

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.390 of 2021

Date of Decision: 19th March, 2021.

Pratyush Thakur	Versus	...Petitioner.
State of H.P.		...Respondent.

Coram:

The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?¹ NO

**For the petitioner: Mr. Rajiv Rai and Mr. Mukesh Sharma,
Advocates.**

**For the respondent: Mr. Nand Lal Thakur, Additional Advocate
General and Mr. Rajat Chauhan, Law Officer, for
the State.**

FIR No.	Dated	Police Station	Sections
29 of 2021	29.1.2021	Sundernagar, District Mandi, H.P.	20 and 29 of the ND&PS Act.

Anoop Chitkara, Judge (oral)

On allegations of joint possession of 704 grams of Charas, which is an intermediate quantity, the petitioner, apprehending arrest, came up before this Court under Section 438 CrPC, seeking anticipatory bail.

2. A perusal of the petition reveals that the petitioner straightaway filed the bail petition before High Court, which is permissible given the decision of a three Judges Bench of HP High Court, in **Mohan Lal v Prem Chand**, AIR 1980 HP 36, (Para 9 & 15), wherein the Full bench holds that a person can directly apply for an anticipatory bail or regular bail to the High Court without first invoking the jurisdiction of the Sessions Judge.

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

3. Mr. Rajiv Rai, learned counsel for the petitioner submits that the petitioner has no criminal history. The status report also does not mention any criminal past of the accused.

4. Briefly, the allegations against the petitioner are that the police had recovered 704 gms of Charas from (a) Ayush Bharti (b) Arvind Sharma, which led to registration of FIR mentioned above. In the investigation, the accused told to the investigator that when they had gone to purchase the Charas, the present petitioner used to call him and asked him to procure the contraband for him as well. The investigation also reveals some bank account transactions to the same effect. The status report does not mention about any criminal history. Given above, the petition is allowed with a strict condition that the petitioner shall join the investigation as and when called upon to do so.

5. Ld. Counsel for the petitioner contends that the custodial investigation would serve no purpose whatsoever. The incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

6. While opposing the bail, the alternative contention on behalf of the State is that if this Court is inclined to grant bail, such a bond must be subject to very stringent conditions.

7. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity greater than the quantity specified in the schedule. S. 2 (xxiii-a) defines a small quantity as the quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, which is now generally called as intermediate quantity. All Sections in the NDPS Act, which specify an offense, also mention that minimum and maximum sentence, depending upon the quantity of the substance. Commercial quantity mandates minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of NDPS Act.

8. The contraband involved is 704 grams of Charas, which *prima facie* is not a Commercial quantity. As such, the rigors of Section 37 of the NDPS Act shall not apply in the present case. Resultantly, the present case is similar to other instances of

the grant of bail in a penal offence. In the facts and circumstances peculiar to this case, the petitioner makes out a case for release on bail.

9. In **Sami Ullaha v Superintendent Narcotic Control Bureau**, (2008) 16 SCC 471, the Hon'ble Supreme Court holds that in intermediate quantity, the rigors of the provisions of Section 37 may not be justified. In **Sunny Kapoor v State of HP**, CrMPM 2168 of 2020, (Para 15), this Court observed that when the quantity is less than commercial, the rigors of Section 37 of the NDPS Act will not attract, and factors become similar to bail petitions under regular statutes. Thus, when the maximum sentence cannot exceed ten years, and the accused is yet to be proved guilty, the grant of bail is normal, unless the Prosecution points towards the exceptional circumstances, negating the bail.

10. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborate and stringent conditions. In **Sushila Aggarwal**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In **Sumit Mehta v. State of N.C.T. of Delhi**, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

11. Given the above reasoning, the Court is granting bail to the petitioner, subject to strict terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

12. In **Manish Lal Shrivastava v State of Himachal Pradesh**, CrMPM No. 1734 of 2020, after analysing judicial precedents, this Court observed that any Court granting bail with sureties should give a choice to the accused to either furnish surety bonds or give a fixed deposit, with a further option to switch over to another.

13.—Given above, the petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rs. Twenty-five thousand (INR 25,000/-), and shall furnish two sureties of a similar amount, to the satisfaction of the Investigator. Before accepting the sureties, the Attesting Officer must satisfy that in case the accused fails to appear in Court, then such sureties are capable to produce the accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

14. In the alternative, the petitioner may furnish aforesaid personal bond and fixed deposit(s) for Rs. Twenty-five thousand only (INR 25,000/-), made in favour of "Chief Judicial Magistrate, District Mandi, H.P.,"

a) The arresting Officer shall give a time of ten working days to enable the accused to prepare a fixed deposit.

b) Such Fixed deposits may be made from any of the banks where the stake of the State is more than 50%, or any of the stable private banks, e.g., HDFC Bank, ICICI Bank, Kotak Mahindra Bank, etc., with the clause of automatic renewal of principal, and liberty of the interest reverting to the linked account.

c) Such a fixed deposit need not necessarily be made from the account of the petitioner and need not be a single fixed deposit.

d) If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned Court.

e) If made online, then its printout, attested by any Advocate, and if possible, countersigned by the accused, shall be filed, and the depositor shall get the online liquidation disabled.

f) The petitioner or his Advocate shall inform at the earliest to the concerned branch of the bank, that it has been tendered as surety. Such information be sent either by e-mail or by post/courier, about the fixed deposit, whether made on paper or in any other mode, along with its number as well as FIR number.

g) After that, the petitioner shall hand over such proof along with endorsement to the concerned Court.

h) It shall be total discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply for substitution of fixed deposit with surety bonds and vice-versa.

i) Subject to the proceedings under S. 446 CrPC, if any, the entire amount of fixed deposit along with interest credited, if any, shall be endorsed/returned

to the depositor(s). Such Court shall have a lien over the deposits up to the expiry of the period mentioned under S. 437-A CrPC, 1973, or until discharged by substitution as the case may be.

15. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order:

a) The petitioner to execute a bond for attendance in the concerned Court(s). Once the trial begins, the petitioner shall not, in any manner, try to delay the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on this very bond, the petitioner also promises to appear before the higher Court in terms of Section 437-A CrPC.

b) The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

c) The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

d) The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as may be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM and shall be let off before 5 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

e) In addition to standard modes of processing service of summons, the concerned Court may serve or inform the accused about the issuance of summons, bailable and non-bailable warrants the accused through E-Mail (if any), and any instant messaging service such as WhatsApp, etc. (if any). [Hon'ble Supreme Court of India in Re Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3/2020, I.A. No. 48461/2020- July 10, 2020]:

i. At the first instance, the Court shall issue the summons.

ii. In case the petitioner fails to appear before the Court on the specified

date, in that eventuality, the concerned Court may issueailable warrants.

- iii. Finally, if the petitioner still fails to put in an appearance, in that eventuality, the concerned Court may issue Non-Bailable Warrants to procure the petitioner's presence and may send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to achieve the purpose.

16. During the trial's pendency, if the petitioner **repeats** or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, the State may move an appropriate application before this Court, seeking cancellation of this bail. Otherwise, the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

17. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order, in vernacular and if not feasible, in Hindi.

18. In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

19. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation per law.

20. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

21. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

In the facts and circumstances peculiar to this case, the petition stands allowed

in the terms mentioned above.

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March 19, 2021 (KS)

**Anoop Chitkara,
Judge.**

High Court of H.P. ◊