

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP(M) No. 2945 of 2025

Reserved On : 24.12.2025

Decided on: 30.12.2025

Vishal Kumar

...Applicant

Versus

State of Himachal Pradesh

...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?

For the applicant : Mr. Yashveer Singh Rathore,
Advocate.

For the respondent : Mr. H.S. Rawat & Mr. Mohinder
Zharaick, Additional Advocates
General, with Ms. Avni Kochhar
Mehta, Deputy Advocate General.

Virender Singh, Judge

Applicant Vishal Kumar has filed the present application, under Section 483 of Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as 'the BNSS') for releasing him, on bail, during the pendency of the trial, arising out of **FIR No. 133 of 2024, dated 10.11.2024,**

registered under Sections 20, 25 and 29 of the Narcotic Drugs and Psychotropic Substance Act (hereinafter referred to as the ND&PS Act), **with Police Station, Damtal**, Police District Nurpur.

2. The applicant has pleaded the fact that he is innocent person and has falsely been implicated, in the present case, as he has no concern whatsoever with the offence, for which, he has been arrested, by the police.

3. According to the applicant, story of the prosecution is highly improbable and rigors of Section 37 of the ND&PS Act are not applicable, in this case.

4. As per the applicant, the case of the prosecution is based on totally absurd, baseless and imaginary story and by no stretch of imagination, a case is made out against him.

5. It is his further case that the story of the prosecution is concocted one, as, no specific role has been attributed to the applicant in the commission of the alleged crime.

6. No recovery is stated to have been effected from

the conscious possession of the applicant, nor, any communication pertaining to sale, purchase and transportation of contraband.

7. According to the applicant, investigation of the case is complete and challan has been filed, as such, his custodial interrogation is no longer required by the police, in this case.

8. The applicant has earlier tried his luck by moving bail application before this Court, bearing Cr. MP(M) No. 2147 of 2025, however, the same was dismissed as withdrawn, on 12.09.2025. Thereafter, the applicant has again moved bail application, before this Court, bearing Cr. MP(M) No. 2579 of 2025 and the same was dismissed as withdrawn with liberty to approach the learned Sessions Judge. Subsequently, the applicant approached the learned trial Court, by moving bail application No. 99-N/XXII/2025, which was also dismissed, vide order dated 29.11.2025.

9. The applicant, through his counsel, has undertaken to abide by the terms and conditions, to be imposed by this Court, in case, he is ordered to be released

on bail, during the pendency of the the trial.

10. On these submissions, a prayer has been made to allow the bail application.

11. When put to notice, the police has filed the status report, disclosing therein, that on 10.11.2024, ASI Satinder Singh, I.O., CIA Staff, Nurpur has submitted a ruqua to Police Station, Damtal, disclosing therein, that he, alongwith other police officials, was on patrolling duty, as well as, duty to detect the crime relating to excise and narcotics. When, the police party was conducting patrolling in Nurpur, Kandwal, Laudhwan, Bhadroya, Damtal and Milwan, and was present near Ranchi Mod, then, he received a secret information at about 6:00 p.m. that a vehicle No. JK-08L-1571 (White coloured Alto) was coming from Milwan side towards Pathankot, in which, Karanpreet Singh S/o Ajeet Singh and Vishal Kumar (applicant), S/o Kamal Kishore were the occupants. As per the information, the aforesaid persons were indulged in the business of selling the charas/cannabis.

11.1 As per the informer, both the persons, namely,

Karanpreet Singh and Vishal (applicant) are very clever and they have sent Sahil Kumar S/o Mehar Chand to conduct reiki on his motorcycle, bearing No. JK08N-5726. The said information was found to be authentic and reliable and according to the I.O., in case of delay, the said contraband could have been removed, as such, he has complied with the provisions of Section 42(2) of the NDPS Act and submitted the ruqua to SDPO, Indora, through Const. Arun.

11.2 Thereafter, the picketing was put near grain market towards Gilwan with the help of other police officials. At that time, Incharge HHC Santosh Raj was apprised about the aforesaid fact and associated in the raiding party. In the meanwhile, I.O. noticed two persons coming from Damtal chowk side, who, on inquiry, disclosed their name as Mohan Singh, S/o Rasal Singh and Dharamvir, S/o late Sh. Subhash Chand. Both of them were apprised about the information and requested to associate the police party as independent witnesses. On the request of the I.O., they were ready to be independent witnesses. The I.O. started waiting for the aforesaid motor-cycle. At about 6:50 p.m., aforesaid

motorcycle (blue and black coloured pulser) reached there. The I.O. signaled to stop the vehicle. After the motor-cycle, aforesaid Alto car was also coming, On seeing the motorcycle stopped by the Police, driver of the car had stopped the car at a distance of about 10 meters. HC Ranjit Singh was directed to be present near the motorcycle and rest of the police officials had overpowered the persons, traveling in the Alto car.

11.3 On inquiry, driver of the Alto car disclosed his name as Karanpreet Singh, whereas, the person sitting by his side disclosed his name as Vishal (applicant). The driver of the motor-cycle disclosed his name as Sahil Kumar.

11.4 All the three persons were apprised about the secret information. In the presence of the independent witnesses, the vehicle was searched. In the vehicle, a black coloured rucksack was found, which, on opening was found to be containing 6 packets, having stick shaped black coloured substance, which, on smelling was founded to be charas. The said fact was also confirmed by the aforesaid three persons, who were nabbed by the Police. On

weighment, the said Charas was found to be 3.20 kg. Other codal formalities were completed and all the three accused persons were arrested.

11.5 After receiving positive report from the SFSL, Junga, the Police prepared the charge-sheet.

11.6 It has been mentioned, in the status report, that as per the record one more case is found to have been registered against the applicant:-

(i) FIR No.95 of 2024, dated 24.05.2024, registered under Sections 20, 29, 25 of ND& PS Act, with Police Station Jawali, District Kangra, H.P.

11.7 On the basis of above facts, it has been apprehended, in the status report, that in case, the applicant is released on bail, he may not be available for trial and he may again indulge in the same activities and may also coerce the witnesses. Hence, a prayer has been made to dismiss the application.

12. Admittedly, the contraband, which has allegedly been recovered, in the present case, falls within the definition of 'commercial quantity'. Once, this fact has been

stated by the police in the status report, then, admittedly, rigors of Section 37 of the NDPS Act are applicable in the present case.

13. When, rigors of Section 37 of the NDPS Act are applicable, in that eventuality, before releasing the applicant, on bail, it is incumbent upon this Court to give findings, with regard to fulfillment of twin conditions, as enumerated, under Section 37(b) of the NDPS Act. These conditions are (i) that the applicant is not guilty of such offences, and (ii) that while on bail, he will not commit any offence.

14. In a recent decision, in case, titled as ***Narcotics Control Bureau versus Mohit Aggarwal***, reported in ***AIR 2022 SC 3444***, the Hon'ble Supreme Court has reiterated the earlier view regarding compliance of the conditions, as enumerated in Section 37 of the NDPS Act. The relevant paras 10 to 15 of the judgment are reproduced, as under:

“10. The provisions of Section 37 of the NDPS Act read as follows:

“[37. Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure,

1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

11. It is evident from a plain reading of the non obstante clause inserted in sub-section (1) and the conditions imposed in subsection (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the

Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

12. The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In “Collector of Customs, New Delhi v. Ahmadalieva Nodira”, (2004) 3 SCC 549, a decision rendered by a Three Judges Bench of this Court, it has been held thus:

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. **The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial**

probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.” [emphasis added]

13. The expression “reasonable ground” came up for discussion in “State of Kerala and others Vs. Rajesh and others” (2020) 12 SCC 122 and this Court has observed as below:

“20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. **The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.** In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

[emphasis added]

14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

15. Moreover, the view of this Court is being guided by the decision of the Hon’ble Supreme Court in **Criminal Appeal No.5544 of 2024**, titled as ‘**Narcotics Control Bureau versus Kashif**, **Citation No.2024 INSC 1045**, wherein, it has been held that in case of commercial

quantity of the contraband, the accused shall generally be not released on bail, until or unless, the conditions, as per Section 37 of the NDPS Act, are held to be existed in favour of the applicant. Relevant paragraphs 8 and 39 of the said judgment are reproduced, as under:-

“8. There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act. Apart from the granting opportunity of hearing to the Public Prosecutor, the other two conditions i.e., (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.

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39. *The upshot of the above discussion may be summarized as under:*

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally.

which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused."

(self-emphasis supplied)

16. In the absence of the twin conditions, as enumerated, under Section 37(1)(b) of the NDPS Act, this Court cannot accept the arguments of learned counsel, appearing for the applicant, who has sought the release of the applicant, on bail, during the pendency of the trial.

17. In addition to this, a futile attempt has also been

made by learned Counsel for the applicant qua the fact that grounds of arrest were not served upon the applicant. As per the stand taken by the police, applicant was occupant in the vehicle No. JK08L-1571, in which, the alleged contraband was recovered. The applicant was intercepted on the basis of the secret information and it is not a case of the prosecution that he was found there at the spot by chance. Accused Karanpreet Singh and Sahil Kumar are from the same area, whereas Vishal Kumar (applicant) was occupant in vehicle No. JK08L-1571, and they all were intercepted at 6:20 pm, at Damtal Chowk. When the memos, which were prepared at the spot, were signed by all the three accused, then, the contents of the arrest memo are to be read along with those documents, which were prepared by the I.O. at the spot. Cumulative reading of those documents, negates the contention of learned Counsel for applicant qua non service of grounds of arrest.

18. In this case, learned Counsel appearing for the applicant has also sought the relief of bail on the ground of procedure adopted by learned JMFC Indora, while

conducting the proceedings under Section 52-A of ND&PS Act, on 11.11.2024. As per the said order, all the sticks were grinded in grinder brought by the police for making the entire substance homogeneous and out of the mixture, two samples of 26/26 grams were drawn. On the basis of the above fact, as mentioned in the order dated 11.11.2024, passed by learned JMFC Indora, it has been argued that there is violation of Section 52-A of ND&PS Act, as such, a prayer has been made that the entire trial is vitiated against the applicant, on account of the said attempt of the police to make the recovered substance as powderish.

19. The said argument, is devoid of merits, as in the judgment passed by Hon'ble Supreme Court in "**Narcotics Control Bureau Vs Kashif**" (supra), relief of bail cannot be granted to the accused, even in case, of any lapse or delayed compliance of Section 52-A of ND&PS Act, as the said is stated to be a procedural irregularity.

20. Considering the observations and discussions, made above, this Court is of the view that the applicant is not entitled to relief of bail, at this stage. As such, the

present application is dismissed.

21. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

(Virender Singh)
Judge

30th December, 2025
(Pramod Kumar)