

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

**Cr.MP(M) No. 1100 of 2021**  
**Reserved on: 22.6.2021**  
**Date of Decision: 2.7.2021**

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**Sanjeev Kumar**

**...Petitioner.**

**Versus**

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**State of H.P.**

**...Respondent.**

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**Coram:**

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

**Whether approved for reporting?<sup>1</sup> No**

**For the petitioner: Mr. C.S. Thakur, Advocate.**

**For the respondent: Mr. Nand Lal Thakur Addl. Advocate General, Mr. Ram Lal Thakur Deputy Advocate General, and Mr. Rajat Chauhan Law Officer.**

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**THROUGH VIDEO CONFERENCE**

<b>FIR No.</b>	<b>Dated</b>	<b>Police Station</b>	<b>Sections</b>
<b>366/2020</b>	<b>20.12.2020</b>	<b>Kullu, District Kullu</b>	<b>20, 29 of NDPS Act and Section 188 and 269 of IPC.</b>

**Anoop Chitkara, Judge.**

The petitioner, incarcerated upon his arrest for possessing commercial quantity of 1 Kg 855 gram Charas has come up before this Court under Section 439 of CrPC, seeking regular bail.

2. Earlier, the bail petitioner had filed the following bail petitions:

(a) Bail application i.e. CNR No. HPKU01-00001-2021, titled as Sanjeev Kumar Vs. State of HP was filed before the Court of learned Special Judge-I, Kullu and the same stood dismissed on 15.1.2021.

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<sup>1</sup> **Whether reporters of Local Papers may be allowed to see the judgment?**

(b) Bail application i.e. Cr.MP(M) No. 127 of 2021, titled as Sanjeev Kumar Vs. State of HP was also filed before this Court and the same stood dismissed vide order dated 4.2.2021.

(c) Thereafter bail application i.e. Cr.MP(M) No. 631 of 2021 was also filed by the same petitioner and the same was dismissed as withdrawn.

3. In Para 4 of the bail application, the petitioner declares having 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 on 20.12.2020 police party of the aforesaid Police Station were patrolling within their jurisdiction to detect the crime of intoxicants. At around 3:30 am (night time), when the Investigator reached at a spot known as 'Khaladanala' bridge near 'Shishamati', then two persons were walking on the road. On seeing them, the Investigator asked the driver to stop the vehicle. After that the Investigator inquired from these two persons of their wandering at such mid night. On this, both of them became perplexed. One person was carrying a hand bag, who tried to conceal it behind him. The Investigator asked him about the bag and about his name, on which the said person told his name as Inder Dev, whereas the other person told his name as Sanjeev Kumar. When the Investigator asked them why in Covid19 pandemic they are walking at such odd hours, then they could not give any satisfactory answer. It raised suspicion in the mind of the Investigator and he decided to conduct search of the bag. Because the time was odd, as such despite efforts the Investigator could not associate independent witnesses and conducted search in presence of the police officials. From the bag which was carried by accused Inder Dev, police recovered contraband, which when weighed, the same was found to be 1.855 Kg Charas. After that the police party complied with all procedural requirements of NDPS Act and Cr.PC and arrested the accused persons. Based on these allegations, the Police registered the FIR mentioned above.

5. Ld. Counsel for the petitioner submits that the evidence collected against the petitioner is legally inadmissible. Ld. Counsel for the petitioner further contends that the petitioner is a first offender and incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

6. On the contrary, the State contends that the Police have collected sufficient evidence. Further, the quantity involved is commercial, and S. 37 of the NDPS Act's restrictions do not entitle the accused to bail. The accused has yet not discharged the presumption under S. 35 of the NDPS Act. The crime is heinous, the accused is a risk to law-abiding people, and bail might send a wrong message to society.

**REASONING:**

7. Mr. C.S. Thakur, learned counsel for the petitioner argued that the accused arraigned simply because of call details between him and co-accused Manjeet juvenile offender, who is on bail. Learned counsel for the petitioner further submitted that the call details between Sanjeev Kumar and Manjeet were due to the reason that they belong to the same school and were quite close. To prove this, he has annexed school leaving certificates of Manjeet and Sanjeev Kumar. A perusal of school leaving certificates, Ext. P-1 reveals that petitioner Sanjeev Kumar had studied in Government Higher School, Falan from 7<sup>th</sup> April, 2012 to 31<sup>st</sup> March, 2015. The other accused Manjeet had also studied in the same school w.e.f. 24<sup>th</sup> June, 2014 till 31<sup>st</sup> March, 2017. Given above, both of them were together in the same school from 24<sup>th</sup> June, 2014 till 31.3.2015. Thus even if there were call details between them, it is quite possible that they were calling in normal course being schoolmates. However, burden on the petitioner Sanjeev Kumar was not just the call details but he was arrested along with main accused Inder Dev from whose possession, the police party had recovered 1 kg 855 gram of charas. Although accused Inder Dev was carrying charas in his hand but on seeing the police party, both of them got perplexed. On the basis of call details, the police party arrested another accused person. Investigation revealed that they had purchased charas from juvenile offender. Even if petitioner Sanjeev Kumar has come out of call details and has explained the same but still his presence with Inder Dev is prima facie proved by photographs which form part of the challan. A perusal of the bail petition does not point out that petitioner was not present there at the spot. Accordingly, the reverse burden is on the accused. Thus given the commercial quantity involved, the rigors of Section 37 of the NDPS Act is on the accused to at least explain that what was he doing with the main accused at such odd hours during lockdown. Although this Court is satisfied about the call details between Manjeet and petitioner but due to his

presence with main accused at odd hours, this Court is not satisfied that there are reasonable grounds for giving him bail as he was not guilty of such offence. However, the petitioner may file a fresh petition placing better particulars so as to discharge the burden and make this court believe that he was not guilty of such offence so as to comply with the mandate of Section 37 of the NDPS Act.

8. The decision of this Court in **Satinder Kumar v. State of H.P** Cr.MP(M) No. 391 of 2020, decided on 4<sup>th</sup> Aug 2020, covers the proposition of law involved in this case, wherein this Court has held that satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The ratio of the decision is that to get the bail in commercial quantity of substance, the accused must meet the twin conditions of S. 37 of NDPS Act. It implies that the accused should satisfy its twin conditions and come out clean.

9. The quantity of Charas allegedly recovered from the petitioner is 1 kilogram 855 gram, and thus falls in the category commercial quantity. The petitioner has not stated anything to discharge the rigors of S. 37 of NDPS Act. The stand that the accused is in custody for more than 1 and half year is also not a legal ground to overcome the rigors of S. 37 of NDPS Act. Given above, at this stage, the petitioner fails to make out a case for bail.

10. Ld. Counsel for the petitioner submitted that as per newspaper reports, the State of Himachal Pradesh is legalizing cannabis (Charas), subject to the rules and regulations framed in this regard. Be that as it may, the petitioner may explore what benefits such rules, regulations, and the policy change might apply to the persons involved in the commercial quantity of charas (Cannabis). The policy change may open new possibilities for bail to the persons involved in the commercial quantity of charas (Cannabis) by making out the new grounds for bail. Thus, it shall be open for the petitioner to file a new bail petition pointing out the new grounds in the changed scenario if it happens. He may also file another application on changed circumstances or with better particulars.

11. 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.

12. Given above, In the facts and circumstances peculiar to this case, the petition is dismissed. However, the petitioner shall be at liberty to file a new petition on the same cause of action or different grounds.

**Anoop Chitkara,  
Judge**

2<sup>nd</sup> July, 2021  
(Guleria)

High Court of H.P.