

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1518 of 2026

Date of decision: 15.09.2026.

Sanjay Kumar @ Sanju ...Petitioner.

Versus

State of H.P. ...Respondent.

Coram:

The Hon'ble Mr. Justice Chirag Bhanu Singh, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. N.K. Thakur, Sr. Advocate with
Mr. Divya Raj Singh, Advocate.

For the respondent : Mr. Prashant Sen, Deputy Advocate
General.

Chirag Bhanu Singh, Judge (oral):

The petitioner Sanjay Kumar came to be arrested on 07.06.2026 and is behind the bars since then in case FIR No. 41 of 2026, dated 13.04.2026, registered at Police Station Rehan, Police District Nurpur, District Kangra, under Sections 20, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act'). He seeks post arrest bail by way of the present petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS').

2. The status report filed by the State is suggestive of

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

the fact that on 13.04.2026, at about 6:17 p.m., one Yusuf and Robin were apprehended by the police party and were found in possession of 1 kg 210 grams of charas. During the course of the investigation, one of the co-accused, Robin, is stated to have made a disclosure statement that the present petitioner Sanjay Kumar had supplied 692 grams of charas to him. The petitioner Sanjay Kumar and co-accused Robin had been in communication with each other on Whatsapp and through voice calls and chats regarding the aforesaid delivery using mobile number 8580673104.

3. As per the prosecution, co-accused Robin had asked the present petitioner to supply the contraband to Yusuf. Both Yusuf and Robin are stated to have been in constant touch with the present petitioner/accused over the phone.

4. It is the contention of the learned counsel for the petitioner that there is no legal evidence worth the name to connect the petitioner with the exclusive and conscious possession of the contraband nor did he have any role in the alleged recovery of the said contraband. There are no chances of the petitioner fleeing from justice and he has been wrongly incarcerated.

5. Per contra, the learned Deputy Advocate General would contend that the petitioner/accused was a part of an

organized racket and has been found complicit in the crime. The discretion of granting bail be not exercised in his favour.

6. I have heard the learned counsel for the parties and gone through the record carefully.

7. The perusal of the record, however, shows that admittedly the contraband came to be recovered from the possession of co-accused Yusuf and Robin. The present petitioner was not present at the spot at the time of the alleged recovery. The contraband so recovered from the co-accused, is also intermediate in quantity, therefore, the rigors of Section 37 of the NDPS Act would not apply with the same vigour.

8. The present petitioner came to be arrested on the basis of a disclosure statement made by one of the co-accused, Robin. The Hon'ble Supreme Court in **Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1**, has in uncertain terms held that the disclosure statement made under Section 67 of the Act is inadmissible in evidence and the same cannot be used as a confessional statement.

9. The status report no doubt shows that apparently the petitioner was in constant touch with the co-accused on the mobile phone, but that in itself may not be sufficient to curtail the liberty of the petitioner. The existence of the call details

alone may not sub-serve the purpose of the prosecution, at least, at this stage and that too without any corresponding substantive material placed on record to connect the petitioner/accused with the occurrence. This Court in ***Saina Devi vs. State of Himachal Pradesh, 2022 Law Suit (HP) 211***, has also categorically held so.

10. Even otherwise, pre-trial incarceration is generally loathed by the Courts. Suspicion alone, howsoever strong may not take the place of proof.

11. Thus, seeing to the totality of circumstances discussed hereinabove and keeping in view the quantity of contraband recovered that too from the conscious possession of the other two co-accuseds, the petitioner has been able to carve out a case for grant of bail.

12. Accordingly, the petition is allowed. As a sequel, the petitioner is ordered to be enlarged on bail, subject to his furnishing personal bonds in the sum of Rs. 50,000/- with two sureties of the like amount to the satisfaction of the learned trial Court. The bail shall, however, be subject to the following conditions:-

- (i) The petitioner shall regularly put in appearance before the learned trial Court, as and when directed;

- (ii) The petitioner shall not tamper with the prosecution evidence in any manner nor hamper the investigation in any manner;
- (iii) The petitioner shall not make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade them from disclosing such facts to the Court;
- (iv) The petitioner shall not leave the territory of India without the express permission of the Court;
- (v) The petitioner shall not indulge in any similar activity again.

13. The observations made hereinabove shall not prejudice the party on the merits of the case, whatsoever.

14. The petition stands disposed of in the aforesaid terms.

(Chirag Bhanu Singh)
Judge

15th September, 2026.
(kck)