

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**Cr.MP(M) No. 1622 of 2026
Decided on 17th September, 2026**

Gaurav Kaundal **...Petitioner**

Versus

State of HP **.....Respondent**

Coram

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

¹Whether approved for reporting? Yes

**For the petitioner : Mr. Nishant Khidta, Advocate,
vice Mr. Ashok Kumar, Advocate.**

**For the respondent/State : Mr. Rajpal Thakur, Additional
Advocate General.**

Chirag Bhanu Singh, Judge

The petitioner has preferred an application under Section 483 of Bharatiya Nagarik Suyraksha Sanhita, 2023 (for short "BNSS") seeking post-arrest bail in Case FIR No. 66 of 2026, dated 01.05.2026 registered at Police Station Sarkaghat, District Mandi, under Sections 21, 27-A & 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the Act").

2. The facts which emerge from the status report,

so filed by the State is that on 01.05.2026, a police party headed by HC Narender Barwal had left for patrolling in the official vehicle bearing registration No. HP-89-2049. At about 10:00 am when the police patrol was at Navahi, a secret information had been received that one Vishal, son of Sh. Hardev Singh, R/O Village Kothi, Post Office Cholthara, Tehsil Sarkaghat, District Mandi, who was wearing a check shirt, grey jeans and a red cap, was on his way from Jahu to Sarkaghat. He was carrying a consignment of heroin (Chitta). In case he is apprehended, a huge cache of drugs can be made.

3. Acting swiftly, the Investigating Officer, HC Narender Barwal had prepared the reasons of belief under Section 42(2) of the Act and had sent the same to the SDPO, Sarkaghat through HHC Ashwani Kumar. The rest of the party had proceeded towards Fatehpur to set up a naka. When the Police patrol had reached near Shani Dev Mandir, they had noticed a person with the same description coming from Fatehpur side at about 10:20 AM. On seeing the Police patrol, he tried running towards Sarkaghat. In the process he had also thrown something from the right pocket of his pants towards the railing near the Peepal tree. The members of the Police patrol had

apprehended the person after a short chase. The Investigating Officer had tried to stop the vehicle to associate some independent witness, but to no avail. Eventually, he had telephonically called Mr. Narender Kumar Gautam, Former Panchayat Pradhan and requested him to reach the spot. In the meanwhile, one Rahamuddin, son of Shri Jalaluddin, had reached the spot on foot. After some time, Sh. Narender Kumar Gautam, Former Pradhan had also reached the spot. After associating both of them as independent witnesses, the Investigating Officer had asked the person to disclose his name. He had disclosed his name as Vishal S/o Sh. Hardev Singh. The Investigating Officer had thereupon given the search of the police team and thereafter checked the packet thrown by the accused. It turned out to be a packet of a Four Square cigarette. Inside the cigarette packet, one transparent polythene was found, which was tied with a knot. On opening the polythene packet, light brown granular substance was found inside. Over and apart, three small packets made of silver foil, along with five round brown substance wrapped in plastic was also recovered.

4. On the basis of experience and the disclosure of the accused, it was found to be heroin (Chitta). On weighing,

the contraband was found to be 6 grams. After following the codal formalities, the Investigating Officer had taken the contraband into possession. The said accused Vishal also came to be arrested at the spot.

5. During the course of investigation, the said accused Vishal is stated to have made a disclosure statement that he had procured the contraband from co-accused Arun Kumar @ Monu and the payment in respect of the contraband had been made to co-accused Gaurav Kaundal (the present petitioner) which had been pay through UPI. He had even earlier procured contraband from co-accused Arun Kumar. As per him co-accused Arun Kumar used an ATM card and deposited money in the account of the present petitioner i.e. accused Gaurav Kaundal, who belongs to Hamirpur. On 28/29 April, he had deposited Rs. 16,000/- in the account of Gaurav Kaundal i.e. the petitioner. The ATM card of Gaurav Kaundal is with the co-accused Arun Kumar. He had also made a payment to the petitioner on phone bearing No. 82198-04288.

6. Based on the aforesaid information, the present petitioner had come to be arrested on 04.05.2026. He is presently in Judicial custody.

7. I have heard learned counsel for the parties and gone through the records meticulously.

8. The learned counsel for the petitioner would contend that no contraband had been recovered from the conscious and exclusive possession of the petitioner and his name had surfaced in pursuance to a disclosure made by one of the co-accused and there is no material on record to show the active participation of the present petitioner in the crime. No case is made out against the petitioner. Even otherwise, the investigation in the case are complete and no recoveries have to be effected from the petitioner. He is innocent and has been falsely implicated at the instance of the others co-accuseds. The prosecution has already filed a challan and the trial has also commenced.

9. Per contra Sh. Rajpal Thakur, learned Additional Advocate General for the State has vociferously urged that keeping in view the gravity of the offence alleged, and the fact that the petitioner was a part of an organized racket and sufficient material had been collected against the accused during investigation, the discretion of bail cannot be exercised in his favour. There are chances that the petitioner may again indulge in

same and similar activities in the future too.

10. It however transpires from record that the contraband, indeed, was not recovered from the conscious and exclusive possession of the petitioner. Admittedly, the contraband and that too only 6 grams had come to be recovered from one of the co-accused-Vishal.

11. The petitioner came to be arrested on the basis of a disclosure statement made by the said co-accused Vishal, and that too that he had procured the contraband from another co-accused, Arun Kumar alias Monu, and on whose asking he had deposited the sale consideration in the account of the petitioner/accused Gaurav Kaundal through UPI.

12. By now, it is fairly settled that a statement made by the co-accused is inadmissible in law.

13. The Hon'ble Supreme Court of India in ***Tofan Singh vs. State of Tamil Nadu 2021 (4) SCC 1*** has in uncertain terms held that any disclosure made under Section 67 (or even under Section 23 of BNS) is inadmissible and cannot be used as a confessional statement in the trial. In a case titled as ***State By (NCB) Banguluru vs. Pallulabid Ahmad Arimutta and Anr.***

[SLP (Crl.) No. 242 of 2022, decided on 10.1.2022] the Hon'ble Supreme Court has further reiterated the aforesaid proposition of law regarding inadmissibility of the confessional statement and has further gone on to hold that even the Bank details collected in this respect will have to be examined at the stage of trial.

14. Even otherwise, merely the existence of the Bank Statement details of the accused cannot be said to be a circumstance, which alone may suffice to hold that the petitioner was complicit in the crime. Suspicion howsoever strong cannot take the place of proof.

15. It further emerges on record that admittedly the quantity of contraband recovered from the co-accused Vishal is only 6 grams of heroin (Chitta) and in that sense, the quantity of contraband having been recovered in the present case being less than commercial, the rigours of Section 37 may not ***stricto sensu*** apply in the facts and circumstances of the present case. Over and apart, there is nothing on record to remotely suggest that any case under the Act stands registered against the petitioner. The apprehension of the State that the petitioner may indulge in similar activities thus also seems to be unfounded. The trial is also stated to have commenced. It is thus likely to take

substantial time. Pre-trial detention is also otherwise generally loathed by the Courts.

16. Thus, seeing to the totality of circumstances discussed above, the petitioner could be granted the discretion of bail, though subject to strict terms.

17. As a sequel, while allowing the present petition, it is directed that in case the petitioner is henceforth found indulging in any similar activity and an FIR is registered against the petitioner under the provisions of the Act, even the present bail granted shall stand forfeited.

18. For all the reasons discussed hereinabove, the bail petition is thus allowed. As a sequel, the petitioner is ordered to be released on bail subject to his furnishing bail bonds to the tune of Rs.50,000/- with one surety of the like amount, to the satisfaction of the learned trial Court subject to the following conditions:-

- i) That the petitioner shall not tamper with the prosecution evidence nor intimidate, threaten or coerce the witnesses conversant with the facts of the case;
- ii) That the petitioner shall put in appearance before the Investigating Officer or the Court as and

when directed;

iii) That the petitioner shall not leave the territory of India without the express permission of the Court, he shall surrender passport, if any, before the investigating agency;

iv) If the bail petitioner is found to be indulging in similar cases in the future and an FIR is registered against him under the NDPS Act, his bail shall be liable to be cancelled forthwith.

19. 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 for the purposes of the disposal of the present petition.

20. Petition stands disposed off in the aforesaid terms, so also the pending miscellaneous applications, if any.

17th September, 2026
(Ritu)

(Chirag Bhanu Singh)
Judge