

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.MP(M) No.1157 of 2026
Decided on: 16.07.2026

Salima

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner:

Mr. Ankit Dhiman, Advocate.

For the respondent:

Mr. Sumit Sharma, Deputy Advocate
General.

ASI Rajinder Kumar, P.S. Sadar,
Chamba, District Chamba, Himachal
Pradesh.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS, 2023") is seeking regular bail in case FIR No. 302 of 2025 dated 26.12.2025 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act").

2. As per the prosecution story, on 26.12.2025 at around 12:00 noon, when the police team was checking the

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

vehicles at Rampur Mod near Kandla, District Chamba, H.P., the petitioner, who was coming from Tissa side, was stopped for checking while she was driving a Red Scooty without a number plate. When the petitioner was asked why the number plate had not been installed on the Scooty. She replied that she was going to Chamba to get it installed. Thereafter, the petitioner was asked to open the dicky of the Scooty for search. She however disclosed that the same is not in order for the last 10-12 days and its lock is not in working condition. On suspicion and due to the unsatisfactory response given by her, the police party deputed Constable Rakesh Kumar to call a mechanic, who brought Ashik Ali from Kandla. The said mechanic was apprised of the situation and the lock of the dicky of the scooty was opened, from which a black-coloured plastic bag tied with a knot was recovered. On opening the knot of the said bag, a black, green and white coloured substance was recovered, which, on smell and experience, was found to be charas. The recovered charas was weighed on an electronic weighing machine and found to be 1 kilogram and 402 grams. The recovered charas was repacked in the same manner and sealed in a cloth parcel with six seals of seal 'E'. NCB forms in triplicate were filled in, and the impression

of seal 'E' was taken on the NCB forms as well as on a piece of cloth. The seal, after use, was handed over to Constable Rakesh Kumar. The proceedings at the spot were photographed and video graphed. The parcel containing charas was taken into possession along with the Scooty. Thereafter, a rukka was prepared and sent to Police Station Sadar, Chamba, H.P., on the basis of which, an FIR was registered against the petitioner.

3. The petitioner was arrested on 26.12.2025 at around 10.15 p.m. in the night and her arrest was informed to her father. The medical of the petitioner was also got conducted at Chamba Hospital.

4. The petitioner had earlier filed the application on 19.01.2026 for release on bail before the learned Special Judge, Chamba, Division Chamba, H.P., which was dismissed on 23.01.2026.

5. The petitioner thereafter had approached this Court by way of Cr.MP(M) No. 250 of 2026 titled **Salima** vs. **State of Himachal Pradesh**. The said petition came to be rejected on 17.03.2026. At the time of rejecting the petition, the Court had considered the judgment passed by Hon'ble Supreme Court in **Madan Lal and another** versus **State of H.P.**, (2003) 7 SCC 465

and other judgment and also the effect of Section 37 of the Act, since it was a commercial quantity recovered from the petitioner.

6. After dismissal of the bail application, the prosecution has examined 16 witnesses.

7. Learned counsel representing the petitioner has vehemently argued that now after recording the evidence of some of the witnesses, it can be safely concluded that the petitioner has been falsely implicated for the commission of the offence and the alleged contraband was not recovered from her conscious possession. It has further been averred that there is no material to connect the petitioner for commission of the alleged offence and her husband hatched a conspiracy to falsely implicate her and she is already having a dispute with her husband. Learned counsel for the petitioner has also argued that since the petitioner was not given the grounds of arrest, the mandatory directions passed by the Hon'ble Supreme Court in ***Mihir Rajesh Shah vs. State of Maharashtra and another***, (2026)¹ SCC 500 have not been complied with.

8. The respondent-State has filed a status report and opposed the bail on the ground that since the contraband recovered from the petitioner is a commercial quantity, this Court

has to see the import of the rigors of Section 37 of the Act.

9. I have heard the learned counsel for the parties and also gone through the status report.

10. Before proceeding with the matter, it would be relevant to quote the provisions of Section 37 of the Act, which read as under:-

“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. A perusal of the provisions contained under Section 37 of the Act reveals that the Court while considering the application for release of the accused in a case where the quantity of the recovered contraband is a commercial quantity has to return the findings and satisfy that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence, while on bail.

12. After rejecting the application for bail filed by the petitioner, the statements of material witnesses have been recorded. As per the prosecution story, Constable Rakesh was deputed to summon the mechanic to open the dicky of the scooty. Learned counsel for the petitioner has placed on record the statement of Ashiq Ali, who has been examined as PW-11 and he has deposed that when he reached on the spot, the dicky of the vehicle was already opened. It is not in dispute that the petitioner is not the owner of the vehicle. No doubt, on the day when the vehicle was intercepted, she was on the wheels, but once it has

come on record that the dicky was already opened, the story put forth by the prosecution that the dicky was opened by the mechanic is not true and thus this Court is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of the offence and she is not likely to commit any offence while on bail.

13. At this juncture, the Court is not discussing the evidence of other witnesses for the reason that it may be fatal to the prosecution, when the learned Special Judge has to decide the trial being faced by the petitioner, but the Court is of the view that once it has not *prima facie* been established that the contraband was seized from the conscious possession of the petitioner, she cannot be kept behind the bars for an indefinite period.

14. Learned counsel for the petitioner further submits that the petitioner being a woman and further having a child about 17-18 months cannot be kept behind the bars for an indefinite period especially when the evidence, which has been adduced so far, does not *prima facie* establish that the petitioner has committed the offence for which she is facing the trial.

15. At this juncture, it would be relevant to mention the

provisions of Section 480 (1) of the BNSS, 2023, which clearly provide that the Court has to take note of the fact that if there appears reasonable grounds for believing that the person is not guilty of an offence punishable with death or imprisonment for life, he/she can be released on bail if such person is a child or is a woman or is sick or infirm. In the present case, the Court cannot lose sight of the fact that the petitioner being woman is behind the bars for the last more than six months and she cannot be kept behind the bars for an indefinite period.

16. The Hon'ble Supreme Court in ***State of Rajasthan, Jaipur vs. Balchand alias Baliay*** (1977) 4 SCC 308 has held that the normal rule is bail and not jail, except where the gravity of the crime or the heinousness of the offence suggests otherwise. No doubt, in the present case, the petitioner has been tried for commission of offence under the Act, which is a special legislation, but at the same time, the Court cannot even ignore the fact that after rejecting the bail application of the petitioner, the prosecution has examined 16 witnesses out of 30 and one of the official witnesses i.e. inspector Gagan Deep, who had intercepted the vehicle has been given up, as evident from a perusal of zimni order dated 18.06.2026, passed by the learned

Special Judge.

17. The Hon'ble Supreme Court has time and again held that the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. In the present case, the petitioner being a woman is not involved in any of the offence prior to the one in which she is facing trial. There is no possibility of the petitioner fleeing from justice and further statements of about 16 witnesses have already been recorded. In case the petitioner is ultimately convicted, she will have to undergo the sentence imposed by the learned trial Court. Therefore, it is a fit case where this Court is enlarging the petitioner on bail.

18. As already observed above, this Court is not going to conduct a mini trial for the purpose of considering the bail application for release of the petitioner at this stage, as per various pronouncements of the Hon'ble Supreme Court.

However, keeping in view the fact that the petitioner is behind the bar for the last more than six months, it is a fit case to enlarge her on bail especially when her child, who is about 17 months, is unnecessarily suffering.

19. Resultantly, the present petition is allowed and the petitioner is ordered to be released on bail subject to her furnishing personal bonds in a sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of the learned trial Court. The petitioner, while on bail, will abide by the following conditions: -

“(i) The petitioner shall not intimidate the witnesses, nor will she influence any evidence in any manner whatsoever.

(ii) The petitioner shall attend the trial on each and every hearing and will not seek unnecessary adjournments.

(iii) The petitioner shall not leave the present address for a continuous period of fifteen days without furnishing the address of the intended visit to the SHO concerned, the Police Station concerned and the trial Court.

(iv) The petitioner shall surrender her passport, if any, to the Court; and

(v) The petitioner shall furnish her 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.”

20. It is expressly made clear that in case of violation of any of conditions, the prosecution will have the right to file a petition for cancellation of the bail.

21. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, District Jail, Chamba, H.P. and the learned trial Court by *FASTER*.

22. The observations made hereinabove shall remain confined to the disposal of the present petition and will have no bearing whatsoever on the merits of the case.

(Jiya Lal Bhardwaj)
Judge

16th July, 2026
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