

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP(M) No.1618 of 2026

Decided on: 22.09.2026

Bobi Kumar

.....Petitioner

Versus

State of Himachal Pradesh

....Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the Petitioner : Mr. Deepak Kaushal, Senior Advocate with Mr. Aditya Chouhan, Advocate.

For the Respondent : Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

HC Hitender Singh No.255, Police Station Paonta Sahib, HP, present in person along with record.

Sandeep Sharma, Judge (oral):

Bail petitioner namely Bobi Kumar, who is behind bars since 09.03.2026, has approached this Court in the instant proceedings filed under Section 483 of BNSS for grant of regular bail in case FIR No. 54/2026 dated 8.3.2026 under Sections 22 & 29 of the ND & PS Act, registered at Police Station Paonta Sahib, District Sirmaur, Himachal Pradesh.

2. Pursuant to directions issued by this Court,

¹ Whether the reporters of the local papers may be allowed to see the judgment?

respondent-State has filed status report and HC Hitender Singh has come present with record. Record perused and returned.

3. Close scrutiny of record/status report reveals that on 07.03.2026 at about 10:30 p.m., police, which at the relevant time was present at Behral, received secret information that Aamir and Mohammad Nawaz, who indulge in illegal trade of narcotics, can be caught red-handed with huge quantity of contraband if their vehicle bearing registration No. HR-10Q-8382 coming from Paonta Sahib is checked. On the basis of aforesaid information, police constituted a raiding team and intercepted aforesaid vehicle in the presence of independent witnesses and allegedly recovered one plastic envelope containing prohibited drug, namely Primyvon-Spas, containing Tramadol and Alprazolam tablets 1 IP 05 mg in huge quantity. Since no plausible explanation ever came to be rendered on record qua possession of aforesaid quantity of contraband, police, after having completed necessary codal formalities, lodged FIR against both Aamir and Mohammad Nawaz, arrested them on 08.03.2026 and since then, they are behind bars.

4. Allegedly, aforesaid co-accused made disclosure statement to the police that contraband recovered from them was sold to them by co-accused Shakib for total sale consideration of Rs. 1,00,000/-. In the aforesaid background, aforesaid co-

accused Shakib also came to be named in FIR and he was also arrested. Vide order dated 10.08.2026 passed by this Court in Cr.MP(M) No. 1405/2026, ***titled Shakib versus State of Himachal Pradesh***, aforesaid person has already been enlarged on bail. Allegedly, aforesaid co-accused Shakib disclosed to the police that contraband received from Aamir and Mohammad Nawaz was actually received by him from present bail-petitioner namely Bobi Kumar, R/o Saharanpur. In the aforesaid backdrop, police raided parking at Chilkana, Saharanpur, where allegedly present bail-petitioner was indulging in illegal trade of narcotics and recovered 3600 capsules of Primyvon-Spas and 600 tablets of Alprazolam. Since present bail petitioner was unable to render proper explanation for possession of aforesaid quantity of contraband, police arrested him on the night of 09.03.2026 and since then he is behind bars.

5. Prior to filing of petition at hand, petitioner had approached learned Special Judge, Sirmaur at Nahan for grant of bail, but the same was dismissed vide order dated 09.03.2026. Since challan stands filed in the competent Court of law and nothing remains to be recovered from the bail-petitioner, he has approached this Court in instant proceedings for grant of regular bail.

6. Precisely, the case of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Deepak Kaushal, learned Senior Counsel, duly assisted by Mr. Aditya Chauhan, learned counsel for the petitioner, is that petitioner has been falsely implicated because no contraband was recovered from his conscious possession. Mr. Kaushal states that otherwise also, petitioner has been named in FIR on the basis of disclosure statement made by the co-accused, which is not permissible. He states that otherwise also, as per status report, 3600 tablets of Primivon-Spas do not fall under ND&PS Act as per SFSL report, and as far as 600 tablets of Alprazolam are concerned, only 82.8 grams of prohibited drug has been found in the same, which is intermediate quantity and as such, rigours of Section 37 of the ND&PS Act are not attracted. He states that since considerable time is likely to be consumed in conclusion of trial, prayer made by the petitioner for grant of bail deserves to be allowed.

7. While fairly acknowledging factum with regard to filing of challan in competent Court of law, Mr. Rajan Kahol, learned Additional Advocate General, states that though nothing remains to be recovered from the petitioner, but keeping in view the gravity of offence alleged to have been committed by him, he does not deserve any leniency. He states that there is overwhelming evidence adduced on record suggestive of the fact

that petitioner is a drug peddler, who, in the event of his being enlarged on bail, may not only flee from justice, but may again indulge in these activities. He states that otherwise also, rigours of Section 37 of the ND & PS Act are attracted in the present case for the reason that in one FIR, two recoveries came to be effected and if contraband recovered in both recoveries is measured in totality, it becomes 658.20 grams. He further states that otherwise also, contraband, which was recovered from co-accused Aamir and Mohammad Nawaz was supplied by present bail petitioner and as such, entire contraband recovered in FIR is required to be taken into consideration while determining applicability of Section 37 of ND&PS Act. He states that since batch number of contraband recovered in both recoveries is same, coupled with the fact that same was supplied by the present bail-petitioner, petitioner cannot take benefit of intermediate quantity and cannot be granted bail on account of rigours of Section 37 of ND&PS Act.

8. Having heard learned counsel for the parties and perused material available on record, this Court finds that in FIR detailed above, two recoveries of contraband are shown to have been effected. First recovery was effected on 07.03.2026 at Paonta Sahib, wherein allegedly persons, namely Aamir and Mohammad Nawaz, were found in possession of 11,040 capsules

of Primyvon-Spas and 4200 tablets of Alprazolam. Aforesaid persons disclosed to the police that they had purchased aforesaid quantity of contraband from person, namely Shakib, for total consideration of Rs.1,00,000/-. As per prosecution, above-named Shakib admitted during his interrogation that contraband supplied by him to Aamir and Mohammad Nawaz was actually supplied by the present bail-petitioner. Second recovery came to be effected at Chilkana parking, Saharanpur on 09.03.2026, wherein allegedly present bail-petitioner was found in conscious possession of 3600 capsules of Primyvon-Spas and 600 tablets of Alprazolam. Interestingly, Investigating agency, though on one hand has claimed that two separate recoveries effected in one FIR are required to be considered as one recovery so as to bring the same within ambit of commercial quantity, but interestingly, contrabands recovered in both recoveries were sent to SFSL separately. In SFSL report given in the case of recovery from Aamir and Mohammad Nawaz dated 23.03.2026, quantity of contraband has been shown as 575.40 grams, whereas in SFSL report dated 27.03.2026 given in the case of the petitioner, quantity of contraband has been shown to be of 82.8 grams, i.e. intermediate quantity.

9. At this stage, it is apt to take note of the fact that tablets, namely Primyvon-Spas, in both recoveries were held to

be not covered under ND&PS Act by the SFSL. Admittedly, in the case at hand, petitioner came to be named in the FIR on the basis of disclosure statement made by co-accused Shakib, but having taken note of the fact that subsequently on 09.03.2026, 82.8 grams of prohibited drug came to be recovered from the conscious possession of the petitioner, petitioner may not be entitled to benefit of judgment passed by Hon'ble Apex Court in case ***Tofan Singh v. State of Tamil Nadu (2021) 4 SCC 1***, wherein it came to be ruled that disclosure statement, if any, made under Section 67 of ND&PS Act will not be admissible. Since bail-petitioner came to be apprehended with conscious possession of prohibited drug, may be on information shared by co-accused Sakib, he may not be entitled to benefit of judgment passed by Hon'ble Apex Court in ***Tofan Singh*** (supra), but certainly this Court is persuaded to agree with Mr. Deepak Kaushal, learned Senior Counsel, that recovery of contraband, if any, from the conscious possession of the petitioner can be said to be of intermediate quantity. If it is so, rigours of Section 37 of the ND & PS Act will not be attracted.

10. Though Mr. Rajan Kahol, learned Additional Advocate General, vehemently argued that since two recoveries in same FIR came to be effected, coupled with the fact that narcotic substance recovered from the conscious possession of

co-accused Aamir and Mohammad Nawaz was supplied by present bail-petitioner, contraband recovered in both recoveries is required to be clubbed together for determining quantity of contraband recovered in FIR. He submitted that since total quantity of 658.20 grams of narcotic substance came to be recovered from accused named in the FIR, rigours of Section 37 of the ND & PS Act are very much attracted and in that situation, petitioner is not entitled to bail, especially when there is nothing to suggest that he has been falsely implicated and in the event of his being enlarged on bail, he may flee from justice.

11. However, this Court, having taken note of the fact that in one FIR, two different recoveries came to be effected that too on different dates and at different places, is not persuaded to agree with Mr. Rajan Kahol, learned Additional Advocate General, that entire contraband recovered in the FIR is required to be taken into consideration for determining actual quantity of contraband recovered in FIR. First recovery was effected on 07.03.2026 at Paonta Sahib, Himachal Pradesh from co-accused Aamir and Mohammad Nawaz, whereas second recovery came to be effected on 09.03.2026 from parking at Chilkana, **Saharanpur**, UP, wherein petitioner was apprehended with 82.8 grams of narcotic substance. Though Mr. Rajan Kahol, learned Additional Advocate General, repeatedly argued that since

contraband, may be recovered in two different recoveries, was of the same batch, coupled with the fact that co-accused Aamir and Nawaz, from whose conscious possession contraband came to be recovered in Paonta, disclosed that contraband was supplied by co-accused Shakib, who stated that contraband supplied to aforesaid persons was actually received by him from present bail-petitioner, entire contraband is required to be taken into consideration while determining quantity of contraband, however, this Court is not impressed with aforesaid submission of Mr. Kahol, for the reason that prohibited drugs which came to be recovered in the case at hand may be of same batch, but recoveries have been effected at different places. *“Whether contraband recovered from the conscious possession of Aamir and Mohammad Nawaz was actually supplied by the present-bail petitioner”* is a question to be decided by learned trial Court below in totality of evidence collected on record by the prosecution, but certainly at this stage, same cannot be taken into consideration to determine quantity of contraband recovered from conscious possession of the petitioner, which admittedly in the case at hand was of intermediate quantity. If it is so, rigours of Section 37 of the ND & PS Act are not attracted. In past, no case under ND&PS Act stands registered against the petitioner and as such, he being first offender deserves leniency.

12. True it is that contraband recovered at Saharanpur from conscious possession of the petitioner can be linked straightaway to the petitioner, but certainly there is no evidence, save and except statement made by the co-accused Shakib that contraband recovered at Paonta Sahib can be linked to the petitioner at this stage, rather for that purpose, prosecution is required to adduce on record cogent and specific evidence. Reliance in this regard is placed upon a recent judgment of Hon'ble Apex Court in **Nadeem Ahamed Vs. The State of West Bengal** (Cr.Appeal Nos.3575-3574 of 2025), decided on 05.08.2025), wherein it has been held as under:-

"25. Therefore, we have no hesitation in holding that the trial Court committed a grave factual error in concluding that the contraband heroin recovered from two distinct individuals could be clubbed together, so as to be covered under the commercial quantity (above 250 gms.)."

13. Hon'ble Apex Court as well as this Court have held in catena of cases that one is deemed to be innocent till the time his/her guilt is not proved, in accordance with law. Since guilt, if any, of the bail petitioner is yet to be established on record by the prosecution by leading cogent and convincing evidence, this court sees no reason to curtail the freedom of the bail petitioner for an indefinite period during trial. Apprehension expressed by learned Additional Advocate General, that in the event of being enlarged

on bail, bail petitioner may flee from justice can be best met by putting the bail petitioner to stringent conditions.

14. Needless to say, object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

15. Hon'ble Apex Court in Criminal Appeal No. 227/2018, ***Dataram Singh vs. State of Uttar Pradesh & Anr*** decided on 6.2.2018 has held that freedom of an individual cannot be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has been further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty.

16. In ***Manoranjana Sinh alias Gupta versus CBI, (2017) 5 SCC 218***, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of bail and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment, which

conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

17. The Apex Court in **Prasanta Kumar Sarkar versus Ashis Chatterjee and another (2010) 14 SCC 496**, has laid down various principles to be kept in mind, while deciding petition for bail viz. prima facie case, nature and gravity of accusation, punishment involved, apprehension of repetition of offence and witnesses being influenced.

18. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, bail-petitioner has carved out a case for grant of bail, accordingly, the petition is allowed and the bail-petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to her furnishing personal bond in the sum of Rs.5,00,000/- with two local sureties in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, with following conditions:

- a. He shall make himself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;***
- b. He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;***
- c. He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer; and***
- d. He shall not leave the territory of India without the prior permission of the Court.***
- e. He shall surrender his passport, if any, before the investigating agency.***

19. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

20. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of this application alone. The petition stands accordingly disposed of.

21. A downloaded copy of this order shall be accepted by the learned trial Court, while accepting the bail bonds from the petitioner and in case, said court intends to ascertain the veracity of the downloaded copy of order presented to it, same may be ascertained from the official website of this Court.

(Sandeep Sharma)
Judge

September 22, 2026
(sunil)