*

6. Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent-State, submitted that the grounds of arrest were communicated to the petitioner as is apparent from the memo of arrest. The police had recovered 1.511 kgs. of

charas from the vehicle being driven by the petitioner. The rigours of Section 37 of the ND&PS Act apply to the present case. The petitioner has not satisfied the twin conditions laid down under Section 37 of the ND&PS Act. Therefore, he prayed that the present petition be dismissed.

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

8. The parameters for granting bail were considered by the Hon'ble Supreme Court in *Ajwar v. Waseem* (2024) 10 SCC 768: 2024 SCC OnLine SC 974, wherein it was observed at page 783: -

“Relevant parameters for granting bail

26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [Refer: *Chaman Lal v. State of U.P.* [Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974]; *Kalyan Chandra Sarkar v. Rajesh Ranjan* [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7

SCC 528: 2004 SCC (Cri) 1977]; *Masroor v. State of U.P.* [*Masroor v. State of U.P.*, (2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368]; *Prasanta Kumar Sarkar v. Ashis Chatterjee* [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765]; *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527]; *Anil Kumar Yadav v. State (NCT of Delhi)* [*Anil Kumar Yadav v. State (NCT of Delhi)*, (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425]; *Mahipal v. Rajesh Kumar* [*Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558].]

9. This position was reiterated in *Ramratan v. State of M.P.*, 2024 SCC OnLine SC 3068, wherein it was observed as under:-

“12. The fundamental purpose of bail is to ensure the accused's presence during the investigation and trial. Any conditions imposed must be reasonable and directly related to this objective. This Court in *Parvez Noordin Lokhandwalla v. State of Maharashtra* (2020) 10 SCC 77 observed that though the competent court is empowered to exercise its discretion to impose “any condition” for the grant of bail under Sections 437(3) and 439(1)(a) CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. The relevant observations are extracted herein below:

“14. The language of Section 437(3) CrPC, which uses the expression “any condition ... otherwise in the interest of justice” has been construed in several decisions of this Court. *Though the competent court is empowered to exercise its discretion to impose “any condition” for the grant of bail under Sections 437(3) and 439(1)(a) CrPC, the discretion of the*

court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. Several decisions of this Court have dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail.” (Emphasis supplied)

13. In *Sumit Mehta v. State (NCT of Delhi) (2013) 15 SCC 570*, this Court discussed the scope of the discretion of the Court to impose “any condition” on the grant of bail and observed in the following terms: —

“15. The words “any condition” used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance, and effective in the pragmatic sense, and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such an extreme condition to be imposed.” (Emphasis supplied)

14. This Court, in *Dilip Singh v. State of Madhya Pradesh (2021) 2 SCC 779*, laid down the factors to be taken into consideration while deciding the bail application and observed:

“4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for the realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration while considering an application for bail are the nature of the accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of

tampering with the witnesses or apprehension of threat to the complainant or the witnesses; the reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.”
(Emphasis supplied)

10. This position was reiterated in *Shabeen Ahmed versus State of U.P.*, 2025 SCC Online SC 479.

11. The present petition has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

12. The status report clearly mentions that the petitioner is a taxi driver. The police signalled the petitioner to stop the vehicle, and the petitioner stopped it. The police demanded the documents, and he showed them the documents. However, the person sitting adjacent to the petitioner tried to conceal the bag. These circumstances do not show that the petitioner had any knowledge about the possession of the charas. He did not try to speed away after the police signalled him to stop the vehicle; rather, he stopped the vehicle. He produced the documents, as any driver would do. The status report does not show that the

petitioner behaved abnormally in any manner. It was laid down by the Hon'ble Supreme Court in *Sri Shankar Dongarisaheb Bhosale Vs. State of Karnataka, Criminal Appeal No. 1221/2017, decided on 9.1.2025*, that when the contraband was not hidden in the taxi but was visible, the taxi driver cannot be convicted. It was observed: -

“Ordinarily, since it is not disputed that the appellant was a taxi driver and that the contraband was seized from the taxi while he was carrying two passengers who fled from the scene, it cannot be said with any certainty that the appellant himself was carrying the contraband or has connived to carry the said contraband in his vehicle. It was not expected of any taxi driver to give details of the passengers, as ordinarily, no taxi driver/owner, before allowing the passenger to board the taxi, asks for such details from the passenger(s). Moreover, no effort was made to search out the two passengers who may reveal the truth.

The appellant-driver took the defence that he is totally ignorant about the contraband being carried in his vehicle, and it may belong to the passengers who have fled from the spot. Therefore, since the contraband cannot be linked to the appellant, he is not liable to be prosecuted.”

13. In the present case, the police asserted in the status report that Vidya Nath is a distant relative of the accused, but that by itself is not sufficient to connect him with the commission of the crime. As per the status report, the police collected the call detail record and the bank statement. The

status report does not show that the petitioner was in touch with the co-accused or that any money was transferred from the petitioner's account to the account of the co-accused. Therefore, there is insufficient material at this stage to *prima facie* connect the petitioner with the commission of the crime.

14. The status report does not show that the petitioner has criminal antecedents. The material on record is *prima facie* insufficient to connect the petitioner with the commission of a crime; therefore, it cannot be said that he would indulge in the commission of a crime in case of his release on bail.

15. It was submitted on behalf of the petitioner that the grounds of arrest were not communicated to the petitioner. The Hon'ble Supreme Court has reserved judgment regarding the furnishing of grounds of arrest in each and every case, including offences punishable under the IPC in *Mihir Rajesh Shah Vs. State of Maharashtra*, SLP (Crl.) No. 17132 of 2024, vide order dated 22.4.2025. The Hon'ble Supreme Court had not decided this question in the *State of Karnataka v. Hemanth Dutta*, SLP (Crl.) No. 9295 of 2025 vide order dated 26.6.2025 and waited for the outcome of the decision. Therefore, it would be improper for this

Court to go into this question regarding the supply of grounds of arrest to the petitioner involved in a case arising out of the NDPS Act, especially when the accused is entitled to bail on merits, and the adjudication of this question will not help him in getting the bail; hence, this question is left open.

16. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail in the sum of ₹1,00,000/- with one surety of the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following terms and conditions: -

- (I) The petitioner will not intimidate the witnesses, nor will he influence any evidence in any manner whatsoever;
- (II) The petitioner shall attend the trial on each and every hearing and will not seek unnecessary adjournments;
- (III) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the SHO concerned, the Police Station concerned and the Trial Court;
- (IV) The petitioner will surrender his passport, if any, to the Court; and
- (V) The petitioner will furnish his mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile

number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

17. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

18. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, District Open Air Jail, Bilaspur, H.P. and the learned Trial Court by FASTER.

19. The observations made hereinabove are regarding the disposal of this petition and will have no bearing, whatsoever, on the case's merits.

20. 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 the order presented to it, the same may be ascertained from the official website of this Court.

(Rakesh Kainthla)
Judge

16th July, 2025
(Chander)