

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.1191 of 2026

Date of decision:22.09.2026

Girdhari Lal	...Petitioner
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Versus

State of H.P.	...Respondent
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Coram:

The Hon’ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Rajinder Singh Chandel, Advocate.

For the respondent : Mr. Diwakar Dev Sharma, Additional Advocate General.

Romesh Verma, Judge (oral):

The instant petition has been filed by the present petitioner for the grant of regular bail, invoking the provisions of Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in case FIR No. 0106/2025, dated 08.12.2025, registered under Sections 20, 25, and 29 of the NDPS Act registered at Police Station Banjar(Seraj), District Kullu, Himachal Pradesh.

2. The status report filed in response to the aforesaid petition states that on 08.12.2025, the police party laid a *nakka* at about 9:45 PM. At the relevant time, about 20 vehicles were checked. Thereafter, at about 10:00 PM near Khundan Bridge, about 15 vehicles were intercepted. Subsequently, at about 12:05 AM, one car arrived from Batahad Chowk and the police officials signalled the driver to stop the

Whether reporters of Local Papers may be allowed to see the judgment?

same. The driver stopped the vehicle on left side of bridge. Apart from the driver, one more person was occupying a seat in the vehicle. When the police officials demanded the documents of the vehicle from the person occupying the front seat, the other person opened the door and fled away. The police officials tried to chase and intercept him, but on account of the darkness, they could not catch him.

3. After associating independent witnesses, the vehicle bearing registration number HP-01K-4274 was searched. The person sitting in the driver's seat disclosed his name as Brij Lal, son of Shri Bansi Ram, resident of Village Brehal, Post Office Kamlah Fort, Tehsil Dharampur, District Mandi, aged 48 years. He further disclosed that the person who fled away from car was Girdhari Lal, present petitioner, son of Shri Mardhana Ram, resident of Village Manjerh, Post Office Cholangadh, Tehsil Dharampur, District Mandi, Himachal Pradesh.

4. In the presence of the independent witnesses, the car was searched and after opening the bonnet of the car, near the battery, a carry bag of blue, yellow and white colour having chain with the words "GTCCO" written in it was recovered. Upon opening the said bag, a dark black contraband substance was found. After weighing the same on electronic scale, it was found to be 2.505 kilograms.

5. After completing the codal formalities, a case under Sections 20, 25 and 29 of the NDPS Act was registered against the accused persons.

6. During interrogation, Brij Lal, co-accused, revealed that on 07.12.2025, at about 11:00 AM, both the accused persons had travelled to Jibhi in his vehicle bearing registration No. HP-01K-4274. From Jibhi, while going towards Sajwad at about 7:00 PM, an unknown person met them on a bridge who was consuming *charas*. When they proceeded towards Dhyagi, the said unknown person asked for a lift, which was given by them. While travelling, the said unknown person told them about *charas*, as both accused were in the habit of consuming the substance. A deal was struck between them for the purchase of *charas*. After travelling about one kilometre, the unknown person came out of the car, asking the accused persons to wait for half an hour. Thereafter, unknown person brought the *charas*, handed it over to the accused persons for which Girdhari Lal, present petitioner, gave a sum of Rs.60,000/-, whereafter both accused proceeded towards their house. It has come in the investigation that the contraband was meant for the purpose of sale in the open market as well as for self-consumption. The recovered sample was sent to SFSL, Junga, and in the report, it was found that exhibit is the extract of cannabis (*charas*). In the present case, commercial quantity of *charas* weighing 2.505 kilograms has been recovered from the joint possession of the present petitioner and the co-accused in vehicle No.HP-01K-4274.

7. Section 37 of the NDPS Act reads 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.

8. The Hon'ble Apex Court, in various decisions interpreting Section 37 of the NDPS Act, has held that to curb the menace of dangerous drugs flooding society, Parliament has mandated that a person accused of offences involving a commercial quantity shall not be released on bail unless the mandatory twin conditions under Section 37 are satisfied: (i) that there are reasonable grounds for believing that the accused is not guilty of such offence, and (ii) that he is not likely to commit any offence while on bail.

9. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitation contained under Section 439 of the Code of Criminal Procedure, but is also governed by the non-obstante clause and the stringent conditions prescribed under Section 37 of the NDPS Act. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates. 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.

10. The rigors of Section 37 of the NDPS Act are squarely attracted in the instant case, as the quantity of contraband recovered is commercial. The Hon'ble Supreme Court in ***Narcotics Control Bureau vs. Kashif, (2024) 11 SCC 372***, held as follows:

"9. 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.

10. *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.*

11. *In [State of M.P. vs. Kajad2](#), this Court while considering the scope of [Section 37](#) in the light of the scheme of the Act, had observed that: -*

“5. A perusal of [Section 37](#) of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of [Section 37\(1\)](#). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub- section (1) of [Section 37](#) are in addition to the limitations provided under the [Code of Criminal Procedure](#) or any other law for the time being in force regulating the grant of bail. Liberal

approach in the matter of bail under the Act is uncalled for.”

12. Similarly, recently a three-Judge Bench in *NCB vs. Mohit Aggarwal*³, considering the earlier judgments on the parameters of bail available under [Section 37](#) of the said Act held that:

“19.....The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under [Section 37](#) of the NDPS Act.”

50.2 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.”

11. To the similar extent the Hon’ble Supreme Court in ***State of Kerala vs. Rajesh and others, (2020) 12 SCC 122***, has held as follows:

“17. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non-bailable. It reads thus:–

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.
(emphasis supplied)

18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In *Union of India Vs. Ram Samujh and Ors.* 1999(9) SCC 429, it has been elaborated as under:-

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind leaves no room for doubt that the statutory limitations must be strictly adhered to and followed. that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their

nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didier v. Chief Secy., Union Territory of Goa [(1990) 1 SCC 95] as under:

“24. With deep concern, we may point out that the organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail

are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent–accused on bail. Instead of attempting to take a holistic view of the harmful

socio- economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended.

19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

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22 The submission made by learned counsel for the respondents that in Crime No. 14/2018, the bail has been granted to the other accused persons(A-1 to A-4), and no steps have been taken by the prosecution to challenge the grant of post-arrest bail to the other accused persons, is of no consequence for the reason that the consideration prevailed upon the Court to grant bail to the other accused persons will not absolve the act of the accused respondent(A-5) from the rigour of Section 37 of the NDPS Act.”

12. The learned counsel for the petitioner has failed to satisfy the twin conditions stipulated under Section 37 of the NDPS Act. There are no reasonable grounds to believe that the petitioner is not guilty of the alleged offence.

13. The petitioner has not been able to make out a prima facie case for his enlargement on bail. Without commenting on the merits of the case, the petitioner has not been able to persuade this Court that he was not involved in the commission of offence. Therefore, no discretion can be granted to him in attending facts and circumstances of the case.

14. Any observation made is only for the adjudication of the present petition for grant of bail and it shall have no bearing on the merits of the case.

15. Consequently, the present petition, being devoid of any merit, deserves to be dismissed. Ordered accordingly. Pending application(s), if any, shall also stand disposed of.

(Romesh Verma)
Judge

22nd September, 2026
(vt)