(2025:HHC:17735)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) Nos. 1034 & 1035 of 2025
Reserved on: 26.05.2025
Cr. MP(M) No.1201 of 2025
Reserved on 30.05.2025.
Date of Decision: 05.06.2025.

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1. Cr.MP(M) No. 1034 of 2025

Naveen Chauhan ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

2. Cr.MP(M) No. 1035 of 2025

Rajan Mehta ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

3. Cr.MP(M) No. 1201 of 2025

Mohit Aggarwal ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

For the Petitioner(s) : Mr. N.S. Chandel, Senior Advocate, with Mr. Digvijay Singh, Advocate,

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

in Cr.MP(M) Nos. 1034 & 1035 of 2025.

Mr. Vinod Kumar Thakur & Mr. Raman Sharma, Advocates, in Cr.MP(M) No.1201 of 2025.

For the Respondents/ State : Mr Lokender Kutlehria, Additional Advocate General, in Cr.MP(M) Nos. 1034 & 1035 of 2025.

Mr. Jitender K. Sharma, Additional Advocate General, in Cr.MP(M) No.1201 of 2025, with HC Harish Kumar No.84, I/O PS Rampur, District Shimla (H.P).

Rakesh Kainthla, Judge

All the petitions have been filed for seeking regular bail in the same FIR; hence, these are being taken up together for disposal by way of a common judgment.

2. The petitioners have filed the present petitions seeking regular bail in FIR No. 30 of 2025, dated 04.03.2025, registered for the commission of offences punishable under Sections 21, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short "NDPS Act") and Section 111 of Bhartiya Nyaya Sanhita (in short "BNS"), at Police Station, Rampur, Shimla, H.P. As per the prosecution, the police party found a vehicle bearing temporary registration number T1124-HP7712N parked on the roadside. The police found Sohan Lal & Geeta

sitting in the vehicle. The police searched the vehicle and recovered 26.68 grams of chitta/heroin from the dashboard of the vehicle. The police arrested the occupants of the vehicle. The police checked the bank account of the occupants of the vehicle and found money transactions. The police arrested the petitioners based on the money transaction with Sohan Lal. The police found that the petitioner Rajan Mehta had transferred ₹40,570/- to the account of Sohan Lal @ Sonu, and he had made 76 phone calls to Sohan Lal @ Sonu. The petitioner, Naveen Chauhan, had transferred ₹17,300/- to the account of Sohan Lal @ Sonu and made 06 phone calls. The petitioner, Mohit Aggarwal, had transferred ₹ 20,300/- to the account of Sohan Lal, and he had talked to him 28 times. The petitioners are innocent, and they were falsely implicated in the present FIR. There is no evidence to connect the petitioners with the commission of the offence. They belong to respectable families, and there is no chance of their absconding. The petitioners would abide by the terms and conditions which the Court may impose. Hence, the petitions.

3. The petitions are opposed by filing status reports asserting that the police party was on patrolling duty on

03.03.2025. They found a vehicle bearing Registration No. T1124-HP7712N, parked on the roadside. The police went to the vehicle. The driver of the vehicle identified himself as Sohan Lal, and the lady sitting beside him identified herself as Geeta Sreshta. The police searched the vehicle and recovered a polythene powder containing 26.68 grams of chitta/heroin. The police seized the chitta/heroin and arrested the occupants of the vehicle. The call details of Sohan Lal and Geeta Sreshta were obtained, and their bank account details were checked. It was found that Sohan Lal had ₹3,26,639.41/- in his bank account and Geeta Sreshta had ₹1,19,498.52/- in her account. Statements of their bank accounts revealed that ₹45,61,780/ were credited to the account of Sohan Lal between 01.01.2023 to 04.03.2025, whereas ₹45,35,780/- were debited from his account maintained in Central Bank of India. Further, ₹17,10,260/- were credited to his bank account maintained in Punjab National Bank, Branch Manali (Kullu) between 01.01.2023 and 04.03.2025. They revealed on inquiry that this money was obtained by them through the sale of chitta/heroin. The police arrested Adital Rathore, Gagan Thakur, Raj Kumar Mehta, Rajan Mehta-petitioner, Sanjeev Sharma, Kushal Chauhan, Ujjawal Pandit, Mohit Aggrawal-petitioner &

Naveen Chauhan-petitioner on 21.03.2025 for the commission of an offence punishable under Section 29 of the NDPS Act. They were in touch with Sohan Lal and had transferred a huge amount to his account. Sohan Lal was running an organised crime syndicate. Hence, Section 111 of BNS was also added. The police arrested Ritik Jistu, Pushpendra, Pawan Chhetri, Digambar Singh, Dheeraj Sharma, Vipul, Honey Lal, Raman Kaith, Shashi Kumar, Dharam Sen, Hukam Chand, Ankehswar Dutt, Vimal, Mahender Kumar, Aashish Kumar, Gaurav, Hanish Thakur and Lalit Kaith based on the bank transactions. Sohan Lal also revealed that Pooja Atwal and Asrshdeep Atwal were supplying the chitta/heroin to him. FIR No.116/2022, dated 05.08.2022, FIR No. 12/2025, dated 07.02.2025, FIR No. 104/2024, dated 08.10.2024 and FIR No.30/25, dated 04.03.2025, were found to have been registered against Sohan Lal. The police also arrested Arshdeep and Pooja Atwal. Asha Devi had also transferred the money to their bank, and she was arrested on 15.04.2025. All the accused were selling/purchasing the chitta/heroin, and Section 27A of the NDPS Act was also added. The police arrested Lakpa Dorge on 21.04.2025, Nikhil Negi and Jagat Ram on 27.04.2025, and Dushyant Sharma on 07.05.2025. Petitioner, Rajan Mehta,

had transferred ₹1,29,270/- to the accounts of Sohan Lal, Raman Kaith, Ujjawal Pandit, Lalit Kaith, Dheeraj Sharma, Naveen Chauhan and Nikhil Negi. FIR No. 86/2024, dated 20.07.2024, was registered against the petitioner Rajan Mehta, which is pending for adjudication before the learned Trial Court. Petitioner Naveen Chauhan had transferred ₹74,800/- to the account of Sohan Lal, Ritik Jistu, Rajan Mehta, Ujjawal Pandit, Lalit Kaith and Kushal Chauhan. FIR No. 29/205, dated 06.04.2019, was registered against him at Police Station Jhakri. The petitioner, Mohit Aggarwal, had transferred ₹ 20,300/- to the account of Sohan Lal and made 293 calls to the accused Atidal Rathore. No other case was registered against him, hence, the status report.

4. I have heard Mr. N.S. Chandel, learned Senior Counsel, assisted by Mr. Digvijay Singh, learned counsel for the petitioners/accused in Cr.MP(M) Nos. 1034 & 1035 of 2025, Mr. Vinod Kumar Thakur & Mr. Raman Sharma, learned counsel for the petitioner, in Cr.MP(M) No.1201 of 2025, Mr. Lokender Kutlehria and Mr. Jitender Sharma, learned Additional Advocate General, for the respondent/State.

5. Mr. N.S. Chandel, learned Senior Counsel for the petitioners, in Cr.MP(M) No.1034 and 1035 of 2025, submitted that the petitioners are innocent and they were falsely implicated. There is no material to connect them with the commission of a crime except the call detail record and the financial transactions, which do not constitute legally admissible evidence. No recovery was made from the petitioners. Therefore, he prayed that the present petitions be allowed and the petitioners be released on bail.

6. Mr. Vinod Kumar Thakur and Mr. Raman Sharma, learned counsel, for the petitioner in Cr.MP(M) No.1201 of 2025 submitted that there is no evidence against the petitioner except the financial transactions, which are not sufficient to connect him with the commission of a crime. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

7. Mr. Lokender Kutlehria and Mr. Jitender Sharma, learned Additional Advocate General, for the respondent/State, submitted that the petitioners are part of an organised syndicate which is involved in the sale/purchase of chitta/heroin. This is

evident from the call detail record and the bank transactions; therefore, they prayed that the present petitions be dismissed.

8. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

9. The parameters for granting bail were considered by the Hon'ble Supreme Court in ***Ajwar v. Waseem (2024) 10 SCC 768: 2024 SCC OnLine SC 974,*** wherein it was observed on page 783: -

> ***"Relevant parameters for granting bail***
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> **26.** While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [Refer: ***Chaman Lal* v. *State of U.P.* [*Chaman Lal* v. *State of U.P.*, (2004) 7 SCC 525: 2004 SCC (Cri) 1974]; *Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977]; *Masroor v. State of U.P. [Masroor v. State of U.P.*, (2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368]; *Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765]; *Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527]; *Anil Kumar Yadav v. State (NCT of Delhi)[Anil Kumar***

Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425]; Mahipal v. Rajesh Kumar [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] .]

10. This position was reiterated in ***Ramratan v. State of M.P., 2024 SCC OnLine SC 3068,*** wherein it was observed: -

> "**12.** The fundamental purpose of bail is to ensure the accused's presence during the investigation and trial. Any conditions imposed must be reasonable and directly related to this objective. This Court in ***Parvez Noordin Lokhandwalla* v. *State of Maharastra (2020) 10 SCC 77*** observed that though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437(3) and 439(1)(a) CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. The relevant observations are extracted herein below:
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> > "**14.** The language of Section 437(3) CrPC, which uses the expression "any condition ... otherwise in the interest of justice" has been construed in several decisions of this Court. *Though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437(3) and 439(1)(a) CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice.* Several decisions of this Court have dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail." (Emphasis supplied)

13. In ***Sumit Mehta*** **v.** ***State (NCT of Delhi) (2013) 15 SCC 570***, this Court discussed the scope of the discretion of the Court to impose "any condition" on the grant of bail and observed in the following terms:—

> **"15.** The words "any condition" used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. *Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance, and effective in the pragmatic sense, and should not defeat the order of grant of bail.* We are of the view that the present facts and circumstances of the case do not warrant such an extreme condition to be imposed." (Emphasis supplied)

14. This Court, in ***Dilip Singh*** **v.** ***State of Madhya Pradesh (2021) 2 SCC 779***, laid down the factors to be taken into consideration while deciding the bail application and observed:

> "**4.** It is well settled by a plethora of decisions of this Court that criminal proceedings are not for the realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. *The factors to be taken into consideration while considering an application for bail are the nature of the accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; the reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations.* A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as

> a recovery agent to realise the dues of the complainant, and that too, without any trial." (Emphasis supplied)

11. This position was reiterated in ***Shabeen Ahmed versus State of U.P., 2025 SCC Online SC 479.***

12. The present petitions have to be decided as per the parameters laid down by the Hon'ble Supreme Court.

13. The petitioner(s) were arrested based on the statements made by co-accused, Sohan Lal & Geeta Shrehtra, the deposit of money by them in the account of Sohan Lal and other co-accused and the call detail records. It was laid down by the Hon'ble Supreme Court in ***Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547: (2020) 2 SCC (Cri) 361: 2019 SCC OnLine SC 588*** that a statement made by co-accused during the investigation is hit by Section 162 of Cr.P.C. and cannot be used as a piece of evidence. It was also held that the confession made by the co-accused is inadmissible under Section 25 of the Indian Evidence Act. It was observed at page 568: -

> **44.** Such a person, viz., the person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned, and the statement is taken by the police officer. A confession that is made to a police officer would be inadmissible, having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act, would also be inadmissible. A

> confession, unless it fulfils the test laid down in ***Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66: AIR 1939 PC 47]*** and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC."

14. Similarly, it was held in ***Surinder Kumar Khanna vs Intelligence Officer Directorate of Revenue Intelligence 2018 (8) SCC 271*** that a confession made by a co-accused cannot be taken as a substantive piece of evidence against another co-accused and can only be utilised to lend assurance to the other evidence. The Hon'ble Supreme Court subsequently held in ***Tofan Singh Versus State of Tamil Nadu 2021 (4) SCC 1*** that a confession made to a 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 petitioners.

15. 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.

16. 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 coaccused Dabe Ram, this Court had considered the existence of a prime facie case against the petitioner and had rejected the bail application as not satisfying the conditions of Section 37 of NDPS Act.
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> **[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.
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> **[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 the aforesaid elucidation, the petitioner is also entitled to the benefit of bail.

17. 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.***

18. Therefore, the petitioners cannot be detained in custody based on a statement made by the co-accused, as the same does not constitute a legally admissible piece of evidence.

19. The police have also relied upon the deposit of money in the accounts of Sohan Lal and Geeta Sreshta. It was laid down by the Kerala High Court in ***Amal E vs State of Kerala 2023:KER:39393*** that financial transactions are not sufficient to connect the accused with the commission of a crime. It was observed:

> "From the perusal of the case records, it can be seen that, apart from the aforesaid transactions, there is nothing to show the involvement of the petitioners. It is true that the documents indicate the monetary transactions between the petitioners and some of the accused persons, but the question that arises is whether the said transactions were in connection with the sale of Narcotic drugs. To establish the same, apart from the confession statements of the

> accused, there is nothing. However, as it is an aspect to be established during the trial, I do not intend to enter into any finding at this stage, but the said aspect is sufficient to record the satisfaction of the conditions contemplated under section 37 of the NDPS Act, as the lack of such materials evokes a reasonable doubt as to the involvement of the petitioner."

20. It was submitted that the petitioners are involved in the financing of the drugs; therefore, they are involved in the commission of an offence punishable under Section 27A of the ND&PS Act. This submission is not acceptable. Bombay High Court dealt with Section 27A of the ND&PS Act in ***Rhea Chakraborty Vs. Union of India 2021 Crl. LJ 248*** and held that the sale and purchase of the drugs are separately made punishable under Sections 20, 21, 22 and 23 of the NDPS Act and the term financing cannot be interpreted to mean providing money for a particular transaction but can only mean making that particular activity operational or sustainable. It was observed: -

> "**66.** Section 27A is much wider if sub-clause (iv) of Section 2(viiia) is taken into account. This sub-clause (iv) of Section 2(viiia) takes in its sweep all the remaining activities which are not mentioned in sub-clauses (i),(ii) & (iii). This covers just about every activity which can be described as dealing in narcotic drugs or psychotropic substances. The interpretation of Section 27A should not be stretched to the extent of rendering the classification of

sentences depending on the quantities in penal Sections 20, 21, 22 and 23 otiose.

67. Sub-clause (viiia) of Section 2 of the NDPS Act is an inclusive definition. The inclusive part mentions financing, abetting or conspiring and harbouring. The financing and harbouring parts are specifically made punishable under Section 27A.

68. *The activities mentioned in Section 2(viiia)(iii) and Section 8(c) refer to sale, purchase, export, import, etc. All these activities involve monetary transactions. For every sale or purchase, there can be use of money. But that will not mean that either of the parties has "financed" the transaction. Such sales and purchases are separately prohibited and made punishable under Section 8(c), read with Section 20 and other similar Sections. Therefore, "financing" is something more than just paying for purchases and other activities involving contraband as defined under Section 8(c). Contravention of that Section and indulging in activities mentioned in Sections 20, 21, 22 and 23 incur punishment depending on the quantity of the contraband.*

69. For interpreting Section 27A harmoniously with the Scheme of the Act and other Sections, it is necessary to go to the Statement of Objects and Reasons for incorporating this Section in the Act w.e.f. 29.5.1989. The Statement of Objects and Reasons of the 1989 Amendment, which is reproduced hereinbefore, mentions that India was facing a problem of transit traffic in illicit drugs. The spillover from such traffic was causing problems of abuse and addiction. Therefore, a need was felt to amend the Law to further strengthen it.

70. Thus, the aim was to control the traffic in illicit drugs as the spillover from such traffic was causing problems of abuse and addiction. The Legislature wanted to attack the basic cause of the illicit traffic of drugs. The prohibitory Section 8 was already existing at that time. Therefore, a separate Section 27A was introduced to check these activities, which were the root cause of illicit traffic.

> "Financing" and "harbouring" such activities were, therefore, specifically mentioned under Section 27A.
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> **71.** "Financing" is not defined under the Act. The Concise Oxford Dictionary defines the word "finance" as "(1) the management of (esp. public) money, (2) monetary support for an enterprise, (3) (in pl.) the money resources of a state, company, or person, to provide capital for (a person or enterprise)".
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> **72.** Black's Law Dictionary gives the meaning of the word "finance" as "to raise or provide funds".
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> **73.** *Thus, "financing" as generally understood, is offering monetary support or provide funds.*
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> **74.** *Therefore, simply providing money for a particular transaction or other transactions will not be financing of that activity. Financing will have to be interpreted to mean to provide funds for either making that particular activity operational or for sustaining it. It is the financial support which directly or indirectly causes the existence of such illicit traffic. The word "financing" would necessarily refer to some activities involving illegal trade or business*.
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> **75.** The allegations against the Applicant of spending money in procuring drugs for Sushant Singh Rajput will not, therefore, mean that she had financed illicit traffic." (emphasis supplied)

21. I respectfully agree with the judgment of the Bombay High Court and hold that financing does not involve the sale/purchase of drugs but something more. Interpreting the term financing as sale/purchase would make the provisions of Sections 20, 21, 22 and 23 of the ND&PS Act redundant, and a statute cannot be interpreted in a manner to make any part of the legislation redundant. It was laid down by the Hon'ble Supreme

Court in ***Nathi Devi v. Radha Devi Gupta*, *(2005) 2 SCC 271: 2004 SCC OnLine SC 1625*** that a statute cannot be interpreted to make any of its provisions redundant. It was observed on page 285:

> "**31.** Furthermore, it is now well settled that a statute should be read in a manner which would give effect to all the words used in the Act and in the event the decision of this Court in ***Kanta Goel [(1977) 2 SCC 814]*** is read in a manner suggested, the expressions "let out by her or by her husband" and "such premises" in Section 14-D would be otiose. Such a construction is not contemplated in law in view of the well-settled principle that endeavour should be made to give effect to all the expressions used in a statute."

22. Further, the legislature has consciously used the words sale, purchase and financing in different provisions. These words are different and cannot mean the same. It was laid down in ***The Guardians of the Parish of Brighton vs The Guardians of the Strand Union [1891] 2 Q.B. 156*** that when different words are used by the legislature, they are presumed to carry different meanings. It was observed:

> It is a rule of construction that where in the same Act of Parliament, and relation to the same subject matter, different words are used, the Court must see whether the legislature has not made the alteration intentionally, and with some definite purpose; *primâ facie,* such an alteration would be considered intentional. We have to determine, then, whether "pauper" in s. 36 has a different meaning from "person" in ss. 34 & 35, and I am clearly of the opinion, after hearing the arguments and reading the

judgments of the Divisional Court, that "pauper" means something different from "person."

23. A similar view was taken in ***Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala*, *(2001) 5 SCC 175: 2001 SCC (Cri) 857: 2001 SCC OnLine SC 621***, wherein it was observed on page 191:

> **"19...**When the legislature has taken care of using different phrases in different sections, normally different meaning is required to be assigned to the language used by the legislature, unless context otherwise requires. However, in relation to the same subject matter, if different words of different import are used in the same statute, there is a presumption that they are not used in the same sense (***Member, Board of Revenue v. Arthur Paul Benthall [AIR 1956 SC 35***] AIR at p. 38)...."

24. Further, the words sale and finance are not the same and cannot mean the same. Lord Atkin held in his dissenting judgment of ***Liversidge v. Sir John Anderson and another (1942) A.C. 206*** that the strained meaning cannot be given to the ordinary words. It was observed:

> "I protest, even if I do it alone, against a strained construction put on words with the effect of giving an uncontrolled power of imprisonment to the minister. To recapitulate: The words have only one meaning. They are used with that meaning in statements of the common law and statutes. They have never been used in the sense now imputed to them. They are used in the Defence Regulations in their natural meaning, and, when it is intended to express the meaning now imputed to them, different and apt words are used in the regulations generally and in this regulation in particular. Even if it

> were relevant, which it is not, there is no absurdity or no such degree of public mischief as would lead to a non-natural construction.
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> I know of only one authority which might justify the suggested method of construction: "'When I use a word,' Humpty Dumpty said in rather a scornful tone, 'it means just what I choose it to mean, neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be master — that's all.'" ("Through the Looking Glass," c. vi.) After all this long discussion, the question is whether the words "If a man has" can mean "If a man thinks he has." I am of the opinion that they cannot, and that the case should be decided accordingly.

25. Therefore, it is difficult to agree with the submission that financing in Section 27A of the NDPS Act is equivalent to sale/purchase.

26. It was specifically mentioned in the status reports that the petitioners are involved in the sale/purchase of the chitta/heroin. Therefore, as per the status reports, it was a simple case of sale and purchase and did not involve the financing of the drug trade. Hence, *prima facie*, the applicability of Section 27A of the ND&PS Act is not made out based on the allegations contained in the status report.

27. The police have also added Section 111 of BNS. It reads as under:

"**111. Organised Crime.** "(1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organized crime.

Explanation. —For the purposes of this subsection,—

(i) "organised crime syndicate" means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang, indulge in any continuing unlawful activity;

(ii) "continuing unlawful activity" means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence;

(iii) "economic offence" includes criminal breach of trust, forgery, counterfeiting of currency notes, bank notes and Government stamps, hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution organization for obtaining monetary benefits in any form.

(2) Whoever commits organised crime shall—

(a) If such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to a fine which shall not be less than ten lakh rupees;

(b) In any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to a fine which shall not be less than five lakh rupees.

(3) Whoever abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or otherwise engages in any act preparatory to an organised crime, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(4) Any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to a fine which shall not be less than five lakh rupees.

(5) Whoever, intentionally, harbours or conceals any person who has committed the offence of an organised crime shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees: Provided that this sub-Section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

(6) Whoever possesses any property derived or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life

> and shall also be liable to fine which shall not be less than two lakh rupees.
>
> (7) If any person on behalf of a member of an organized crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than one lakh rupees".

28. It is apparent from the bare perusal of the Section that a person should indulge in a specified activity either singly or jointly as a member of an organised crime syndicate in respect of which more than one charge sheet has been filed before a Court within the preceding period of ten years and the Court has taken cognisance of such offence.

29. It was laid down by the Kerala High Court in ***Mohd. Hashim v. State of Kerala, 2024 SCC OnLine Ker 5260*** that where no charge sheet was filed against the accused in the preceding ten years, he cannot be held liable for the commission of an offence punishable under Section 111 of the BNS Act. It was observed:

> "**10.** Section 111 (1) explicitly stipulates that to attract the offence, there should be a continuing unlawful activity, by any person or group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate. The material ingredient to attract the above provision, so far as the present case is concerned, is that there should have been a

continuing unlawful activity committed by a member of an organised crime syndicate or on behalf of such syndicate.

11. Explanation (i) and (ii) of sub-section (1) of Section 111 of BNS define an organised crime syndicate and a continuing unlawful activity, respectively.

12. Continuing unlawful activity under explanation (ii) of Section 111(1) of the BNS means an activity prohibited by law, which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheet has to be filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such an offence. Furthermore, an organised crime syndicate under Explanation (i) of sub-section (1) of Section 111 of the BNS means a group of two or more persons who, acting either singly or jointly as a syndicate or gang, indulge in any continuing unlawful activity.

13. While interpreting the analogous provisions of the Maharashtra Control of Organised Crime Act, 1999, which mandates the existence of at least two charge sheets in respect of a specified offence in the preceding ten years, the Honourable Supreme Court in ***State of Maharashtra v. Shiva alias Shivaji Ramaji Sonawane [(2015) 14 SCC 272]*** has unequivocally held as follows:

> "9. It was in the above backdrop that the High Court held that once the respondents had been acquitted for the offence punishable under the IPC and Arms Act in Crimes No. 37 and 38 of 2001 and once the Trial Court had recorded an acquittal even for the offence punishable under Section 4 read with Section 25 of the Arms Act in MCOCA Crimes No. 1 and 2 of 2002 all that remained incriminating was the filing of charge sheets against the respondents in the past and taking of cognizance by the competent court over a period of

ten years prior to the enforcement of the MCOCA. The filing of charge sheets or taking of the cognisance in the same did not, declared the High Court, by itself constitute an offence punishable under Section 3 of the MCOCA. That is because the involvement of respondents in previous offences was just about one requirement, but by no means the only requirement, which the prosecution has to satisfy to secure a conviction under MCOCA. *What was equally, if not more important, was the commission of an offence by the respondents that would constitute "continuing unlawful activity". So long as that requirement failed, as was the position in the instant case, there was no question of convicting the respondents under Section 3 of the MCOCA. That reasoning does not, in our opinion, suffer from any infirmity*.

10. The very fact that more than one charge sheet had been filed against the respondents, alleging offences punishable with more than three years' imprisonment, is not enough. *As rightly pointed out by the High Court, the commission of offences before the enactment of MCOCA does not constitute an offence under MCOCA. Registration of cases, filing of charge sheets and taking of cognisance by the competent court in relation to the offence alleged to have been committed by the respondents in the past is but one of the requirements for invocation of Section 3 of the MCOCA. Continuation of unlawful activities is the second and equally important requirement that ought to be satisfied. Only if an organised crime is committed by the accused after the promulgation of MCOCA, he may, seen in the light of the previous charge sheets and the cognisance taken by the competent court, be said to have committed an offence under Section 3* of the Act.

11. In the case at hand, the offences which the respondents are alleged to have committed after the promulgation of MCOCA were not proved against them. The acquittal of the respondents in Crimes Nos. 37 and

38 of 2001 signified that they were not involved in the commission of the offences with which they were charged. Not only that the respondents were acquitted of the charge under the Arms Act, even in Crimes Case Nos. 1 and 2 of 2002. No appeal against that acquittal had been filed by the State. This implied that the prosecution had failed to prove the second ingredient required for the completion of an offence under MCOCA. *The High Court was, therefore, right in holding that Section 3 of the MCOCA could not be invoked only on the basis of the previous charge sheets for Section 3 would come into play only if the respondents were proved to have committed an offence for gain or any pecuniary benefit or undue economic or other advantage after the promulgation of MCOCA*. Such being the case, the High Court was, in our opinion, justified in allowing the appeal and setting aside the order passed by the Trial Court".

14. Subsequently, the Honourable Supreme Court in ***State of Gujarat v. Sandip Omprakash Gupta [2022 SCC OnLine SC 1727]***, while interpreting the analogous provisions of the Gujarat Control of Terrorism and Organised Crime Act, 2015, clarified the ratio in ***Shivaji alias Shivaji Ramaji Sonawane*** (supra) by observing thus:

"52. It is a sound rule of construction that the substantive law should be construed strictly so as to give effect and protection to the substantive rights unless the statute otherwise intends. Strict construction is one which limits the application of the statute by the words used. According to Sutherland, 'strict construction refuses to extend the import of words used in a statute so as to embrace cases or acts which the words do not clearly describe'.

53. The rule as stated by Mahajan C.J. in ***Tolaram Relumal v. State of Bombay, (1954) 1 SCC 961: AIR 1954 SC 496***, is that "if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which

exempts the subject from penalty rather than the one which imposes a penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature." In ***State of Jharkhand v. Ambay Cements, (2005) 1 SCC 368***, this Court held that it is a settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. The basic rule of strict construction of a penal statute is that a person cannot be penalised without a clear reading of the law. Presumptions or assumptions have no role in the interpretation of penal statutes. They are to be construed strictly in accordance with the provisions of law. Nothing can be implied. In such cases, the courts are not so much concerned with what might possibly have been intended. Instead, they are concerned with what has actually been said.

54. *We are of the view and the same would be in tune with the dictum as laid in* ***Shiva alias Shivaji Ramaji Sonawane*** *(supra) that there would have to be some act or omission which amounts to organised crime after the 2015 Act came into force i.e., 01.12.2019 in respect of which, the accused is sought to be tried for the first time in the special court.*

55. We are in agreement with the view taken by the High Court of Judicature at Bombay in the case of *Jaisingh* (supra) that neither the definition of the term 'organised crime' nor of the term 'continuing unlawful activity' nor any other provision therein declares any activity performed prior to the enactment of the MCOCA to be an offence under the 1999 Act nor the provision relating to punishment relates to any offence prior to the date of enforcement of the 1999 Act, i.e., 24.02.1999. *However, by referring to the expression 'preceding period of ten years' in Section 2(1)(d), which is a definition clause of the term 'continuing unlawful activity' inference is sought to be drawn that in fact, it takes into its ambit the acts done prior to the*

enforcement of the 1999 Act as being an offence under the 1999 Act. The same analogy will apply to the 2015 Act.

56. There is a vast difference between the act or activity, which is being termed or called an offence under a statute and such act or activity being taken into consideration as one of the requisites for taking action under the statute. For the purpose of organised crime, there has to be a continuing unlawful activity. There cannot be continuing unlawful activity unless at least two charge sheets are found to have been lodged in relation to the offence punishable with three years' imprisonment during the period of ten years. Indisputably, the period of ten years may relate to the period prior to 01.12.2019 or thereafter. In other words, it provides that the activities, which were offences under the law in force at the relevant time and in respect of which two chargesheets have been filed and the Court has taken cognizance thereof, during the period of preceding ten years, then it will be considered as continuing unlawful activity on 01.12.2019 or thereafter. It nowhere by itself declares any activity to be an offence under the said 2015 Act prior to 01.12.2019. It also does not convert any activity done prior to 01.12.2019 to be an offence under the said 2015 Act. It merely considers two chargesheets in relation to the acts which were already declared as offences under the law in force to be one of the requisites for the purpose of identifying continuing unlawful activity and/or for the purpose of an action under the said 2015 Act.

57. If the decision of the coordinate Bench of this Court in the case of ***Shiva alias Shivaji Ramaji Sonawane*** (supra) is looked into closely along with other provisions of the Act, the same would indicate that the offence of ‘organised crime’ could be said to have been constituted by at least one instance of continuation, apart from continuing unlawful activity evidenced by more than one chargesheets in the

preceding ten years. We say so, keeping in mind the following:

(a) If 'organised crime' was synonymous with 'continuing unlawful activity', two separate definitions were not necessary.

(b) The definitions themselves indicate that the ingredients of the use of violence in such activity with the objective of gaining pecuniary benefit are not included in the definition of 'continuing unlawful activity', but find place only in the definition of 'organised crime'.

(c) What is made punishable under Section 3 is 'organised crime' and not 'continuing unlawful activity'.

(d) If 'organised crime' were to refer to only more than one chargesheets filed, the classification of crime in Section 3(1)(i) and 3(1)(ii) reply on the basis of the consequence of the resulting in death or otherwise would have been phrased differently, namely, by providing that 'if any one of such offence has resulted in the death' since continuing unlawful activity requires more than one offence. Reference to 'such offence' in Section 3(1) implies a specific act or omission.

(e) As held by this Court in ***State of Maharashtra*** **v.** ***Bharat Shanti Lal Shah*** (supra) continuing unlawful activity evidenced by more than one chargesheet is one of the ingredients of the offence of organised crime and the purpose thereof is to see the antecedents and not to convict, without proof of other facts which constitute the ingredients of Section 2(1)(e) and Section 3, which respectively define commission of the offence of organised crime and prescribe punishment.

(f) There would have to be some act or omission which amounts to organised crime after the Act

came into force, in respect of which the accused is sought to be tried for the first time, in the Special Court (i.e. has not been or is not being tried elsewhere).

(g) *However, we need to clarify something important. Shiva alias Shivaji Ramaji Sonawane (supra) dealt with the situation where a person commits no unlawful activity after the invocation of the MCOCA. In such circumstances, the person cannot be arrested under the said Act on account of the offences committed by him before the coming into force of the said Act, even if he is found guilty of the same. However, if the person continues with the unlawful activities and is arrested, after the promulgation of the said Act, then such a person can be tried for the offence under the said Act. If a person ceases to indulge in any unlawful act after the said Act, then he is absolved of the prosecution under the said Act. But, if he continues with the unlawful activity, it cannot be said that the State has to wait till he commits two acts of which cognisance is taken by the Court after coming into force. The same principle would apply, even in the case of the 2015 Act, with which we are concerned.*

58. In the overall view of the matter, we are convinced that the dictum as laid by this Court in ***Shiva alias Shivaji Ramaji Sonawane***(supra) does not require any relook. The dictum in ***Shiva alias Shivaji Ramaji Sonawane*** (supra) is the correct exposition of law".

16. Section 111 (1) of the BNS in respect of organised crime is, in essence, analogous to the provisions of the Maharashtra Control of Organised Control Act and the Gujarat Control of Terrorism and Organised Crime Act. The legal principles laid down by the Honourable Supreme Court in its interpretation of organised crime as defined by the above two state legislations are applicable on all fours to Section 111 (1) of the BNS. Thus, it is not necessary to

have a further interpretation of the above analogous provision.

17. In view of the above discussion, to attract an offence under Section 111 (1) of the BNS it is imperative that a group of two or more persons indulge in any continuing unlawful activity prohibited by law, which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheet has to be filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such an offence.

18. In the present case, it is undisputed that no charge sheet has been filed against the petitioner in any court in the last ten years. Therefore, prima facie, the offence under Section 111(1) is not attracted. Nevertheless, these are matters to be investigated and ultimately decided after trial. Additionally, the petitioner has been in judicial custody for the last 57 days, and recovery has been effected.

30. This position was reiterated in ***Om Prakash vs. The State of Karnataka (07.02.2025 - KARHC): MANU/KA/0356/2025*** wherein it was observed:

"12. So far as the offence under Section 111 of the BNS is concerned, the learned Senior Counsel for the petitioners relied on a judgment of the Kerala High Court in the case of Mohammed Rashid Vs. State of Kerala in Bail Application No.5927/2024 dated 13.08.2024. The provisions of Section 111 of the BNS are borrowed from MaCOCA and similar enactments, including the KaCOC Act. It is trite law that to conclude that there is an organized crime, and the accused are members of the organized crime Syndicate, it is essential that any one of the members of the Syndicate should be facing at least

three charge sheets initiated within a period of ten years prior to the crime and which are pending. The perusal of the charge sheet nowhere indicates that any of the nine accused are facing such charge sheets within the period of ten years preceding the crime. Therefore, the invoking of the provision under Section 111 of BNS is also prima facie impermissible."

31. This judgment was followed in ***Pesala Sivashankar Reddy v. State of A.P., 2024 SCC OnLine AP 5422,*** wherein it was held:

> "**8.** The Hon'ble Supreme Court in the matter of ***State of Maharashtra*** **v.** ***Shiva Alias Shivaji Ramaji Sonawane 2015 SCC OnLine SC 648*** was dealing with the Maharashtra Control of Organised Crime Act, 1999 (MCOC) Act and the offence of organised crime under the said act. The Hon'ble Supreme Court has held that only if an organised crime is committed by the accused after the promulgation of the MCOCA Act, that he may be seen in the light of the previous charge sheet, which is taken cognisance by the competent court, would have committed an offence under Section 3 of the Act.
>
> **9.** The Hon'ble Supreme Court, in the matter of ***Mohamad Iliyas Mohamad Bilal Kapadiya v. State of Gujarat 2022 Live Law (SC) 538,*** held that to invoke the provisions of Gujarat control of terrorism and organised act crime, 2015, in respect of an act of organised crime more than one charge sheet should be filed in the preceding ten years. Section 111 of B.N.S. is analogous to the organised crime acts of various states, which were dealt with by the Hon'ble Supreme Court.
>
> **10.** The Hon'ble High Court of Kerala in the matter of ***Mohammed Hashim v. State of Kerala 2024 SCC OnLine Ker 5260.*** The learned Judge of the Kerala High Court has emphasised that Section 111 can be invoked only if more than one charge sheet has been filed for such offences in

> the preceding ten years before a competent court, and such charge sheets are taken cognisance of by the court.
>
> **11.** This Court agrees with the observations of the Kerala High Court, and admittedly, no charge sheet has been filed against the petitioner for similar offences in any court of law in the preceding ten years as such, cause for invocation of Section 111 of B.N.S. has to be dealt appropriately by the investigating officer during the course of investigation of the crime."

32. It was held in ***Suraj Singh vs. State of Punjab (25.09.2024 - PHHC): MANU/PH/4288/2024*** that the police must gather legally admissible evidence to connect the accused with the commission of a crime punishable under Section 111 of the BNS Act. It was observed:

> "15. To bring an offence into the four corners of an organised crime, the offence must fall under a category described in S. 111 of BNS, 2023. The prima facie evidence must be legally admissible to constitute any continuing unlawful activity to constitute an organised crime as defined in S. 111 BNS. Without legally admissible prima facie evidence, the State cannot make any suspect undergo custodial interrogation to hunt for such evidence against the suspect or others. The evidence must be gathered first to make out a prima facie case within the scope of S. 111 of BNS, and such evidence alone would justify custodial interrogation to carry out further investigation. Without legally admissible accusations, allegations, or evidence, the State cannot arrest a suspect to fish evidence against them or use such a suspect as custodial bait by any hook, line, and sinker to bring the case into the fold of S. 111 of BNS. Prima facie evidence must be admissible, and if such evidence is deemed inadmissible, the entire foundation will collapse."

33. The prosecution is relying upon the statement made by Sohan Lal and Geeta Sreshta during the interrogation to connect the petitioners with the commission of a crime and thereby attract the provisions of Section 111 of BNS, 2023. The statement made by the co-accused is inadmissible in evidence, and the financial transactions do not show that the money was deposited in connection with the narcotics, therefore, these cannot be used against the petitioners to connect them with the commission of an offence punishable under Section 111 of BNS, 2023.

34. It was submitted that the petitioners have not explained the reason why they were in touch with the co-accused and the deposit of the amount. This submission will not help the State. The accused have a right to silence, and it is for the prosecution to prove that the calls between the petitioners and the co-accused and the deposit of money in the account of the co-accused were because the petitioners were members of an organised crime syndicate. When the State has failed to produce any legal evidence in support of its assertions, it cannot rely upon the silence of the accused to prove its case.

35. Therefore, *prima facie*, there is insufficient material to connect the petitioners with the commission of offences punishable under Sections 21, 27A, and 29 of the ND&PS Act and Section 111(3) of BNS, and their further detention is not justified.

36. In view of the above, the present petitions are allowed, and the petitioners are ordered to be released on bail subject to their furnishing bail bonds in the sum of ₹1,00,000/- each with one surety each in the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioners will abide by the following conditions:

(i) The petitioners will not intimidate the witnesses, nor will they influence any evidence in any manner whatsoever.

(ii) The petitioners shall attend the trial and will not seek unnecessary adjournments.

(iii) The petitioners will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the concerned Police Station and the Court.

(iv) The petitioners will surrender their passports, if any, to the Court and;

(a) The petitioners will furnish their mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of

any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

37. It is clarified that if the petitioners misuse their liberty or violate any of the conditions imposed upon them, the investigating agency shall be free to move the Court for cancellation of the bail.

38. The observations made here-in-above are regarding the disposal of the petitions and will have no bearing, whatsoever, on the case's merits.

39. The petitions stand accordingly disposed of. A copy of this order be sent to the Superintendent of District Jail Kaithu, District Shimla, H.P. and the learned Trial Court by FASTER.

40. A downloaded copy of this order shall be accepted by the learned Trial Court while accepting the bail bonds from the petitioners, and in case said Court intends to ascertain the veracity of the downloaded copy of the order presented to it, the same may be ascertained from the official website of this Court.

(Rakesh Kainthla)
Judge

05th June, 2025
(Shamsh Tabrez)

KARAN SINGH GULERIA

Digitally signed by KARAN SINGH GULERIA
DN: C=IN, O=HIGH COURT OF HIMACHAL PRADESH, OU=HIGH COURT OF HIMACHAL PRADESH SHIMLA, Phone=e5d61f6599be410af7c5f0b57379e225878f23c9ea27b281046985b3b1fe0b75, PostalCode=171001, S=Himachal Pradesh, SERIALNUMBER=f72cf9165791d55ec939375291962d0d90d094876bd59591426c0b1ce651f01f, CN=KARAN SINGH GULERIA
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