Neutral Citation No. (2025:HHC:17295)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 1103 of 2025
Reserved on: 26.05.2025
Date of Decision: 03.06.2025

Yash Pal Thakur ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1]. No

For the Petitioner : Mr. Harsh Sharol, Advocate.
For the Respondent/State : Mr. Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail. It has been asserted that the petitioner was arrested vide F.I.R. No. 87 of 2023, dated 31.07.2023 for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act') registered at Police Station Dharampur, District Solan, H.P. As per prosecution, the police intercepted a vehicle

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

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bearing registration No. HP-63A-5557 and recovered 16.01 grams of heroin. The petitioner was occupying the front seat, and Vipul was driving the vehicle. The petitioner has no connection with the contraband. He is innocent and was falsely implicated. The petitioner has been in custody since 31.07.2023, and no witness has been examined so far. The co-accused has already been released on bail; hence, the petition.

2. The petition is opposed by filing a status report asserting that the police party was on patrolling duty when they received a secret information indicating that a vehicle bearing Registration No. HP-63A-5567 was approaching Solan, which was transporting heroin. The police reduced the information in writing and sent it to the Supervisory Officer. The vehicle was searched in the presence of witnesses. The police recovered 16.01 grams of heroin from the car. The driver identified himself as Vipul, the person in the front seat identified himself as Yashpal, and the individuals in the rear seat identified themselves as Anmol and Paramjeet. The police arrested the occupants and conducted the investigation. The police presented the challan before the Court on 26.09.2023. Notices have been issued to the other accused for 29.05.2025. Twenty-three witnesses have been

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cited, but no witness has been examined so far. FIR No. 102 of 2022, dated 08.07.2023 and FIR No. 108 of 2020, dated 16.05.2020, are pending against the petitioner. The petitioner was convicted in FIR No. 58 of 2021, dated 22.03.2021, by learned Special Judge, Shimla (Forests), on 12.08.2024 to undergo imprisonment for four years; hence, the status report.

3. I have heard Mr. Harsh Sharol, learned counsel for the petitioner, and Jitender Sharma, learned Additional Advocate General for the respondent-State.

4. Mr. Harsh Sharol, learned counsel of the petitioner, submitted that the petitioner has been in custody since 31.07.2023. The prosecution has not examined a single witness, and the right of speedy trial of the petitioner is being violated; therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

5. Mr. Jitender Sharma, learned Additional Advocate General, for the respondent/State, submitted that the petitioner was convicted by the learned Special Judge (Forests) under the NDPS Act. He has criminal antecedents and is likely to commit a

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similar crime in case of his release on bail, 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. 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***
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> **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***

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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] .]

8. 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 Maharastra (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

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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*

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> *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)

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

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

11. It is undisputed that the petitioner had earlier filed a bail petition bearing Cr.MP(M) No. 10 of 2024, which was dismissed by this Court on 07.03.2024. It was held in the ***State of Maharashtra Vs. Captain Buddhikota Subha Rao (1989) Suppl. 2 SCC 605,*** that once a bail application has been dismissed, a subsequent bail application can only be considered if there is a change of circumstances. It was observed:

> "Once that application was rejected, there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact situation. And when we speak of change, we mean a substantial one, which has a direct impact on the earlier decision and not merely cosmetic changes, which are of little or no consequence. 'Between the two orders, there was a gap of only two days, and it is nobody's case that during these two days, drastic changes had taken place necessitating the release of the

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> respondent on bail. Judicial discipline, propriety, and comity demanded that the impugned order should not have been passed, reversing all earlier orders, including the one rendered by Puranik, J., only a couple of days before, in the absence of any substantial change in the fact situation. In such cases, it is necessary to act with restraint and circumspection so that the process of the Court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order which had hitherto eluded him.

12. Similar is the judgment delivered in ***State of M.P. v. Kajad, (2001) 7 SCC 673***, wherein it was observed: -

> 8. It has further to be noted that the factum of the rejection of his earlier bail application bearing Miscellaneous Case No. 2052 of 2000 on 5-6-2000 has not been denied by the respondent. It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances, the second application would be deemed to be seeking a review of the earlier judgment, which is not permissible under criminal law as has been held by this Court in ***Hari Singh Mann v. Harbhajan Singh Bajwa [(2001) 1 SCC 169: 2001 SCC (Cri) 113]*** and various other judgments.

13. Similarly, it was held in ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav (2004) 7 SCC 528***, that where an earlier bail application has been rejected, the Court has to consider the rejection of the earlier bail application and then consider why the subsequent bail application should be allowed. It was held:

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> "11. In regard to cases where earlier bail applications have been rejected, there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration, if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent bail application should be granted."

14. A similar view was taken in ***State of T.N. v. S.A. Raja, (2005) 8 SCC 380***, wherein it was observed:

> 9. When a learned Single Judge of the same court had denied bail to the respondent for certain reasons, and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of res judicata are not applicable to bail applications, but the repeated filing of bail applications without there being any change of circumstances would lead to bad precedents."

15. This position was reiterated in ***Prasad Shrikant Purohit v. State of Maharashtra (2018) 11 SCC 458***, wherein it was observed:

> "30. Before concluding, we must note that though an accused has a right to make successive applications for the grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds, which persuade it to take a view different from the one taken in the earlier applications."

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16. It was held in ***Ajay Rajaram Hinge v. State of Maharashtra, 2023 SCC OnLine Bom 1551,*** that a successive bail application can be filed if there is a material change in the circumstances, which means a change in the facts or the law. It was observed:

> "7. It needs to be noted that the right to file successive bail applications accrues to the applicant only on the existence of a material change in circumstances. The sine qua non for filing subsequent bail applications is a material change in circumstance. A material change in circumstances settled by law is a change in the fact situation or law which requires the earlier view to be interfered with or where the earlier finding has become obsolete. However, a change in circumstance has no bearing on the salutary principle of judicial propriety that successive bail application needs to be decided by the same Judge on the merits, if available at the place of sitting. There needs to be clarity between the power of a judge to consider the application and a person's right based on a material change in circumstances. A material change in circumstance creates in a person accused of an offence the right to file a fresh bail application. But the power to decide such subsequent application operates in a completely different sphere, unconnected with the facts of a case. Such power is based on the well-settled and judicially recognized principle that if successive bail applications on the same subject are permitted to be disposed of by different Judges, there would be conflicting orders, and the litigant would be pestering every Judge till he gets an order to his liking resulting in the credibility of the Court and the confidence of the other side being put in issue and there would be wastage of Court's time and that judicial discipline requires that such matter must be placed before the same Judge, if he is

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> available, for orders. The satisfaction of material change in circumstances needs to be adjudicated by the same Judge who had earlier decided the application. Therefore, the same Judge needs to adjudicate whether there is a change in circumstance as claimed by the applicant, which entitles him to file a subsequent bail application."

17. Therefore, the present bail petition can only be considered on the basis of the change in the circumstances, and it is not permissible to review the order passed by the Court.

18. It was submitted that there is a delay in the progress of the trial, which is not attributable to the petitioner. The status report shows that prosecution has cited twenty-three witnesses, but no witness has been examined so far.

19. This Court had noticed while deciding Cr.MP(M) No. 694 of 2025 that there was a delay in the progress of the trial, which was not attributable to the petitioner. The delay appeared to be due to the absence of the co-accused and the failure of the prosecution to produce the witnesses.

20. The status report shows that the petitioner was found in possession of 16.01 grams of heroin, which is an intermediate quantity and slightly above the minimum quantity. The petitioner has been in custody since 31.07.2023, and keeping in view the quantity stated to have been found in possession of

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the petitioner, the failure to conclude the trial within one year and nine months assumes significance and justifies the plea of the petitioner that his right to a speedy trial is being violated.

21. It was laid down in ***Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352*** that the right to a speedy trial is a constitutional right of an accused. The right of bail is curtailed on the premise that the trial would be concluded expeditiously. It was observed: -

> "13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in ***Vaman Narain Ghiya v. State of Rajasthan, [2008] 17 SCR 369: (2009) 2 SCC 281*** ('the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....'). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in ***Kartar Singh v. State of Punjab, [1994] 2 SCR 375: (1994) 3 SCC 569*** made observations to this effect. In ***Shaheen Welfare Association v. Union of India, [1996] 2 SCR 1123: (1996) 2 SCC 616*** again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on:

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> A conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an under-trial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods."

22. The Court highlighted the effects of pre-trial detention and the importance of a speedy trial as under:

> "22. Before parting, it would be important to reflect that laws which impose stringent conditions for the grant of bail may be necessary in the public interest; yet, if trials are not concluded in time, the injustice wreaked on the individual is immeasurable. Jails are overcrowded, and their living conditions, more often than not, are appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as of 31st December 2021, over 5,54,034 prisoners were lodged in jails against a total capacity of 4,25,069 lakhs in the country[*National Crime Records Bureau, Prison Statistics in India https://ncrb. gov. in/sites/default/files/P SI-202 1/Executive ncrb Summary-2021.pdf*]. Of these 122,852 were convicts; the rest, 4,27,165 were undertrials.
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> 23. The danger of unjust imprisonment is that inmates are at risk of 'prisonisation', a term described by the Kerala High Court in ***A Convict Prisoner v. State, 1993 Cri LJ 3242,*** as a radical transformation whereby the prisoner:
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> > 'loses his identity. He is known by a number. He loses personal possessions. He has no personal

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> relationships. Psychological problems result from loss of freedom, status, possessions, dignity, and autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes. '
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> 24. There is a further danger of the prisoner turning to crime, 'as crime not only turns admirable but the more professional the crime, more honour is paid to the criminal'[*Working Papers - Group on Prisons & Borstals - 1966 U.K.*] (also see Donald Clemmer's 'The Prison Community' published in 1940[*Donald Clemmer, The Prison Community (1968) Holt, Rinehart & Winston, which is referred to in Tomasz Sobecki, 'Donald Clemmer's Concept of Prisonisation', available at: https://www.tkp.edu.pl/wpcontent/uploads/2020/12/Sobecki_sklad.pdf (accessed on 23rd March 2023).*]). Incarceration has further deleterious effects, where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts, therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases where special laws enact stringent provisions, are taken up and concluded speedily."

23. It was held in ***Shaheen Welfare Association. v. Union of India, (1996) 2 SCC 616: 1996 SCC (Cri) 366*** that a person cannot be kept behind the bars when there is no prospect of trial being concluded expeditiously. It was observed at page 621:

> "8. It is in this context that it has become necessary to grant some relief to those persons who have been deprived of their personal liberty for a considerable length of time without any prospect of the trial being

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> concluded in the near future. Undoubtedly, the safety of the community and the nation needs to be safeguarded looking to the nature of the offences these undertrials have been charged with. But the ultimate justification for such deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged. If such a finding is not likely to be arrived at within a reasonable time, some relief becomes necessary."

24. Similarly, it was laid down by the Hon'ble Supreme Court in ***Jagjeet Singh v. Ashish Mishra*, *(2022) 9 SCC 321: (2022) 3 SCC (Cri) 560: 2022 SCC OnLine SC 453*** that no accused can be subjected to unending detention pending trial. It was observed at page 335:

> "**40.** Having held so, we cannot be oblivious to what has been urged on behalf of the respondent-accused that cancellation of bail by this Court is likely to be construed as an indefinite foreclosure of his right to seek bail. It is not necessary to dwell upon the wealth of case law which, regardless of the stringent provisions in a penal law or the gravity of the offence, has time and again recognised the legitimacy of seeking liberty from incarceration. To put it differently, no accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory provisions expressly bar the grant of bail, such as in cases under the Unlawful Activities (Prevention) Act, 1967, this Court has expressly ruled that after a reasonably long period of incarceration, or for any other valid reason, such stringent provisions will melt down, and cannot be measured over and above the right of liberty guaranteed under Article 21 of the Constitution (see ***Union of India v. K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713***, paras 15 and 17])."

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25. It was laid down by the Hon'ble Supreme Court in ***Javed Gulam Nabi Shaikh v. State of Maharashtra (2024) 9 SCC 813: 2024 SCC OnLine SC 1693*** that the right to speedy trial of the offenders facing criminal charges is an important facet of Article 21 of the Constitution of India and inordinate delay in the conclusion of the trial entitles the accused to grant of bail, it was observed at page 817: -

> "**10.** Long back, in ***Hussainara Khatoon (1) v. State of Bihar [Hussainara Khatoon (1) v. State of Bihar, (1980) 1 SCC 81: 1980 SCC (Cri) 23]***, this Court had declared that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and content of Article 21 as interpreted by this Court". Remarking that a valid procedure under Article 21 is one which contains a procedure that is "reasonable, fair and just", it was held that : (SCC p. 89, para 5)
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> > "5. ... Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that a speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied a speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long-

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> delayed trial in violation of his fundamental right under Article 21."

11. The aforesaid observations have resonated, time and again, in several judgments, such as ***Kadra Pahadiya v. State of Bihar [Kadra Pahadiya v. State of Bihar, (1981) 3 SCC 671: 1981 SCC (Cri) 791]*** and ***Abdul Rehman Antulay v. R.S. Nayak [Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93]***. In the latter, the court re-emphasised the right to a speedy trial and further held that an accused, facing a prolonged trial, has no option: (***Abdul Rehman Antulay case [Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93]***, SCC p. 269, para 84)

> "*84.* ... The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands a speedy trial and yet he is not given one, it may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to a speedy trial on the ground that he did not ask for or insist upon a speedy trial."

26. It was further held that if the State or any prosecuting agency, including the Court concerned, has no wherewithal to provide the right of speedy trial to the accused, then the bail should not be opposed on the ground that the crime is serious. It was observed at page 820:

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> **17.** If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.
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> **18.** We may hasten to add that the petitioner is still an accused, not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.
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> **19.** We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed, thereby violating Article 21 of the Constitution.

27. In the present case, the fact that the prosecution has not examined even a single witness within one year and nine months shows that the trial is not likely to conclude soon.

28. It was submitted that the petitioner has criminal antecedents. It was laid down by the Hon'ble Supreme Court in ***Ayub Khan v. State of Rajasthan, 2024 SCC OnLine SC 3763: 2024: INSC:994*** that the criminal antecedents may not be a reason to deny bail to the accused in case of his long incarceration. It was observed:

> "**10.** The presence of the antecedents of the accused is only one of the several considerations for deciding the

> prayer for bail made by him. In a given case, if the accused makes out a strong *prima facie* case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to deny bail. There may be a case where a Court can grant bail only on the grounds of long incarceration. The presence of antecedents may not be relevant in such a case. In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents."

29. In the present case, the petitioner has undergone incarceration for more than one year and nine months. The trial has not yet commenced, and there is no likelihood of early conclusion of the trial. Keeping in view the quantity of heroin, further incarceration of the petitioner is not justified.

30. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail in the sum of ₹50,000/- 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 in case a charge sheet is presented against him and will not seek unnecessary adjournments;*

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(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, 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.*

31. 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.

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

33. The observation made herein before shall remain confined to the disposal of the instant petition and will have no bearing, whatsoever, on the merits of the case.

34. 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

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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

3rd June, 2025
(saurav pathania)