

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

CIS CNR No. HPSH100021702021  
CIS Case Type Bail application  
CIS Registration No. 147/2021  
Bail Application No. 77-S/22 of 2021  
Date of Institution: 05.05.2021  
Date of Decision: 17.05.2021

Shubham aged about 23 years, son of Sh. Chuni Lal, resident of VPO Jhakri, Tehsil Rampur Bushahr, District Shimla, H.P. **(Presently in judicial custody).**

...Bail applicant/accused.

Versus

State of Himachal Pradesh.

..... Respondent.

**Bail application under Section 439 of the Cr.P.C. in FIR No. 93/2021, dated 30.04.2021 under Section 21 of ND & PS Act, registered with Police Station West, District Shimla, H.P.**

For the bail applicant: Sh. Vinay Mehta, Advocate.

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

**ORDER:**

This order will dispose of an application under Section 439 of Cr.P.C. filed by the bail-applicant/accused for the grant of bail.

2. Brief facts, necessary to dispose of the bail application, are that on 29.04.2021 a police party comprising Jogeshwar Singh No.30, H.C. Lalit Kumar No. 42, Constable Bhuvnesh Kumar No. 1527 and Constable Rahul Verma No. 1500 went on patrolling, checking of traffic and stopping the crime towards Chhota shimla, Mehli, Khalini, Tutikandi, Taradevi, Shoghi etc. and at about 9:45 P.M. when they were conducting traffic checking at Khawara-Chowki, Police Barrier, a bus bearing registration No. HP-63A-4163 came from Solan side and it was stopped. When the police started checking of vehicle, the bail applicant was found sitting on seat No. 24. On seeing the police, he removed something from his right pocket and put it on the right hand seat. On getting suspicion, the police associated Sanjay Kumar and Tejinder Singh as witnesses. In their presence, the article which was kept by the bail applicant on seat No. 24 was checked and it was found transparent pouch. On opening the said pouch, some brown coloured substance was found , which was chitta, which on weighment was 8.58 grams. After completing the codal formalities, the FIR has been registered against the bail-applicant.

3. The present application has been moved by the mother of the bail-applicant under Section 439 Cr. P. C. for the grant of bail on the grounds that he is innocent and has been falsely implicated in this case. The bail applicant is a young boy of 23 years of age. He has also given undertaking that he shall abide by all the terms and conditions as imposed by the Court,

if released on bail.

4. The police have opposed the prayer of the bail-applicant/accused on the grounds that he is shrewd person and in the event of bail, he may threaten the witnesses.

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, 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-applicant is 8.58 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 attracted Reference can also be made to the decisions of our Hon'ble High Court in ***Surjan vs. State of H.P. Latest HLJ 2002 (H.P.) 934 and Ved Ram v. State of Himachal Pradesh 2007(1) Shim. L.C. 152, Raj Kamal V. State of Himachal Pradesh, Cr. MP(M) No. 1371 of 2018, Decided on 24.10.2018, Pawan Dixit Vs. State of Himachal Pradesh Cr.MP (M) No. 1570 of 2017, Decided on January 2, 2018 and Pawan Kumar Vs. State of H.P. Cr. MP (M) No.1776 of***

**2018 Decided on 28.12.2018.**

8. The bail-applicant is a young person and putting him in the jail with other criminals will only make him hardened criminal instead of reforming and bringing him in the main stream. When the crime is of serious nature and there is possibility of the accused tampering with the evidence or fleeing from justice, there is justification for sending the bail-applicant/accused in judicial custody. However, in the present case, there is no such apprehension and putting the bail-applicant behind the bar will mar his career and it also amounts to predetermination of the guilt without trial. The grounds taken by the police to deny the bail are not substantiated by record.

9. Thus, no case is made out to deny bail to the bail-applicant. 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 applicant/accused deserves to be released on bail subject to furnishing personal bond in the sum of ₹ 2,00,000/- (rupees two lacs) each with two sureties of the like amount to the satisfaction of the learned Judicial Magistrate Ist Class Court No.4, Shimla/ Illaqua Magistrate. However, release of the bail applicant is subject to the following conditions:-

- i) That the bail applicant shall make himself available for interrogation as and when called by the investigating officer in this case.

- ii) That the bail applicant 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 applicant shall not leave the country without the prior permission of the investigating officer or the Court.
- iv) The bail applicant shall attend the trial on each date, unless exempted.
- v) In case of non-appearance on the intimated date, then irrespective of the contents of the bail bonds, the bail applicant undertake to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, subject to the provisions of Sections 446 & 446-A of Cr.P.C. The failure of the petitioner to reimburse the State shall entitle the trial Court to order transfer of money from the bank account(s) of the petitioner. However, this recovery is subject to the condition that the expenditure incurred must be only to trace the bail applicants and relates to the exercise

undertaken solely to nab the bail applicant in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.

- vi) In case the bail applicants commit any fresh offence during the bail, then they shall intimate the SHO of the present police station, with all the details of the present and the new FIR, within thirty days of the knowledge of such fresh FIR. In such a situation, it shall be open for the State, if it deems fit and proper, to apply for cancellation of this bail.
- vii) The bail applicant shall surrender all firearms along with ammunition, if any, and the arms license to the concerned authority within 30 days from today.
- viii) The bail applicants shall inform the SHO about the place of residence during trial. The bail applicants shall intimate about the change of residential address, within two weeks from such change, to the police station, and after filing of the Police report also to the trial Court.
- ix) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may file an application for cancellation of bail of the bail applicant.

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

11. 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.

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

Sd/-

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

PS\*