

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**Cr.MP(M) No. 1617 of 2026
Decided on 15th September, 2026**

Vijay Bihari

...Petitioner

Versus

State of HP

.....Respondent

Coram

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

¹Whether approved for reporting?

For the petitioner : Mr. T.K. Verma, Advocate.

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

Chirag Bhanu Singh, Judge (Oral)

The present petition has been filed under Section 483 of Bharatiya Nagarik Suyraksha Sanhita, 2023 (for short "BNSS") seeking post-arrest bail in Case FIR No. 10 of 2026, dated 07.02.2026 registered at Police Station Rampur Bushahar, District Shimla, under Sections 21 & 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the Act").

2. The facts which emerge from the status report, are that on the fateful day, i.e. on 07.02.2026, a team headed by HC

Piyush Raj had left for patrolling at about 02:45 PM. When the police patrol was present at Nirath, a secret information had been received that one pickup bearing registration number HP-06C-6566 was coming from Shimla side, having two occupants, and if the said vehicle is intercepted, a huge cache of drugs may be recovered.

3. Acting swiftly, the Investigating Officer recorded the reasons of belief under Section 42(2) of the Act and sent the same to the SDPO Rampur Bushehar through Constable Mohinder Singh. In the meanwhile, the Investigating Officer looked for independent witnesses and he associated one Prem Singh Chauhan, Up-Pradhan, Gram Panchayat, Nirath, who was present in the market, as an independent witness.

4. After having constituted a raiding party including the independent witness, the police party waited for the pickup near Bhera Khad. At about 03:45 PM, the aforesaid vehicle was noticed coming from Shimla side. In the presence of the independent witness, the vehicle was signaled to stop. Two persons were found sitting in the vehicle. On inquiry, the driver of the vehicle has disclosed his name as Yugal Kishor, while the co-driver has disclosed his name as Naresh.

5. After following the codal formalities, the Investigating Officer had searched the vehicle. During the course of search, one transparent polythene packet was found concealed in the back pocket of the seat of the driver. On opening the polythene, gray granular substance was found. On the basis of experience and disclosure made by the accused, it was found to be heroin (chitta). On weighing, it was found to be 9.26 grams. After following the codal formalities, the contraband was taken into possession by the Investigating Officer. The co-accuseds came to be arrested at the spot.

6. During the course of investigation, co-accused Yugal Kishor made a disclosure statement that he had procured the said contraband from one David alias Vijay Bihari (the present petitioner), who had a mobile bearing number 93780-35627. He had purchased the same for Rs.20,000/-.

7. The custody of the present petitioner had been procured by the police from Theog police, who had already arrested him in another case registered vide FIR No. 19 of 2026 on 09.02.2026, registered under Sections 21 & 29 of the Act. He came to be formally arrested in the present FIR on 23.02.2026. Presently, he is in the judicial custody.

8. The learned counsel for the petitioner has urged with all vehemence that the petitioner has been falsely implicated in the present case. Nothing has been recovered from his conscious possession. He has been arrested merely on the basis of a disclosure statement made by one of the co-accused. Apart from the CDRs, there is nothing on record to remotely connect the present petitioner with the occurrence.

9. Per contra, the learned Deputy Advocate General submits that not only is the present petitioner a habitual offender, but since he belongs to Haryana, there is every likelihood of the petitioner fleeing from justice.

10. I have heard the rival contentions so raised and gone through the material placed on record.

11. It clearly comes to the fore that the contraband admittedly was intermediate in quantity. It had come to be recovered from the co-accuseds Yugal Kishor and Naresh, while they were traveling in a pickup bearing registration number HP-06C-6566. Admittedly, the present petitioner had not been arrested at the spot nor had been travelling with the co-accuseds at the relevant time.

12. The petitioner came to be arrested on the basis of a disclosure statement made by co-accused Yugal Kishor.

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

14. 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] has further reiterated the aforesaid proposition of law regarding inadmissibility of the confessional statement and has further gone on to hold that even the CDR details collected in this respect will have to be examined at the stage of trial.

15. Even otherwise, merely the existence of the call 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.

16. Much was tried to be urged by the respondent/State

that the petitioner had two other cases registered under the Act, one at Haryana and another at Theog, and there is every likelihood of the petitioner fleeing from justice, but the same could be taken care of by putting the petitioner to strict terms. Since there is nothing substantial on record to connect the petitioner to the commission of the present crime except the call details, which *prima facie* seem to be insufficient to connect the petitioner to the commission of the crime. Moreover, the rigours of Section 37 of the Act cannot apply with the same force given the fact that intermediate quantity of contraband had been recovered by the police.

17. Having considered the entire conspectus facts and law discussed here-in-above, the petitioner thus has been able to carve out a case for the grant of bail. The petition is accordingly allowed.

18. 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 to the facts of the case;

ii) That the petitioner shall attend the trial as and when directed;

iii) The petitioner will furnish his 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;

iv) 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.

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 purpose of the disposal of the present petition.

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

15th September, 2026 (Ritu)

**(Chirag Bhanu Singh)
Judge**