

Ankush versus State of HP  
Ashish versus State of HP  
Subhash Kumar vs State of HP

Bail Application No.76-S/22 of 2021  
Bail Application No.75-S/22 of 2021  
Bail Application No.78-S/22 of 2021

**In the Court of Rajeev Bhardwaj, Special Judge, Shimla,  
H.P.**

1) CIS CNR No. HPSH100021652021  
CIS Case Type Bail application  
CIS Registration No. 144/2021  
Bail Application No. 76-S/22 of 2021  
Date of Institution: 05.05.2021  
Date of Decision: 17.05.2021.

Ankush Verma son of late Shri Ramesh Kumar, R/o village Bagna, P.O. Jathia Devi, Tehsil & District Shimla, H.P. **(Presently in judicial custody).**

...Bail applicant/accused.

Versus

State of Himachal Pradesh.

..... Respondent.

2) CIS CNR No. HPSH100021662021  
CIS Case Type Bail application  
CIS Registration No. 145/2021  
Bail Application No. 75-S/22 of 2021  
Date of Institution: 05.05.2021  
Date of Decision: 17.05.2021

Ashish Sharma son of Shri Gopal Krishan, R/o VPO Jathia Devi, Tehsil & District Shimla, H.P. **(Presently in judicial custody).**

...Bail applicant/accused.

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Versus

State of Himachal Pradesh.

..... Respondent.

3) CIS CNR No. HPSH100021892021  
CIS Case Type Bail application  
CIS Registration No. 149/2021  
Bail Application No. 78-S/22 of 2021  
Date of Institution: 07.05.2021  
Date of Decision: 17.05.2021.

Subhash Kumar son of Shri Shadi Ram, R/o Village Bagi, P.O. Jathia Devi, Tehsil & District Shimla, H.P. **(Presently in judicial custody).**

...Bail applicant/accused.

Versus

State of Himachal Pradesh.

..... Respondent.

**Bail applications under Section 439 of the Cr.P.C. in FIR No. 99/2021, dated 04.05.2021, under Sections 21 & 29 of the ND & PS Act, registered with Police Station West, District Shimla, H.P.**

For the bail applicants: S/Shri Pradeep Verma & K.S. Thakur, Advocate. **(Connected through virtual mode).**

For the respondent: Shri B.S. Negi, Id. P.P.

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**ORDER:**

The aforesaid bail applications under Section 439 of Cr.P.C. are taken up together, as they arose from the same FIR No. 99/2021, dated 04.05.2021, under Sections 21 & 29 of the ND & PS Act, registered with Police Station West, District Shimla, H.P.

2. Brief facts, necessary to dispose of the bail applications are that on 03.05.2021, a police party comprising HC Lalit No.42, HC Jageshwar Singh No.30 and other police officials went on patrolling, traffic checking, stopping crime etc. towards Chhota Shimla, Old Bus Stand, Totu, Jathia Devi, Jubber Hatti etc. and at about 9.25 PM when the said police party was present at Kunihar-Totu road near Chanog bifurcation, a vehicle bearing No.HP52B-4430 came from Kunihar side and it was signaled to be stopped. The said vehicle was being driven by bail-applicant Ashish Sharma, bail-applicant Subhash was sitting beside him and Ankush was sitting on his rear seat. On inquiry, when all the persons could not give satisfactory answer, it was apprehended that they may be carrying some suspicious articles. Therefore, Pradhan, Gram Panchayat Chanog was contacted to visit the spot. However, he sent Ward Members Satish Kumar and Khem Chand, who reached at about 10.25 PM at the spot. In the presence of these persons, search of the vehicle was conducted. When the dashboard of the vehicle was opened, swag shaped (Potli Numa) cloth was found concealed below the bag of the documents. In the said swag shaped cloth, three

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white plastic packets were recovered which contained light brown colour substance. On the basis of experience and smelling, the said substance was Heroin (Chhita) The quantity of the Heroin (Chhita) on weighment was found 10.72 grams. In addition, ₹ 14,500/- in cash was also recovered. After completing the codal formalities, F.I.R. was registered against the bail-applicants.

3. The present applications have been moved by the bail-applicants under Section 439 Cr. P. C. for the grant of bail on the grounds that they are innocent persons and have been falsely implicated in the present case. It is stated that they are local persons and ready to cooperate with the police in the investigation. They are electrician by profession and not going to abscond. It is averred that the contraband is less than commercial quantity so the rigor of Section 37 of ND & PS Act will not be applicable. The bail-applicants have also undertaken that they will join the investigation as and when required by the police or as directed by the Court. They have further assured that they will abide by all the terms and conditions as imposed by this Court, if granted bail.

4. The police have opposed the prayer of the bail on the grounds that in the event of the bail, the bail-applicants may threaten the witnesses and they are also pushing the innocent persons in this vicious cycle.

5. Arguments heard. I have also gone through the case file.

6. It is settled law that bail is not only a matter of right,

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but only a privilege to be granted at the discretion of the Court. The discretion is to be exercised objectively and not subjectively with a view to strike a balance between individual's right of personal freedom and the investigational rights of the police.

7. The quantity allegedly recovered from the possession of the bail-applicants is 10.72 grams of Heroin (Chitta), which is more than small quantity and less than commercial quantity. Thus, bar of Section 37 of the ND& PS Act is not applicable. Reference can also be made to the decisions of our Hon'ble High Court in ***Surjan versus State of H.P. Latest HLJ 2002 (H.P.) 934 and Ved Ram versus state of Himachal Pradesh 2007(1) Shim. L.C. 152, Raj Kamal versus State of Himachal Pradesh, Cr. MP(M) No. 1371 of 2018, Decided on 24.10.2018, Pawan Dixit versus State of Himachal Pradesh Cr.MP (M) No. 1570 of 2017, Decided on January 2, 2018 and Pawan Kumar versus State of H.P. Cr. MP (M) No.1776 of 2018 decided on 28.12.2018.***

8. Learned counsel for the accused/bail applicants has argued that the accused/bail applicants deserve to be granted bail because nothing is to be recovered from them and further they belong to respectable family and have roots in the society and, therefore, there is no chance of their fleeing away from the justice or tamper with the evidence.

9. On the other hand, learned P.P. has argued that the accused/bail applicants have committed serious offences and their release on bail, at the stage of investigation, may hamper

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the investigation as they may threaten the witnesses etc.

10. The Court granting the bail should exercise its discretion in judicious manner and not as a matter of course. At the stage of granting the bail, the detailed examination of the evidence and elaborate documentation of the merit of the case need not to undertaken. Here, I refer to the decision of the Hon'ble Apex Court in ***Niranjan Singh and another versus Prabhakar RajaramKharote Singh, AIR 1980, SC 785***. It is also settled proposition of law that bail is not to be denied merely on the basis of gravity of offence and as a measure of punishment to the accused. The purpose of keeping a person behind the judicial custody is to ensure an independent investigation.

11. One of the grounds taken for non-grant of bail by the police is that the bail-applicants may influence the witnesses, but this allegation is not supported by any record. The other grounds opposing the bail are also without any basis. The liberty of a person can not be denied only on the basis of bald allegation. The bail is a right and jail is an exception. Keeping the bail-applicants in jail without any trial amounts to predetermination of the guilt. The bail-applicants can be kept in jail only on the ground of gravity of crime, apprehension of his tampering with evidence or fleeing from justice etc.

12. Thus, no case is made out to deny bail to the bail-applicants. After taking into consideration all the facts of the case, nature and gravity of the offence and the ratio of above decisions of Hon'ble High Court, I think that the applicants/

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accused deserve to be released on bail subject to furnishing personal bond in the sum of ₹ 2,00,000/- (rupees two lacs) each with two sureties each of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Shimla/Ilalaqua Magistrate. However, release of the bail applicant is subject to the following conditions:-

- i) That the bail applicants shall make themselves available for interrogation as and when called by the investigating officer in this case.
- ii) That the bail applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him/her from disclosing such facts to Court or to any police officer.
- iii) That the bail applicants shall not commit an offence similar to offence of which he is accused.
- iv) That the bail applicants shall not leave the country without the prior permission of the investigating officer or the court.

13. The police is at liberty to move this Court for cancellation of this order, in case, any of the above condition is found violated.

14. The observations so made, herein above, are confined to the disposal of the present bail applications and same shall have no bearing on the merits of the case.

15. Authenticated copy of this order be placed on the

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connected bail applications. File of this Court, be consigned to the record room, after due completion.

Announced and signed in the open Court today this 17<sup>th</sup> day of May, 2021.

**( Rajeev Bhardwaj )**  
**Special Judge, Shimla, H.P.**

VT

Special Judge Shimla