

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1851 of 2026

Reserved on: 05.10.2026

Decided on: 06.10.2026

Uploaded on: 06.10.2026

Sanjay Kumar

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr Justice Chirag Bhanu Singh, Judge.

Whether approved for reporting?¹

For the Petitioner : Mr. K. B. Khajuria, Advocate.

**For the Respondent : Mr. Lokender Kuthelria,
Additional Advocate General.**

Chirag Bhanu Singh, Judge

The present bail petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, seeking post-arrest bail in case FIR No. 148 of 2026, dated 14.07.2026, registered at Police Station Sadar Chamba, District Chamba, H.P., under Sections 21 and 29 of the Narcotic Drugs & Psychotropic Substances Act (hereinafter referred to as the "Act").

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

2. The facts which emerge from the status report so filed by the State are that on 14.07.2026, Inspector Gagandeep Singh, In-charge, SIU Chamba, along with a police party, was on patrolling. At about 01:40 PM, when the police party was at Fulnutala, a secret information was received that one Manoj Dhawan was selling narcotics in his residential house and, in case the place was raided, a huge quantity of contraband may be recovered.

3. Acting swiftly, the Investigating Officer, Inspector Gagandeep Singh, recorded the reasons of belief under Section 42(2) of the Act and sent the same to the Deputy Superintendent of Police, Chamba, through Constable Amit Kumar. In the meanwhile, the Investigating Officer, along with the police team, proceeded towards the house of accused Manoj Dhawan. On the way, he telephonically asked the Pradhan of Gram Panchayat Sarol, Vijay Kumar, to reach the spot. The Panchayat Pradhan, Vijay Kumar, met the police party outside the house of the accused. In the meanwhile, another person, Mulak Raj, also reached the spot. Both he and the Pradhan of Gram Panchayat Sarol were associated as

independent witnesses. After their arrival, the Investigating Officer proceeded to the house of the accused.

4. In the presence of the independent witnesses, the Investigating Officer met the brother of the accused. Subsequently, the accused was also found in the other room. The police party conducted the search of the accused. Thereafter, while searching the house of the accused, one blue guitar was found on the top of an almirah. Inside the guitar, one transparent polythene bag was found, inside which a brownish substance was recovered. On the basis of the disclosure statement of Manoj Dhawan, it was found to be heroin (chitta). On weighing, the same was found to be 42.37 grams.

5. After following the codal formalities, the contraband so recovered was taken into possession. The said co-accused Manoj Dhawan also came to be arrested at the spot. He is presently in judicial custody.

6. During the course of investigation, the said co-accused had made a disclosure statement that the recovered

contraband had been purchased by him and Sanjay Kumar (present petitioner) and Jagesh Dhar from Pathankot on 13.07.2026. Eventually, the petitioner and Jagesh Dhar came to be arrested on 28.07.2026. The petitioner is presently in judicial custody.

7. As per the report, the challan already stands filed. One case under the NDPS Act already stands registered against the petitioner/accused, being FIR No. 70 of 2025, dated 03.04.2025, registered under Sections 21, 25 and 29 of the Act, in which 2.48 grams of heroin (chitta) had allegedly been recovered from the petitioner.

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

9. 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. One other case registered against him related to "small" quantity only. The prosecution has already filed a challan and the trial has also commenced.

10. *Per contra*, Mr. Lokender Kuthelria, 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 may not be exercised in his favour. There are chances that the petitioner may again indulge in same and similar activities in the future too.

11. It however transpires from record that the contraband, indeed, was not recovered from the conscious and exclusive possession of the petitioner.

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

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] 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/call details collected in this respect will have to be examined at the stage of trial.

15. 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.

16. 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.

17. The registration of the earlier case registered against the petitioner under the Act apparently are only in respect to "small" quantity. Per the learned counsel for the petitioner, it was only kept by him for self consumption. He is hooked to the drugs and is not a peddler.

18. It further transpires from record that the charge-sheet has already been filed. The culmination of the trial is 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*.

19. Though a repeat offender, under normal circumstances this Court would not have exercised discretion in his favour but seeing to the peculiar circumstances, discussed above and keeping in view the fact that the quantity of contraband recovered from the accused in the present case is "intermediate" and the trial is likely to take time. Since the earlier cases pertain to "small" quantity and apparently the petitioner was himself addicted to the drugs, it would be in the interest of justice and fairplay that the discretion of bail is exercised in his favour, but subject to strict terms. He may be given a chance to reform himself. The quantity of drugs recovered from him on both the occasions rule out his being a peddler. The present recovery is also not solely attributed to the present petitioner.

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

21. 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.

22. 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."

23. 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.

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

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

(Chirag Bhanu Singh)
Judge

06th October, 2026
(Shamsh Tabrez)

**SHAMSH
TABREZ**

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by SHAMSH
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