

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

Cr.MP(M) No: 254 of 2025

Reserved on: 29.08.2025

Announced on : 05.09.2025

Tidj Mamane @ Tidy Mamane ...Petitioner

Versus

State of H.P. & Anr. ...Respondents

Coram:

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting? Yes*

For the petitioner : Mr. Yuyutsu Singh Thakur,
and Mr. Munish Kumar,
Advocates.

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

Ranjan Sharma, Judge

Bail petitioner, Tidj Mamane @ Tidy Mamane, being in custody since 29.02.2024, has come up before this Court, seeking regular bail under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 [*hereinafter referred to as 'BNSS'*], originating from FIR No.11 of 2024, dated 10.02.2024, under Sections 21 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [*hereinafter referred to as NDPS*] and Section 14 of the

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

Foreigners Act, registered at Police Station Parwanoo, District Solan, [HP].

FACTUAL MATRIX IN INSTANT BAIL PETITION:

2. Case set up by Learned Counsel for bail petitioner is that an FIR No. 11 of 2024, dated 10.02.2024, under Sections 21 and 29 of NDPS Act was registered by the police in Police Station Parwanoo, with the averments that on receipt of secret information two persons namely Rishabh Sehgal and Anish Sonkar were found to be in possession of the contraband i.e. Chitta/Heroin, weighing 39.70 grams & 9.33 grams respectively. It is averred that after arrest of Rishabh Sehgal and Anish Sonkar, the police started investigation and during investigation, the police interrogated one Sh. Devinder Chindda, who was also arrested by the police. It is averred that during joint investigation, these accused named the bail petitioner [Tidj Mamane @ Tidy Mamane] and based on confessional-disclosure statement of other accused, the police party at the instance of the accused

Devinder Chindda headed from Parwanoo (HP) to Delhi on 27.02.2024 vide GD No. 54, at about 11:54 PM.

2(i). It is averred that on 28.02.2024, the police reached near Akash Hospital, Dawarka, Delhi, wherein, the bail petitioner [Tidj Mamane @ Tidy Mamane] was identified by the accused Devinder @ Chindda on 28.02.2024, Annexure P-3 and on asking of the police, the bail petitioner handed over his mobile phone to the police on 28.02.2024, Annexure P-4. It is further averred that the bail petitioner was arrested on 29.02.2024, at about 2:10 PM, Annexure P-6. It is averred that the arrest memo was prepared by the police on 29.02.2024, Annexure P-6, whereby the bail petitioner was informed of the accusation under Section 29 of the NDPS Act. It is averred that the police at the instance of the bail petitioner informed his friend one Legase, on mobile number 87318-38064.

2(ii). It is averred that pursuant to the

arrest on 29.02.2024, the police submitted an application for remand before Learned ACJM Kasauli on 01.03.2024, Annexure P-7 and based on this application, the petitioner was produced before Learned ACJM, Kasauli, District Solan, [H.P] when, the bail petitioner was remanded to police custody till 05.03.2024, Annexure P-8. In this background, it is averred that though the petitioner was apprehended by the police on 28.02.2024 but the formal arrest and the arrest memo was shown by the police on 29.02.2024, and he was produced before the Learned ACJM Kasauli on 01.03.2024, which was beyond the duration of 24 hours and, therefore, the arrest of the bail petitioner was not in accordance with law. It is averred that at the time of arrest of police authorities have not resorted to the compliance of Article 22 of the Constitution of India by not furnishing the grounds of arrest to the bail petitioner.

2(iii). It is further averred that the petitioner

is innocent and is not involved in the commission of offence. It is averred that rigors of Section 37 of NDPS Act are not attracted in instant case and no recovery of contraband has been made from the bail petitioner. It is further averred that the incarceration of petitioner, merely on the basis of the confessional-disclosure statement of co-accused is contrary to Section 67 of the NDPS Act. It is averred that the pre-trial incarceration is punitive and is unsustainable. It is averred that the petitioner had filed an application for bail before the Learned Special Judge, Solan, which was withdrawn on 17.05.2024, Annexure P-2 and then another bail application was filed before Learned Special Judge-III, Solan which was also dismissed on 11.12.2024, Annexure P-1. It is averred that bail petitioner had filed a Criminal Writ Petition No. 03 of 2025 before this Court, which was withdrawn. The bail petitioner has further averred that no prejudice will be caused to the prosecution if he is released on bail. It is submitted that the

bail petitioner has furnished an undertaking in Para 5 of the bail application that he is ready and willing to abide by all the terms and conditions as may be imposed by this Court. It is also averred that the bail petitioner is ready and willing to furnish the bail bond and personal bonds to the satisfaction of the Court, in case, he is allowed the concession or liberty by this Court. It is asserted that the bail petitioner is ready and willing to submit his original passport with the Trial Court concerned and shall not leave the jurisdiction of this Court or Special Court as the case may be ordered in facts of instant case.

In this background, that the petitioner has prayed for his release on bail, despite being a Foreign citizen, in accordance with law in the interests of justice.

PROCEEDINGS BEFORE THIS COURT:

3. Upon listing of the bail application on 14.02.2025, the State Authorities, as prayed, were directed to file the Status Report.

3(i). The State Authorities furnished the Status Report dated 01.03.2025, on Instructions of State House Officer, Police Station Parwanoo, District Solan, and the copy of Status Report was furnished to Learned Counsel for the bail petitioner, who prayed for an adjournment to go through the Status Report and make submissions. The matter was listed on 04.04.2025, when, Learned State counsel pointed out that the description of the petitioner in the Passport is at a variance vis-à-vis the details given to police by bail petitioner and prayed for filing affidavit, which was filed on 23.04.2025 pointing out the factum of expiry of *Visa* of the petitioner. In order to ascertain the factum of arrest, this Court directed the Superintendent of Police on 14.07.2025 to file affidavit which was filed on 24.07.2025. Pursuant to this, Learned Counsel for the bail petitioner, as prayed, was granted time to file a response thereto, which was filed on 01.08.2025. Accordingly, the matter was finally heard by this

Court.

**STAND OF STATE AUTHORITIES IN STATUS
REPORT(S) AND AFFIDAVITS DATED 23.04.2025
AND 24.07.2025 OF SUPERINTENDENT OF
POLICE:**

4. Perusal of the Status Report indicates the sequence of events that on 10.02.2024, on receipt of secret information, the police party during patrolling apprehended two persons namely Rishabh Sehgal and Anish Sonkar on 10.02.2024 having contraband weighing 39.70 Grams and 9.33 Grams respectively, leading to registration of FIR. Status Report indicates that police started investigation and during investigation two prime accused Rishabh Sehgal and Anish Sonkar named one Devinder @ Chindda at whose instance they had gone to Delhi for fetching the contraband from a Nigerian. Based on this, the third accused Devinder @ Chindda, was also arrested by the police. Status report further indicates that during joint investigation/interrogation of all three accused Rishabh Sehgal, Anish Sonkar and Devinder @ Chindda, the police decided to go to Delhi to

trace the aforesaid Nigerian. Accordingly the police accompanied by Davinder Chhinda, reached near Akash Hospital, Dwarka, when, at the instance of Devinder Chhinda, the police was able to identify the present bail petitioner Tidy Mamane, on 28.02.2024. Pursuant to this bail petitioner joined the interrogation at Delhi and he handed over his mobile phone to the police authorities on 28.02.2024. Status Report further indicates that thereafter the bail petitioner was arrested by the police on 29.02.2024, which is clear from the arrest memo. Status Report further indicates that the bail petitioner was produced before Learned ACJM, Kasauli, on 01.03.2024 whereby, his remand was permitted by the Court upto 05.03.2024. Status Report further indicates that DGP (CID), Himachal Pradesh sent a communication to Ministry of Home Affairs and Ministry of External Affairs New Delhi, through E-mail on 07.03.2024 and thus a reminder on 03.05.2024 to the Central Agencies including CBI, NCB and Interpol for

furnishing the details including past antecedents and involvement of bail petitioner in any other offences. Thereafter, Passport and Visa Authorities were also requested to verify the passport of the bail petitioner when it transpired that the details of the passport given during arrest was also fake. Status Report further indicates that the bail petitioner was issued a *Visa* on 13.05.2023 as a medical attendant which was valid up to 26.07.2023 and this *Visa* was not got renewed by the bail petitioner. Status Report further indicates that after the expiry of *Visa*, the bail petitioner has been residing in India unauthorizedly and illegally, due to which, the provisions of Section 14 of the Foreigners Act was invoked against the bail petitioner. Status Report further indicates that the police completed the investigation and presented the Challan-Police Report before Learned District and Sessions Judge, Solan on 08.04.2024. Status Report further indicates that the matter is fixed for consideration of

charge on 12.03.2025 before the Learned Additional District and Sessions Judge, Solan. It is further submitted that the mobile phone handed over by the bail petitioner to the police has been sent to SFSL Junga, for which the report is awaited and on receipt of report Supplementary Challan was to be filed.

4(i). Pursuant to the orders dated 04.04.2025, Superintendent of Police, Solan, filed an affidavit on 23.04.2025 and Para 2 of the affidavit reveals that the *Visa* of the bail petitioner was valid upto 26.07.2023 but despite the expiry of *Visa* the bail petitioner failed to return to his country. Affidavit further indicates that verification of bail petitioner was conducted, through the Nigerian Embassy wherein, it transpired that the petitioner herein has a fake Passport. Perusal of Para 3 of Reply-Affidavit further indicates that at the time of arrest the bail petitioner informed the police that he was a citizen of Nigeria having address as Tidj Mamane S/o John R/o Village Utuh

Umueze, City Awka Nnewi South Anambra, State Nigeria (Republic Du Niger) having Passport No. 18PC51962, but upon inquiry by the Ministry of External Affairs from High Commission of Federal Republic of Nigeria, it transpired that Passport of the bail petitioner-accused herein is not a Nigerian Passport.

4(ii). Perusal of Affidavit dated 24.07.2025 of the Superintendent of Police Solan, reveals that the bail petitioner was identified by the police on 28.02.2024 at instance of Devinder @ Chindda at Delhi near Akash Hospital. Affidavit further indicates that the bail petitioner was not detained by the police during interrogation. It is averred that the bail petitioner was arrested in accordance with law on 29.02.2024, at about 2:01 PM and intimation of his arrest and grounds for arrest were made known to the bail petitioner and to his friend, Legase, by police authorities. Pursuant to this, the matter was listed on 01.08.2025 when, response to the affidavit was filed by

bail petitioner whereby, the claim in the bail petition was reiterated.

5. Heard Mr. Yuyutsu Singh Thakur, Learned Counsel for the petitioner and Mr. Pranay Pratap Singh, Learned Additional Advocate General for the respondents-State.

MANDATE OF LAW ON BAIL:

6. Broad parameters have been mandated by the Hon'ble Supreme Court regulating the claim for 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 after taking into account the accusation, gravity, status, position in society claim for bail is to be examined. While considering the claim for bail, the factum as to whether the allegations were frivolous or groundless is to be seen. Depending upon the facts of each case, the bail can be refused, in case, a 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 based on cogent and convincing material that the accused may thereafter threaten the witnesses or the victim may be examined and danger of justice being thwarted by grant of bail etc. are relevant factors for denying the concession of bail. It is mandated that the bail can neither be denied

by way of a punishment nor can it be preventative for the reason that the guilt cannot be presumed at this stage. Prolonging incarceration on mere accusation curtails the personal liberty of an accused under Article 21 of the Constitution of India. However, while examining claim for bail, a balance has to be carved between the personal liberty of an accused under Article 21 vis-à-vis societal interests also.

6(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.*

6(ii). While dealing with the claim for bail, the Hon'ble Supreme Court has reiterated the principles on bail in **Criminal Appeal Nos. 3528-3534 of 2025 (Arising from SLP (Crl.) Nos. 516**

-522 of 2025), in State of Karnataka versus Sri Darshan, etc. mandating that while considering the claim for bail neither a detailed examination of the evidence nor any findings touching merits of the case, is to be resorted to.

In the backdrop of above parameters, this Court proceeds to analyze the claim for bail in instant case.

ANALYSIS OF CLAIM FOR BAIL IN INSTANT CASE:

7. Taking into account the entirety of facts and circumstances and based on material on record, this Court is of the considered view that the *bail petitioner herein, {Tidj Mamane @ Tidy Mamane}*, is entitled to be released on bail for following reasons:-

7(i). Status Report indicates that the bail petitioner has been roped in and implicated by the police on the basis of confessional statements of prime accused namely Rishabh Sehgal, Anish Sonkar and Devinder @ Chindda, as referred

to above. The incarceration of the bail petitioner, on the basis of the confessional statement of other co-accused is violative of Section 67 of NDPS Act and the also the mandate of law declared by the Hon'ble Supreme Court in case of **Tofan Singh versus State of Tamil Nadu, (2021) 4 SCC 1**. Further, the action of the State Authorities in prolonging the incarceration of the petitioner endlessly, merely on the basis of the confessional statement made by co-accused under Section 67 of the NDPS Act cannot sustain even in case of a foreigner, accused under the NDPS Act, in view of the judgment passed by the Coordinate Bench of this Court in Cr.MP(M) No. 1745 of 2024, titled as **Yonah Doe Harris versus State of Himachal Pradesh & Ors.**, decided on 26.09.2024, in the following terms:

12. The petitioner had earlier filed a bail petition bearing Cr.MP(M) No. 261 of 2024 titled Doe Harris versus State of Himachal Pradesh decided on 07.03.2024, which was dismissed on the ground that the petitioner has been involved in the commission of an offence punishable under the Foreigners Act and the petitioner cannot be released on bail in view of the judgment of this Court in **Imtizor**

Imamova versus the **State of H.P. [2010 (2) Shim. LC 63 = Latest HLJ 2010(2) 754 (HP) 2010(2) Him. L.R. 801]**. The Hon'ble Supreme Court expressed its reservations about the grant of bail to a non-citizen in **Onyeka Samuel versus State of H.P. in SLP (Criminal) No. 26692 of 2024 decided on 12.08.2024** in a matter arising out of the denial of bail to a foreign national based on the judgment of **Imtizor Imamova** (supra). Thus, the authority of the judgment in **Imtizor Imamova** (supra) has been shaken by the observations made by the Hon'ble Supreme Court. Since this Court is bound by the judgment of the Hon'ble Supreme Court, therefore, it has to accept the judgment passed by the Hon'ble Supreme Court in **Onyeka Samuel** (supra) rather than the judgment in **Imtizor Imamova** (supra).

13. The status report shows that the petitioner was apprehended as per the statement made by the co-accused under Section 67 of the NDPS Act. It was held in **Tofan Singh Versus State of Tamil Nadu 2021 (4) SCC 1** that a confession made to the police officer during the investigation is hit by Section 25 of the Indian Evidence Act and is not saved by the provisions of Section 67 of the NDPS Act. Therefore, no advantage can be derived by the prosecution from the confessional statement made by the co-accused implicating the petitioner.
14. A similar situation arose before this Court in **Dinesh Kumar @ Billa Versus State of H.P. 2020 Cri.L.J.4564** and it was held that a confession of the co-accused and the phone calls are not sufficient to deny bail to a person.
15. It was laid down by this Court in **Saina Devi vs. State of Himachal Pradesh 2022 Law Suit (HP) 211**, that where the police have no material except the call details record and the disclosure statement of the co-accused, the petitioner cannot be kept in custody. It was observed:-

“[16] In the facts of the instant case also the prosecution, for implicating the petitioner, relies upon firstly the confessional statement made by accused Dabe Ram and secondly the CDR

details of calls exchanged between the petitioner and the wife of co-accused Dabe Ram. Taking into consideration, the evidence with respect to the availability of CDR details involving the phone number of the petitioner and the mobile phone number of the wife of co-accused Dabe Ram, this Court had considered the existence of a *prima facie* case against the petitioner and had rejected the bail application as not satisfying the conditions of Section 37 of NDPS Act.

[17] Since, the existence of CDR details of accused person(s) has not been considered as a circumstance sufficient to hold a *prima facie* case against the accused person(s), in **Pallulabid Ahmad's case** (supra), this Court is of the view that petitioner has made out a case for maintainability of his successive bail application as also for grant of bail in his favour.

[18] Except for the existence of CDRs and the disclosure statement of the co-accused, no other material appears to have been collected against the petitioner. The disclosure made by the co-accused cannot be read against the petitioner as per the mandate of the Hon'ble Supreme Court in **Tofan Singh Vs State of Tamil Nadu, 2021 4 SCC 1**. Further, on the basis of aforesaid elucidation, the petitioner is also entitled to the benefit of bail.

16. A similar view was taken by this Court in **Dabe Ram vs. State of H.P., Cr.MP (M) No. 1894 of 2023, decided on 01.09.2023, Parvesh Saini vs State of H.P., Cr.MP(M) No. 2355 of 2023, decided on 06.10.2023 and Relu Ram vs. State of H.P. Cr.MP(M) No. 1061 of 2023, decided on 15.05.2023.**
17. Therefore, there is no legally admissible evidence against the petitioner and he cannot be detained because of the statement made by the co-accused implicating him.
18. Consequently, the **present petition is allowed and the petitioner is ordered to be released on bail** subject to his furnishing bail bonds in the sum of ₹ 1,00,000/- with two sureties in the like amount each to the

satisfaction of the learned Trial Court.
.....”

7(ii). While adjudicating the claim for bail in case of a foreign national who was accused under the NDPS Act and Section 14 of the Foreigners Act, a Co-ordinate Bench of this Court **Cr.MP(M) No. 102 of 2024** decided on 26.04.2024 in Re: **Onyeka Samuel versus State of Himachal Pradesh**, had rejected the bail on the ground that bail petitioner therein was a foreigner whose *Visa* had expired and therefore, he has no right to remain on Indian soil in the following terms:

12. Thus, the petitioner cannot claim the bail on the ground that the charge sheet has been filed.
13. The police have specifically stated that Section 14 of the Foreigners Act was added because the petitioner could not produce his passport and visa. The petitioner has not filed a copy of the visa. It was laid down by this Court in *Imtizor Imamova versus State of H.P.* [2010 (2) Shim. LC 63 = Latest HLJ 2010(2) 754 (HP) = 2010(2) Him. L.R. 801] **that no foreigner has any right to enter or remain in India.** He can enter only with a visa, which is kind of a limited leave. **Once, the visa expires, the person has no right to remain on Indian soil and if he remains so,** he commits an offence.

Therefore, **bail cannot be granted to a foreigner accused of committing an offence punishable under Section 14 of the Foreigners Act.** It was observed:-

“5. It is quite shocking that when the petitioner and other co-accused were found without any valid passport and visa, why the learned trial Court granted bail to them because every minute stay of a "foreigner" within the territory of the country is a recurring offence. On examining the record, while granting bail to the petitioner and other co-accused, the learned Magistrate was oblivious of the provisions of the Foreigners Act, 1946 the order passed under Section 3 of the Foreigners Order, 1948 and the Rules framed thereunder.

6. **No foreigner has any right**, as such, to enter or remain in India, as he/she likes and his entry into and stay in this country are regulated by the provisions of the Foreigners Act, 1946 and Rules made thereunder, for a variety of reasons.

7. A visa issued to a foreigner is in the nature of a limited leave to enter this country or stay there, for a duration controlled and limited by the terms of the visa issued. Such leave also carries with it certain responsibilities, obligations and discipline and the machinery by which such leave to enter or remain is regulated, in the larger interest of the country, cannot be lightly tampered with, particularly by foisting anything that would destroy that machinery.

8. The learned Judicial Magistrate could not have equipped them with a license by passing an order of

bail to stay in India without any passport and valid visa. Rather the Judicial Magistrate, instead of granting bail, should have taken the case on a day-to-day basis and decided the case on merits. In case the accused has found to be not guilty or guilty of the offence, **they shall have to be ordered to be deported after the completion of the sentence, if any imposed."**

19. It was submitted that **non-citizen cannot be discriminated on the grounds of non-citizenship alone**. This submission is stated to be **rejected because the Foreigner's Act will only apply to non-citizens and not to citizens**; therefore, the discrimination is inherent in the nature of the offence itself.
20. In the present case, there is no change in the circumstances and the **petitioner cannot be enlarged on bail; hence, the present petition fails and the same is dismissed**.

Feeling aggrieved against the rejection of bail, the accused, namely, Onyeka Samuel filed a **SLP (Crl) Diary No 26692 of 2024, In re; Onyeka Samuel vs State of Himachal Pradesh, decided on 12.08.2024**, whereby, though the above SLP was dismissed by the Hon'ble Supreme Court but some reservation about the observation regarding grant of bail to a non-citizen did not find favour with the Hon'ble Supreme Court

and in these circumstances liberty was given to file a fresh application for bail in view of the prolonged incarceration, which was directed to be consider and decided expeditiously, in accordance with law in the following terms:

We have some reservations about the observations made by the High Court on grant of bail to a non-citizen. However, otherwise, we are not inclined to interfere with the impugned judgement / order and hence, the present special leave petition is dismissed.

We request the trial Court to take up the chargesheet hearing and trial expeditiously.

We clarify that in case of a change in circumstances, the **trial is prolonged due to reasons not attributable to the petitioner**, it will be open to the petitioner, **Onyeka Samuel, to file a fresh application for grant of bail.** If any such application is filed, the same will be considered and decided in accordance with law.

In a similar fact-situation, the concession of bail was extended to a foreigner by a Coordinate Bench of this Court, in Cr.MP (M) No. 1445 of 2025, **Ugochukwu Alasonye versus State of Himachal Pradesh and Ors** decided on 09.07.2025.

In the above backdrop, the incarnation

of the bail petitioner, merely, on the confessional /disclosure statement of other co-accused for an unduly long and indefinite period since 29.02.2024 cannot sustain.

7(iii). The claim of the bail petitioner also carries weight in view of the fact that prolonging the incarceration for about 1 year and 6 months when, the rigors of Section 37 of the NDPS Act are neither attracted nor applicable, and even investigation is complete and Challan has been filed by the police before Competent Court against the petitioner, which is pending at the stage of consideration of charge as yet.

7(iv). Perusal of the Status Report and the material on record indicates that nothing cogent and convincing has been placed before this Court to even believe the prima-facie accusation under Section 21 and 29 of the NDPS Act against the bail petitioner, and when, the accusation, if any, is a matter to be tested, examined and proved during the trial.

**CLAIM FOR BAIL WHEN NO RECOVERY OF
CONTRABAND MADE FROM BAIL PETITIONER
IN INSTANT CASE:**

8. Presumption of guilt under Section 21 and 29 of the NDPS Act, cannot be inferred by this Court against the bail petitioner, at this stage, for the reason that the police authorities have not recovered any contraband from the bail petitioner. Even, the foundational ingredients to assert the accusation under Section 21 and 29 of NDPS Act are absent in instant case and moreover, the same to be asserted and proved by the prosecution during the trial. Once the bail petitioner has asserted himself to be innocent and not having been involved in the accusation at all, then, the prolonging of incarceration, by presuming the guilt at this stage, certainly violates the very principle of criminal jurisprudence that a person is innocent until proved/held guilty. The plea for bail, when, no recovery has been made from the accused, alike the bail petitioner, carries weight, in view of the mandate of law,

here-in-below:

8(i). While dealing with the claim for bail, in a case alleging accusation in an *intermediate quantity of contraband of Heroin/ Chitta*, wherein, nothing was recovered from the accused therein, the Hon'ble Supreme Court in **Sami Ullaha versus Superintendent, Narcotic Central Bureau, (2008) 16 SCC 471**, in the following terms:-

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.	Name of Narcotic drug or Chemical psychotropic substance [International name Non-proprietary Name (INN)]	Small quantity	Commercial quantity
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77.	Morphine	Morphine 5 gm	250 gm
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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.***

*** **

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.”

8(ii). In State of West Bengal versus Rakesh Singh alias Rakesh Kumar Singh 2022 SCC Online SC 828, the Hon’ble Supreme Court, has 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 rigors of Section 37 NDPS Act do not apply to the present case."*

8(iii). Likewise, while granting bail to a person, from whom, no recovery was affected, this Court, in case titled **Roshan Lal versus State of Himachal Pradesh in Cr.MP(M) No.307 of 2024** decided on 04.03.2024, held as under:

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.

BAIL ON PRINCIPLE OF PARITY:

9. Learned Counsel for the bail petitioner states that once other prime accused namely, Rishab Sehgal, Ashish Sonkar and Devinder @ Chindda, in FIR No.11 of 2024, dated 10.02.2024 for offence under Section 21 and 29 of the NDPS Act have been enlarged on bail by this Court, therefore, the bail petitioner may be granted the same concession.

9(i) Upon considering the above aspects, this Court, is of the considered opinion that

once two prime accused, namely, Rishab Sehgal, Ashish Sonkar from whom, recovery of contraband was effected by the police have been enlarged on bail in Cr.MP(M) No. 2296 of 2024 on 13.03.2025 and in Cr.MP(M) No. 2296 of 2024 on 13.03.2025 and even the third co-accused, namely Devinder @ Chindda has been enlarged on bail in Cr.MP(M) No. 1062 of 2025 on 31.07.2025 in view of prolonged incarceration therefore, once no recovery has been made from the bail petitioner and other accusation is a matter to be tested, examined and proved during the trial and the prolonged incarceration has denied the right of speedy trial under Article 21 and the fact that the matter is at the stage of consideration of charge, and in every likelihood the trial is likely to take considerable time for its conclusion, therefore, this Court, accedes to the prayer of the petitioner, for bail as granted to other co-accused, as referred to above.

PERSONAL LIBERTY AND CLAIM FOR BAIL:

10. While dealing with the concept of bail 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***, in following terms:-

- “18 **Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime.** Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.
- 19 **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.**
- 20 **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.

- 21 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.
- 22 In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside.”

ADHERANCE TO PRINCIPLE : BAIL IS RULE:

11. Depriving the petitioner of the concession of bail shall negate the established 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**, as under:-

“49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

52. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:

“10. In the aforesaid context, we may remind the trial courts and the High

Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:

“What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russell, C.J., said [R v. Rose, (1898) 18 Cox]:

“I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the magistracy of the country that **bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial**”

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that **bail is not to be withheld as a punishment**. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. **The principle that bail is a rule and refusal is an exception is, at times, followed in breach**. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. **It is high time that the trial courts and the High Courts should recognize the principle that “bail is rule and jail is exception”**.
55. As observed by this Court in the case of Gudikanti Narasimhulu (supra), **the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial**.
56. In the present case, the appellant is having deep roots in the society. **There is no possibility of him fleeing away**

from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. **As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant."**

PROLONGED INCARCERATION INFRINGES PERSONAL LIBERTY UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA:

12. While dealing with the claim for bail in case of a Foreign National under the special enactments, in view of prolonged incarceration, the Hon'ble Supreme Court in **Criminal Appeal No. 2790 of 2024 Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari versus State of Uttar Pradesh**, decided on 18.07.2024 has outlined that the personal liberty of a person under Article 21 is sacrosanct and the prolonged incarceration cannot be permitted under the garb of statutory embargoes in special enactments in the following terms:

30. Recently, this Court dealt with a matter **where the appellant, a foreign national, is being prosecuted for offences punishable under Sections 8, 22, 23 and 29 of the NDPS Act.** The appellant was arrested on 21.05.2014. The High Court had granted bail to the appellant vide the order dated 31.05.2022 but had incorporated certain conditions in the bail order because of which the appellant remained in custody despite having a bail order in his favour. **One of the conditions was that the appellant, a Nigerian national, should obtain a certificate of assurance from the High Commission of Nigeria to the effect that the appellant would not leave the country and would appear before the trial court on the dates fixed.** Another condition imposed was that the accused should drop a pin on the google map to ensure that his location is available to the investigation officer at all times. This Court as an interim measure had granted bail to the accused- appellant and thereafter passed a detailed judgment in **Frank Vitus Vs. Narcotics Control Bureau, Criminal Appeal No. 2814-15 of 2024, decided on 08.07.2024.** This Court after referring to earlier decisions of this Court held that conditions of bail cannot be arbitrary and fanciful. The expression 'interest of justice' finding place in **Section 437(3) Cr.P.C.** means only good administration of justice or advancing the trial process. It cannot be given any further broader meaning to curtail the liberty of an accused granted bail. **Courts cannot impose freakish conditions while granting bail. Bail conditions must be consistent with the object of granting bail. While imposing bail conditions, the constitutional rights of an accused who is ordered to be released on bail can be curtailed only to the minimum extent required.**

Even when an accused is in jail, he cannot be deprived of his right to life which is a basic human right of every individual. This Court held that bail conditions cannot be so onerous so as to frustrate the order of bail itself.

30.3. Distinguishing the decision of this Court in Supreme Court [Legal Aid Committee \(Representing Undertrial Prisoners\)](#) (supra), this Court observed that an accused-undertrial has no control over the Embassy or High Commission of his country. On failure of the Embassy or High Commission to issue a certificate that the accused-undertrial would not flee from the country and would attend the trial proceedings regularly, he cannot be continued to be kept in detention despite a bail order. Instead of the same, other practical and pragmatic conditions may be imposed. **This Court clarified that it is not necessary that in every case where bail is granted to the accused in an NDPS case who is a foreign national, the condition of obtaining a certificate of assurance from the Embassy or the High Commission should be incorporated. Consequently, in [Frank Vitus](#) (supra), this Court while confirming the bail granted to the appellant, set aside the two impugned conditions.**

32. This Court has, time and again, emphasized that **right to life and personal liberty enshrined under [Article 21](#) of the Constitution of India is overarching and sacrosanct.** A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under [Article 21](#) of the Constitution of India has been infringed. **In that event, such statutory restrictions**

would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, [K.A. Najeeb](#) (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.

12(i). Similarly, the claim for bail was accepted under Special Enactments by 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**, by reiterating that the right to life and personal liberty under Article 21 of the Constitution of India to be of paramount importance and the 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 deprive 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, and therefore, the claim of the petitioner for bail carries weight.

NO PAST CRIMINAL ANTECEDENTS:

13. Learned Counsel for the bail petitioner asserts that the petitioner has no past criminal antecedents. The status report does not indicate any past criminal antecedents and, therefore, in view of these facts, the present accusation which is yet to be tested, examined and proved during the trial, cannot be made the basis for prolonging

the incarceration of the bail petitioner in facts of instant case.

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

14. 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 who may be acquainted with the facts of the case. However, apprehension if any, of State Authorities are adequately safeguarded by imposing stringent conditions in this bail order.

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

15. The Status Reports filed by the 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 cogent and convincing material, the plea for bail, deserves to be granted to the petitioner, in the instant case.

NOTHING ADVERSE ON LIKELIHOOD OF FLEEING AWAY FROM TRIAL OR JURISDICTION OF COURT:

16. In order to safeguard the rights of bail petitioner and to take care of apprehensions of State that the 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.

ACCUSATION UNDER FOREIGNERS ACT AND RIGHT TO BAIL:

17. So far as the accusation under the Foreigners Act is concerned, Learned State Counsel has opposed the bail on the ground that the bail petitioner has been accused under Section 14 of the Foreigners Act and, therefore, he may not be enlarged on bail.

17(i). Admittedly, bail petitioner is a foreigner. Merely being a foreigner cannot be a ground to divest him of his personal liberty. However, the facts in the affidavit dated 23.04.2025 reveals that the petitioner arrived in India on the basis of Niger Passport No. 18PC 51962 on 28.05.2023 on Medical Attendant Visa No.900 FDB 63-N (page 64) in Flight No. ET-688 at Integrated Check Post (ICP) Delhi. This *isa* was valid upto 26.07.2023 but after expiry of *Visa*, the bail petitioner failed to leave this Country [India] to his parent country. Affidavit of Superintendent of Police, Solan, further indicates that upon verification from Niger Embassy vide letter dated 08.04.2025 it has transpired vide Niger Embassy letter dated 15.04.2025, Annexure R-1, that the name of the person [bail petitioner] is not the name of a Niger citizen. It is averred that the Passport 18PC 51962 is a fake passport as Niger Embassy has not reached at serial No. 18PC in the Passport series whereas the Niger Passport starts from 09 PC to 13PC only. It is

borne out that the Embassy people have tried to speak in Niger languages [officials and locals] but the bail petitioner was not aware of the name of the Niger capital also. It is averred that passport of the petitioner is also not a Nigerian Passport. However, the affidavit of Superintendent of Police indicates that no criminal history was found against the bail petitioner.

17(ii). In these circumstances, though the accusation is a matter to be tested, examined and proved during the trial in accordance with law, yet based on the material on record and in facts of instant case, this Court cannot make a distinction for granting or denying bail, merely on the ground of being a citizen or non-citizen coupled with the fact that the authenticity of the Passport submitted to the police is a matter of trial under the Foreigners Act. Since, the guilt of the petitioner cannot be presumed at this stage and solely made the basis for prolonging the incarceration. The fact that after the expiry of

Visa, the bail petitioner cannot be permitted to roam around freely in the country [India], can be addressed and taken care of, in the light of the mandate of law of the Hon'ble Supreme Court in **Criminal Appeal Nos. 2814-2815 of 2024**, titled as **Frank Vitus** versus **Narcotics Control Bureau and others**, decided on 06.01.2025, which reads as under:

The operative portion of the reportable order reads thus:

"8. In addition to what we held by judgment and order dated 08th July, 2024, we issue the following directions:

(i) **While granting bail to a foreigner** within the meaning of the Act, the **concerned court shall issue direction to the State or prosecuting agency**, as the case may be, to immediately communicate the order granting bail to the concerned Registration Officer appointed under Rule 3 of the Rules who, in turn, shall communicate the order to all concerned authorities including the Civil Authorities. If such information is furnished, it will **enable the authorities under the Act, the Rules and the Order to take appropriate steps in accordance with the law**; and

In the light of the mandate of law in case of **Frank Vitus (supra)** this Court directs the Registry of this Court and the Learned Advocate

General to communicate the passing of this bail order to the concerned Registration Officer and Civil Aviation appointed under Rule 3 of the Registration of Foreigners Rules 1992 notified under the Foreigners Act, 1946, so as to enable them to take appropriate steps hereinafter, in accordance with law.

PLEA OF ILLEGAL ARREST-UNTENABLE:

18. Learned counsel for the petitioner has contended that the arrest of the bail petitioner is illegal on two occasions, *firstly*, the bail petitioner was not produced before the Magistrate within 24 hours of arrest; and *secondly*, the grounds of arrest have not been furnished.

18(i). In order to appreciate the contention of the Learned Counsel for the petitioner it is necessary to have a recap of Article 22(2) of the Constitution of India and Section 42 of the NDPS Act, which reads as under:-

22(2) Every person **who is arrested and detained in custody** shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding

the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

42. Power of entry, search, seizure and arrest without warrant or authorization:-

(l) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, **if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act** is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any

door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) **detain and search, and, if he thinks proper, arrest any person** whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

18(ii). Though the aforesaid contention on the

face of it appears to be attractive but on the scanning of the material on the record including the Status Report(s) and Affidavit(s) filed by the State Authorities, this Court is of the considered view, that though a perusal of Annexure P-6 dated 29.02.2024 reveals that the petitioner was arrested by the police on 29.02.2024 at about 2.10 PM. Even perusal of Para 2 and 3 of the Affidavit dated 24.7.2025 filed by Superintendent of Police indicates that the petitioner was not detained by the Police at any point of time but he associated in the interrogation and he was asked to accompany the police team to Police Station Parwanoo on 28.02.2024 but he was arrested as per law on 29.02.2024 as per the arrest memo. In these circumstances, the affidavit filed by Superintendent of Police revealing the arrest of the petitioner on 29.02.2024, which is borne out from the arrest memo cannot be disbelieved on the bald assertion made by the bail petitioner. Moreover, even as per Section 57 of Cr.P.C., the bail petitioner was

arrested on 29.02.2024 at Police Station Parwanoo was produced before the ACJM, Kasauli on 1.3.2024, which is within 24 hours as mandated under Section 57 of the CrPC. Based on the material on record, once State Authorities have discharged their burden that the bail petitioner was arrested only on 29.02.2024 therefore, keeping in view the judgement of the Hon'ble Supreme Court in the case of **Vihaan Kumar versus State of Haryana and another (2025) 5 SCC 799**, {Para 26.3 thereof} and in **Kasireddy Upender Reddy versus State of Andhra Pradesh and others 2025 SCC OnLine SC 1228**, the contention of the Learned Counsel for the petitioner cannot sustain. In addition, this Court is conscious of the fact that as per the mandate of the three Judge Bench of the Supreme Court in case of **Radhika Agarwal versus Union of India and others (2025) 6 SCC 545**, this Court is of the considered view that the power of judicial review may not be exercised unless there is manifest arbitrariness or non-compliance

of statutory safeguards provided under the said Acts /enactments which are required to be followed by the Authorities Officers in a case when, the arrest is made by an authorised person under the special enactment. In Para 94 of the aforesaid judgement in the case of **Radhika Aggarwal (supra)** the Hon'ble Supreme Court has further mandated that minor procedural lapse on the part of the Authorised Officer may not be seen by magnifying glass in exercise of judicial review which may ultimately end up granting undue advantage or benefit to the person accused of very serious offences under the special Act.

Taking into account the entirety of the facts and circumstances, the contention of Learned counsel for the petitioner assailing his arrest and claiming it to be illegal, in considered view of this Court is not tenable, as the petitioner being a foreign national after expiry of *Visa has been* over staying in India since 27.07.2023 resulting in accusation under Section 14 of the Act.

18(iii). So far as the second plea with respect to the ground of arrest asserting violation of Article 22(1)& (2) of the Constitution of India, it is borne out that the primarily object and intent of communicating the grounds of arrest is to enable a person-accused to seek legal advice and to apply for bail. In the facts of this case, the bail petitioner was informed of the grounds of arrest as per arrest memo intimating accusation under the NDPS and based on such disclosure the bail petitioner has filed the bail before Learned Special Judge, Solan, which was withdrawn on 17.5.2024 and even the subsequent bail filed before Learned Special Judge-III, Solan on dated 13.11.2024 and also dismissed on 11.12.2024 and after dismissal of two bail applications, taking all possible grounds, the plea in the instant bail petition filed with the plea that the grounds of arrest were not furnished, cannot be permitted, in facts of instant case. In these circumstances, this case, this Court sees no reason as to how this

contention would help the petitioner in peculiar facts, in instant proceedings.

18(iv). In backdrop of special enactment, this Court is of the considered view that the NDPS makes a distinction between detention and search of any person and his arrest also. The material on record including the Status Report(s) and the Affidavit(s) of the State Authorities reveals that after identification of the petitioner [Tidj Mamane @ Tidy Mamane] at the instance of co-accused Devinder @ Chindda, near Akash Hospital, Dawarka, Delhi, the Police asserts to have detained the bail petitioner for interrogation and thereafter the bail petitioner was arrested by the Police on 29.2.2024 at (2.11 PM) at Police Station Parwanoo, which is borne out from the arrest memo dated 29.02.2024 and also the affidavit(s) filed by the Superintendent of Police, Solan. The year 2024 being a leap year, the petitioner was produced before the Magistrate i.e. ACJM, Kasauli on the next day on 01.03.2024 [Annexure P-7]. In these

circumstances, the contention of Learned Counsel for the petitioner is not worthy of credence and is therefore turned down. In addition, once petitioner was arrested by police in Police Station Parwanoo on 29.02.2024 [Annexure P-6] and was produced before the Magistrate concerned on 01.03.2024 within 24 hours therefore, the contention of the Learned Counsel for the petitioner that the arrest is illegal i.e. beyond 24 hours, is not sustainable, in facts of the instant case.

18(v). Reliance placed by Learned Counsel for petitioner on the judgement passed in **Criminal Appeal No 310_/2025 [Special Leave Petition (Crl) No. 1136 of 2023, In re: Directorate of Enforcement versus Subhash Sharma** is misplaced for the reason that in case of **Subhash Sharma (supra)** his physical custody was taken over from Bureau of Immigration by Directorate of Enforcement on 05.03.2022 [at 11.00 hours] at IGI Airport and thereafter the arrest memo was prepared on 6.3.2022 [at 1.15 hours] at Raipur and he

was not produced before the Magistrate within 24 hours but was produced before the Magistrate concerned belatedly on 06.03.2022 [at 3.00 p.m]. In this background, the arrest without producing Subhash Sharma before the nearest Magistrate within 24 hours from 11.00 am on 5.3.2022 beyond 24 hours was held to be an illegal.

However, the facts of instant case are entirely different. In the teeth of Clause (d) of Section 42(1) of the NDPS Act as applicable, in instant case read with provisions of Section 51 of the NDPS Act once the bail petitioner on information furnished by co-accused Devinder @ Chindda, [who was earlier arrested] was taken by the police to Delhi and upon identification by Devinder @ Chindda, the petitioner was called for/asked / detained for interrogation/investigation on which the bail petitioner furnished his mobile set to the Police on 28.02.2024 near Akash Hospital, Dawarka, Delhi. As per the own saying of the petitioner, he was arrested by police at Police

Station Parwanoo on 29.02.2024 [Annexure P-6 at 2.11 PM] and on the next day on 01.03.2024, the petitioner-accused herein, was produced before Learned ACJM, Kasauli for remand. Therefore, the contention of Learned Counsel that his arrest was illegal is not tenable on facts as well as in the light of Clause (d) of Section 42 read with Section 51 of NDPS Act read with Section 57 of the Cr.P.C. Perusal of Section 42 of NDPS Act indicates that the right to assail an arrest, arises after “*arrest and detention in custody*” and non-production of such accused-person before nearest magistrate within 24 hours after excluding the travelling time. Moreover, non-production of a person-accused before Magistrate starts from the “*arrest and detention in custody*” under Article 22 (2), therefore, once the bail petitioner herein was arrested and detained in custody by the police in Police station Parwanoo on 29.02.2024 (2.11 PM) and was produced before the Magistrate within 24 hours, on 01.03.2024 [2024 being a

leap year] therefore, the above facts also negate the contention of the petitioner and the plea of arrest being illegal, is turned down, in facts of instant case.

CONCLUSION:

19. 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 29.02.2024 and is undergoing **incarceration for about one year and six months**; and *thirdly*, **conclusion of trial is likely to take considerable time when the case is fixed for consideration of charge for 12.09.2025 as yet** and the trial is likely to take considerable time ; *and fourthly*, the **delay in commencement of trial is not attributable** to the petitioner ; *and fifthly*, **an accused is presumed to be innocent unless proven guilty** ; *and sixthly*, even 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 the petitioner and the accusation is yet to be tested, examined and proved during the trial; and *lastly*, in order to safeguard the interests 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 herein and the material on record and the mandate of law, as referred to above, the claim of the petitioner [Tidj Mamane @ Tidy Mamane] *herein*, for enlargement on bail carries weight, in peculiar fact-situation of this case, as discussed above.

DIRECTIONS:

20. Based on the above discussion and the material on record and the mandate of law and for the reasons recorded hereinabove and in peculiar facts of case, the **instant petition is allowed;** and the *State Authorities are directed to release the petitioner [Tidy Mamane] on bail*, subject to observance of following conditions:-

- (i) Respondent-State Authorities shall release bail petitioner [Tidy Mamane] on furnishing personal bond of Rs. 75,000/- {Rupees

- Seventy Five Thousand} with one surety in the like amount to the satisfaction of Learned Trial Court, if the petitioner is not required in any other case;
- (ii) Petitioner shall report to the police and shall undertake to appear before the Trial Court on every day;
 - (iii) Trial Court shall impound the passport and/or citizenship document(s) of the appellant. If those are in the custody of the prosecution, those shall be handed over to the trial Court.
 - (iv) Petitioner shall undertake to appear in the trial hereinafter, except for his medical exigencies and the exemption granted therefore, if any, in accordance with law;
 - (v) Based on the undertaking furnished in Para 5 of the bail petition, the bail petitioner shall not leave the territorial jurisdiction of the Trial Court; he shall furnish his address to the Trial Court:
 - (vi) Petitioner shall abide by all or any other condition(s), which may be imposed by the Learned Trial Court, in view of this order;
 - (vii) 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 ;
 - (viii) Petitioner shall disclose his functional E-Mail IDs/ WhatsApp number and that of his surety to the Learned Trial Court;

- (ix) Petitioner after release, shall report to 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 behavior;
- (x) Petitioner shall not jump over the bail and also shall not leave the country without prior information of this Court/Trial Court;
- (xi) Petitioner shall not tamper with the evidence in any manner;
- (xii) Petitioner herein shall not cause any inducement, threat or promise {directly or indirectly} to witnesses or the victim or any other person acquainted with the case;
- (xiii) Petitioner is free to seek modification of any condition contained hereinabove, if need arises;
- (xiv) Learned Trial Court can impose any other condition, if so desires, to ensure the presence and effective progress of trial hereinafter;
- (xv) 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;
- (xvi) 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 or the conditions imposed by Learned Trial court, if any;

21. Upon grant of bail to the bail petitioner, this Court directs the Registry of this Court to communicate the passing of this Court order to the Registration Officer [including Superintendent of Police, Solan] under the Registration of Foreigners Rules, 1992 as contemplated under the Foreigners Act, 1946 as well as Civil Authorities [including Deputy Commissioner, Solan] with further request to inform the concerned Embassy and the Ministry of External and Home Affairs, Government of India, New Delhi about the passing of this order. This Court also request the Learned Advocate General of the State of Himachal Pradesh to inform the Registration Officer [Superintendent of Police] as well as Civil Authorities [Deputy Commissioner] about the passing of this order for taking appropriate steps in accordance with law, in terms of the judgment passed by the Honble

Supreme Court in the case of **Frank Vitus (supra)**.

22. 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 hereinafter in-accordance with law, irrespective of any of the observations contained hereinabove.

23. 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.

In aforesaid terms, the instant petitioner and all pending miscellaneous application(s), if any, shall also stand disposed of.

September 05, 2025

[tm/Himani]

(Ranjan Sharma)
Judge

TARUN
MAHAJAN

Digitally signed by Tarun Mahajan
DN: cn=Tarun Mahajan, o=Himachal Pradesh, email=tarun.mahajan@hpraj.nic.in
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