

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**Cr.MP(M) No. 1690 of 2026
Reserved on 05th October, 2026
Decided on 06th October, 2026**

Gaurav		...Petitioner
	Versus	
State of HP		Respondent

Coram

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

¹Whether approved for reporting?

For the petitioner	: Ms. Preetika Thakur, Advocate.
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For the respondent/State	: Mr. Lokender Kutlehria, Additional Advocate General assisted by SI. Ram Krishan, PS Sunder Nagar, District Mandi, HP.
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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. 128 of 2026, dated 07.06.2026 registered at Police Station Sunder Nagar, District Mandi, under Sections 21, 25 & 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 07.06.2026, HC Hans Raj had set up a naka near Kangu helipad. The police party was checking vehicles. At about 5:05 AM, a car bearing number CH 04A-0662 had come from Dehar side. It had been signaled to stop. Apart from the driver one lady was found sitting in the co-driver's seat. Two ladies and two children were also sitting on the rear seat. The driver of the car was asked to show the documents. He had expressed some reservation in this regard as his mother was unwell and he had to rush her to the hospital. Suspicion having arisen the Investigating Officer decided to search the vehicle. The Investigating Officer had deputed a Constable Satish Kumar to look for independent witnesses. He could not find any. In the meantime, a person was noticed coming from Kangu side. He was apprised about the situation and requested to become a witness. The said person, namely Vinod Kumar S/o Sh. Prem Sagar, R/o Village Kangu, Tehsil Sundernagar, District Mandi, agreed to be associated as an independent witness. He, along with Constable Satish Kumar were thus joined as independent

witnesses by the Investigating Officer.

3. The driver of the vehicle had disclosed his name as Gaurav S/o late Sh. Raj Karan, R/o Slapper Colony, Tehsil Sundernagar. The lady sitting on the co-driver seat had described her name as Sarla W/o late Sh. Raj Karan. The lady sitting on the rear seat was one Rishu W/o Girish Sharma and the other was Jyoti W/o Gaurav (driver/petitioner).

4. In the presence of the independent witnesses, the Investigating Officer had searched the vehicle and during the search, a white colored transparent polythene packet tied with a knot was recovered from the pocket of the driver's seat. On opening the polythene, light brown granular substance was found. On the basis of experience and the disclosure of the accused, it was found to be heroin (Chitta). On weighing, it was found to be 6.650 grams.

5. After following the codal formalities, the Investigating Officer had taken the contraband into possession. All the occupants of the vehicle, including the petitioner, were arrested at the spot. Presently, the petitioner is in judicial custody.

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

7. The perusal of the record shows that yet another case stands registered against the petitioner under Sections 21 & 29 of the Act vide FIR No.179 of 2024 on 14.07.2024.

8. It was urged with vehemence by the learned counsel for the petitioner that “intermediate” quantity of contraband had been recovered from the petitioner, and as such, the rigors of Section 37 would not apply with the same force. No doubt, yet another case stands registered against the petitioner under the Act, but that is also in relation to an “intermediate” quantity. All the other co-accused have already been enlarged on bail. The petitioner was also thus entitled to the discretion of bail.

9. Per contra, Sh. Lokender Kutlehria, learned Additional Advocate General for the State has vociferously urged that keeping in view the past antecedents of the petitioner, it seems that his *modus operandi* is to carry small quantity of contraband. There are chances that the petitioner may again indulge in same and similar activities in the future too. The

discretion of bail, thus, cannot be exercised in his favour.

10. The perusal of the status report does show that the quantity of contraband recovered in the present case is indeed “intermediate”, being 6.650 grams of heroin (Chitta) and as such, the rigors of Section 37 will not stricto sensu apply in the facts and circumstances of the present case with the same vigour. Moreover the recovery in the present case is not solely attributed to the petitioner. All the occupants of the car have been implicated and arrested for the same offence.

11. The registration of the earlier case against the petitioner also is in respect to an “intermediate” quantity. He can thus be released, subject to strict terms.

12. It further transpires from the record that the charge-sheet has already been filed. The culmination of the trial is thus likely to take sufficient time. Pre-trial incarceration is otherwise generally loathed by the Courts, as has been held by the Hon’ble Supreme Court in catena of decisions including ***Union of India vs. K.N. Nazeeb 2021 (3) SCC 713 & Javed Gulam Nabi Shaikh vs. State of Maharashtra & Another (Criminal Appeal No.2787 of 2024 decided on 03.07.2024).***

13. “Bail, not jail” is the golden thread which has been running right through the various judgments rendered by the Hon'ble Supreme Court starting from ***Gurbaksh Singh Sibbia & Others v. State of Punjab, (AIR 1980 SC 1632)***, which has consistently been followed till the decision rendered in ***P. Chidambaram v. Directorate of Enforcement, (AIR 2019 SC 4198)***. The object of granting bail was further elucidated in ***Sanjay Chandra & Others v. Central Bureau of Investigation, (AIR 2012 SC 830)***. The Hon'ble Supreme Court has further reiterated that grant of bail was a general rule, as was categorically held in ***Dataram Singh v. State of Uttar Pradesh, [(2018) 3 SCC 22 : AIR 2018 SC 980]***

14. The Hon'ble Supreme Court and this Court, in a catena of decisions, have repeatedly held that an accused is presumed to be innocent until proven guilty. The trial is still at its inception and is likely to take sufficient time. Even otherwise, the quantity of contraband recovered in the present case is intermediate. The recovery is also not solely attributed to the petitioner. All other co-accuseds are also alleged to have been complicit in the commission of the offence. The recovery is not solely attributed to the petitioner/accused.

15. 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 two local sureties 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) The bail petitioner shall not indulge in any similar offence hereinafter. In case he is found to be indulging in similar activities, his bail in the present case shall also stand forfeited."

16. 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.

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

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

(Chirag Bhanu Singh)
Judge

6th October, 2026
(Ritu)

RITU
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by RITU RANI
Date:
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