

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Cr.MMO No.1063 of 2025

Reserved on 24.09.2026

Decided on 30.09.2026

Uploaded on : 30.09.2026

Kulvinder Gill

...Petitioner

Versus

State of H.P.

.....Respondent

Coram:

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

Whether approved for reporting?¹

For the Petitioner : Ms. Suhani Gautam, Advocate.

For the Respondent : Mr. Rajpal Thakur, Additional
Advocate General.

Chirag Bhanu Singh, Judge

The petitioner invokes the jurisdiction of this Court, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), for quashing FIR No.68 of 2025, dated 11.09.2025, registered under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as the 'ND&PS Act'), at Police Station Mehatpur, District Una, H.P., along with all other consequential proceedings.

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

2. As per the petitioner, false and concocted allegations have been made against him. On 11.09.2025, the police had recovered approximately 122.960 kg of poppy husk from a vehicle bearing Registration No.UP16CT-8306. The petitioner was neither present at the spot, nor any contraband had been recovered from his possession, control or premises. No material connects him with the alleged occurrence. The vehicle does not belong to the petitioner or any of his family members. The sole basis for implicating the petitioner was a statement of the co-accused recorded by the police, which is otherwise inadmissible in law.

3. It is further averred by the petitioner that even if the allegations in the FIR are taken at its face value, no prima-facie case is made out against the petitioner. The continuation of the investigation and the proceedings against the petitioner would thus amount to gross abuse of the process of law.

4. The respondent-State, while contesting the petition, has raised preliminary objections that on 11.09.2025, a secret information had been received by the IO, ASI Naginder Pal, that the petitioner-Kulvinder Gill, son

of Telu Ram, resident of Ward No.5, V.P.O. Charatgarh, Tehsil and District Una, H.P., had parked his vehicle bearing Registration No.UP16CT-8306. The vehicle was loaded with poppy husk, (bhukki) on the back seat. If a raid was conducted, a huge quantity of poppy husk can be recovered.

5. The information being credible, the investigating officer, ASI Naginder Pal, immediately swung into action, prepared the reasons of belief under Section 42(2) of the NDPS Act, and sent the information to the ASP, Una. The police party had proceeded to Village Charatgarh, after associating independent witnesses, the police party had raided the house of the petitioner. His co-accused, Mandeep Singh, was only present in the house at that time.

6. 1.390 kg of poppy husk was recovered from the house of the petitioner. On inquiring about the vehicle, co-accused Mandeep Singh had handed over the keys of the vehicle bearing Registration No.UP16CT-8306 to the police and had disclosed to them that the vehicle belonged to the petitioner. During the course of the search of the vehicle, 121.570 kg of poppy husk came to be recovered.

7. The petitioner was not present at that time in his house, and is absconding since that day. The bail application preferred by the petitioner has been dismissed twice by this Court and once by the learned Sessions Court, Una, District Una, H.P. The petitioner has not been apprehended till date, and hence, he is not entitled to the discretionary relief sought.

8. The material collected by the prosecution till now shows the indulgence of the petitioner in the commission of the crime. At this stage, it cannot be said that no prima-facie case is made out against the petitioner.

9. On merits too, the aforesaid contentions have been reiterated by the respondent-State. It is further reiterated that based on the statement of witnesses, it is clear that the house where the recovery had been effected is the ancestral house of the petitioner. The investigation in the case is still pending and the revenue papers regarding the house of the petitioner have still to be collected by the prosecution. The vehicle in question was also being used by the petitioner. Another case, being FIR No. 30 of 2022, dated 23.03.2022,

also stands registered against the petitioner under Sections 15 and 29 of the NDPS Act in PS Kirtpur Sahib, Punjab.

10. I have heard learned counsel for the parties and perused the record.

11. The learned counsel for the petitioner has very strenuously urged that no contraband was found from the “conscious possession” of the petitioner, nor any recovery has been effected from him. He was not even present at the spot, and nor does the vehicle in question belong to him. The only evidence worth the name is the statement of the co-accused, which is otherwise not admissible in law, as has been held in **Tofan Singh versus State of Tamil Nadu, (2021) 4 SCC 1.**

12. Learned counsel has further placed reliance on the judgments of **Avtar Singh and Others v. State of Punjab (2002) 7 SCC 419** and **Rakesh Kumar Raghuvanshi versus State of Madhya Pradesh (2025) INSC 96** to contend that to invoke the provisions of Sections 15 and 29, of the ND&PS Act, to make the possession of the contraband illicit, there should have been “conscious possession”. Conscious possession implies that the person knew that he had the

illicit drug or psychotropic substances in his control and had the intent or knowledge of its illegal nature.

13. The learned counsel would thus, impress that seeing to the facts and circumstances of the case it is clear that the petitioner could not be said to have been in conscious possession of the contraband and as such keeping in view the mandate of **State of Haryana and others versus Ch. Bhajan Lal and others**, AIR (1992) SCC 604, even if the allegations in the FIR are taken at its face value and are accepted in its entirety, it will not prima-facie constitute any offence or make out any case against the accused.

14. No doubt by now, it is trite, as has also been held in Bhajan Lal's case referred hereinabove (supra) that the inherent powers under Section 482 of the Code of Criminal Procedure can be exercised, either to prevent abuse of the process or to secure the ends of justice, though it was further held that it may not be possible to lay down any precise, clearly or defined a straight jacket formula, but it did lay down that the powers could be exercised (i) where the allegations made in the FIR or the complaint taken at its face value and if accepted in its entirety do not prima-facie

constitute any offence. (ii) where the allegations in the FIR do not disclose of cognizable offence, justifying and investigation by the police. (iii) where the un-controverted allegations in the FIR and the evidence collected during investigation do not disclose the commission of any offence. (iv) where the allegations in the FIR do not constitute a cognizable offence, but only a non-cognizable offence and no investigation is permitted by a police officer without an order of a Magistrate. (v) where the allegations made in the FIR, are absurd and inherently improbable or (vi) where there is an express bar or where criminal proceedings are manifestly attended with malafide or are maliciously instituted.

15. It has further to be kept in mind and the legal position is also well settled that when prosecution is asked to be quashed at the initial stage, the test to be applied by the Court is as to whether the un-controverted allegations made prima-facie establish the offence and that no useful purpose was likely to be served, by allowing the criminal prosecution to continue.

16. Based on the aforesaid exposition of law, adverting to the facts of the present case, it transpires that a secret

information in the first instance was received in respect of the petitioner himself by name. It is duly reflected in the FIR itself that the material collected by the prosecution during the investigation shows that the house in question is the ancestral house of the petitioner-Kulvinder Gill. 1.390 kg. of the poppy husk was recovered from the house. The co-accused-Mandeep Singh, on inquiry about the vehicle of petitioner-Kulvinder Gill had handed over the keys to the police. He had specifically identified the vehicle to be that of the petitioner and had duly identified the same to the police in the presence of the independent witnesses. The said vehicle was found to bear Registration No.UP16CT-8306. On searching the vehicle in the presence of the independent witnesses 121.57 Kg. of poppy husk was found in the white coloured Honda Amaze.

17. Since admittedly the investigations are at the very inception, the ownership of the vehicle is still to be established, but based on the statement of the co-accused-Mandeep Singh, prima-facie, it is apparent that the petitioner has some nexus with the crime. Sufficient material has been collected till now by the prosecution to contend that it is the

ancestral house of the petitioner. The secret information received also was in the name of the petitioner. It cannot be said that the bare reading of the FIR, if accepted at its face value and even taken in its entirety will not prima-facie constitute any offence or that no case was made out against the accused. There is sufficient material on record to prima-facie hold that the petitioner is involved in the crime, as not only the house is stated to be of the petitioner, but even the white Honda Amaze from which 121.57 Kg. of poppy husk is alleged to have been recovered is stated to be that of the petitioner. The statement of his co-accused-Mandeep Singh itself corroborates the same.

18. The question about the veracity of the statement made by the co-accused-Mandeep Singh and the question whether the petitioner was found in conscious and exclusive possession are questions, which cannot be considered and even agitated at this stage. That stage is still to come. The admissibility of the statement of the co-accused can be considered only during the actual trial, and not at pre-trial stages. The statement of the co-accused pointing his little finger towards the petitioner is sufficient to hold that the un-

controverted allegations made in the FIR, coupled with the statements made are sufficient and prima-facie establish the offence vis-à-vis the petitioner/accused. The prosecution cannot be whittled at the very inspection on such grounds. The ratio of the Bhajan Lal's case also thus, does not augur to the benefit of the petitioner at this stage. The admissibility of the statement of the co-accused and the question of conscious possession are matters to be answered at a subsequent stage.

19. For all the reasons discussed hereinabove (supra), the petition thus sans any merit and as a sequel the same is dismissed.

20. Pending application(s), if any also stands disposed of.

(Chirag Bhanu Singh)
Judge

September 30, 2026
(subhash sharma)