

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.1954 of 2026
Date of Decision: 09.10.2026

Dhani Ram @ Gallu Petitioner

Versus

State of HP ... Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the Petitioner : Mr. Anirudh R.H. Sharma, Advocate.

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

ASI Jai Ram, PS Kunihar, District
Solan, Himachal Pradesh, present in
person along with record.

Sandeep Sharma, Judge(oral):

Bail petitioner namely Dhani Ram @ Gallu, who is behind bars since 18.09.2025, has approached this Court in the instant proceedings filed under Section 483 of Bharatiya Nagrik Suraksha Sanhita (hereinafter '**BNSS**') for grant of regular bail in FIR No.61 of 2025, dated 18.09.2025, under Sections 18 & 20 of ND & PS Act , registered at Police Station Kunihar, District Solan, Himachal Pradesh.

2. In terms of order dated 30.09.2026, respondent-State has filed status report and ASI Jai Ram has come present with record. Record perused and returned.

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

3. Close scrutiny of status report/ record reveals that on 18.09.2025 at about 12.05 a.m., police, after having received secret information to the effect that petitioner herein, who runs a dhaba in the name of Deepak Bhojanalaya at Jadli near Kunihar Road, indulges in illegal trade of narcotics, constituted a raiding team and raided the dhaba and homestay being run by the petitioner and allegedly in the presence of independent witnesses, recovered 1.622 kg of charas and 1.624 kg of opium. 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 the petitioner, arrested him on 18.09.2025 and since then, he is behind bars.

4. Prior to filing of the petition at hand, petitioner approached learned Special Judge-III, Solan, H.P. by way of Bail Application No. 88-ASJ-II/22 of 2026, titled ***Dhani Ram alias Gallu versus State of Himachal Pradesh***, but the same came to be dismissed vide order dated 05.08.2026 on the ground that petitioner possessed commercial quantity of contraband and as such, rigours of Section 37 of the ND&PS Act are attracted.

5. Though it came to be specifically pleaded at the behest of the petitioner herein that as per Revised Standard Operating Procedure (SOP) for Under Trial Review Committees (UTRCs), petitioner, who is 73 years old, is required to be released, but careful

perusal of order dated 05.08.2026 passed by learned Special Judge-III, Solan, HP, reveals that such prayer of the petitioner was not considered. In the aforesaid background, petitioner has approached this Court in the instant proceedings, praying therein for grant of regular bail.

6. Mr. Anirudh R.H. Sharma, learned counsel representing the petitioner, vehemently argued that though it is yet to be established on record by the prosecution that petitioner was found in possession of commercial quantity of contraband, but even otherwise, he is entitled to bail as per Revised Standard Operating Procedure (SOP) for Under Trial Review Committees (UTRCs), which clearly provides that a person more than 70 years of age can be enlarged on bail even in cases registered under the ND&PS Act. Mr. Sharma further argued that otherwise also, petitioner is behind bars for more than 13 months, but till date charge has not been framed and as such, his prayer for grant of bail also deserves to be considered on the ground of inordinate delay in conclusion of trial.

7. Mr. Rajan Kahol, learned Additional Advocate General, while fairly admitting factum with regard to filing of challan in the competent Court of law, states that though nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of offence alleged to have been committed by him, he does not deserve any leniency, rather needs to be dealt with severely. He states that

there is overwhelming evidence adduced on record suggestive of the fact that bail 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 such activities. He states that with the filing of charge-sheet in the competent Court of law, trial has commenced and as such, prayer made by the petitioner for grant of bail on the ground of inordinate delay in conclusion of trial cannot be accepted. He further states that since commercial quantity of contraband came to be recovered in the case at hand, rigours of Section 37 of the ND&PS Act are attracted. He states that there is nothing on record to suggest that petitioner has been falsely implicated and in the event of his being enlarged on bail, he will not indulge in these activities, rather, previous history of the petitioner clearly reveals that he is a drug peddler. He also supported the finding given by learned Special Judge-III, Solan. However, Mr. Kahol was unable to dispute that in terms of Revised Standard Operating Procedure (SOP) for Under Trial Review Committees (UTRCs), petitioner, who is 73 years old, is required to be released.

8. Having heard learned counsel for the parties and perused the material available on record, this Court finds that this Court is not persuaded to agree with learned counsel for the petitioner that petitioner has been falsely implicated, rather this Court finds that commercial quantity of contraband came to be recovered from the conscious possession of the petitioner in the presence of independent

witnesses. Similarly, this Court is not persuaded to consider the prayer made on behalf of the petitioner for enlargement of petitioner on the ground of inordinate delay, especially when it is not in dispute that rigours of Section 37 of the ND&PS Act are attracted in the present case. No circumstance has been indicated to this Court, from where it can be inferred that petitioner has been falsely implicated. Similarly, in past, two cases under ND&PS Act have been registered against the petitioner, wherein, though, petitioner has been acquitted. However, having taken note of Revised Standard Operating Procedure (SOP) for Under Trial Review Committees (UTRCs), framed by National Legal Services Authority in terms of judgment passed by Hon'ble Apex Court in WP(C) 406/2013-In ***Re-Inhuman Conditions in 1382 Prisons***, prayer made on behalf of the petitioner, who is 73 years old, for enlargement on bail deserves to be considered.

9. As per aforesaid SOP, Office of Secretary, DLSA with the aid of empanelled panel lawyers, Retired Judicial Officer and law students trained as PLVs, if required and available, shall draw list of UTPs/Convicts eligible for consideration by the UTRC out of Data sent to him by Jail Superintendent of every jail in District and thereafter UTPS/Convicts falling under the categories as prescribed in Clause 2.2. of Step-II, shall be placed before Under Trial Review Committees, which reads as under:-

STEP 2: Processing of Data by Secretary, DLSA

2.1 The office of Secretary, DLSA, with the aid of empaneled panel lawyers, Retired Judicial Officers and law students trained as PLVs, if required and available, shall draw list of UTPs/Convicts eligible for consideration by the UTRC out of Data sent to him from Step-I in the light of criteria laid down by Hon'ble Supreme Court in WP(C) 406/2013-Re-Inhuman Conditions in 1382 Prisons, as per detailed hereunder (Para 2.2).

If any further details are required by the Secretary, DLSA from any court or from the Jail Superintendent or from the police authorities, the same may be ascertained by the Secretary DLSA. Thereafter, the Secretary DLSA shall prepare a list of eligible UTPs for consideration of UTRC in the Excel Sheet/Soft form as per Annexure A & B.

2.2 Cases of UTPs / Convicts falling under following categories shall be considered by the Secretary, DLSA for placing them before the UTRC:-

2.2.1 UTPs eligible under Section 436A Cr.P.C./479 BNSS [As per order of Hon'ble Supreme Court dated 24th April, 2015]

2.2.2 UTPs who are first time offenders and have completed one-third of their sentence, and eligible as per Section 479 BNSS. [As per order of Hon'ble Supreme Court dated 19th November, 2024]

2.2.3 UTPs granted bail by the court, but have not been able to furnish sureties. [As per order of Hon'ble Supreme Court dated 24th April, 2015]

2.2.4 UTPs accused of compoundable offences. [As per order of Hon'ble Supreme Court dated 24th April, 2015] 2.2.5 UTPs eligible under Section 436 of Cr.P.C/478 BNSS. [As per order of Hon'ble Supreme Court dated 05th February, 2016]

2.2.6 UTPs who may be covered under Section 3 of the Probation of Offenders Act, or Section 360 CrPC/401 BNSS and can be released on probation of good conduct or on admonition. [As per order of Hon'ble Supreme Court dated 05th February, 2016]

2.2.7 Convicts who have undergone their sentence, or are entitled to be considered for pre mature release, or are entitled to release pursuant to remission already granted to them. [As per order of Hon'ble Supreme Court dated 05th February, 2016]

2.2.8 UTPs become eligible to be released on bail on Section 167(2)(a)(i) & under (ii) CrPC/Section 187 (3) (i) & (ii) BNSS, read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, persons accused 1985 of (where Section 19/24/27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days, as the case may be. [As per order of Hon'ble Supreme Court dated 06th May, 2016]

2.2.9 UTPs who are imprisoned for offences which carry a maximum punishment of 2 years. [As per order of Hon'ble Supreme Court dated 06th May, 2016]

2.2.10 Persons detained under Chapter VIII of the Cr.P.C. i.e. u/s 107, 108, 109 and 151 of Cr.P.C/ Sections 126, 127, 128 and 170 of the BNSS. [As per order of Hon'ble Supreme Court dated 06th May, 2016]

2.2.11 UTPs who are sick or infirm including terminally ill, who require specialized medical treatment. [As per order of Hon'ble Supreme Court dated 06th May, 2016]

2.2.12 Women UTPs. [As per order of Hon'ble Supreme Court dated 06th May, 2016]

2.2.13 UTPs who are first time offenders between the ages 18 and 21 years and in custody for the offence punishable with less than 7 years of imprisonment and have undergone at

least 1/4th of the maximum sentence possible. [As per order of Hon'ble Supreme Court dated 06th May, 2016]

2.2.14 UTPs who are of unsound mind and are to be dealt with as per Chapter XXV CrPC/Chapter XXVII of the BNSS. [As per order of Hon'ble Supreme Court dated 06th May, 2016]

2.2.15 UTPs eligible for release under Section 437(6) of Cr.P.C/Section 480(6) of the BNSS wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of 60 days from the first date fixed for taking evidence in the case. [As per order of Hon'ble Supreme Court dated 06th May, 2016]

2.2.16 UTPs who are and above the age of 70 years. 2.3 The DLSA Secretary must inform the District & Sessions Judge that the complete list has been prepared and request him to convene the UTRC meeting at the earliest. A copy of the list may also be shared with other members of the UTRC so that they can come prepared for the meeting.

STEP 3: Processing of identified cases by UTRC *3.1 The District & Sessions Judge shall convene the UTRC meeting as soon as the intimation is received from the DLSA, Secretary about the completion of the lists.*

3.2 UTRC shall consider the cases shortlisted by the Secretary, DLSA and make recommendations for release/appropriate action.

3.3 Upon processing the individual cases, the recommendations of UTRC may include:-

3.3.1 In case UTPs covered under Section 436A Cr.P.C/479 BNSS.: UTRC may recommend to concerned trial court to take up the matter and consider him/her for release on bail if there are no special reasons to deny bail, with or without sureties.

3.3.2 UTPs released on bail by the court, but have not been able to furnish sureties: The UTRC may recommend the trial court to examine the reason why the accused is not furnishing surety/ bail bonds and if he/she is unable to do so due to poverty, then the trial court may consider reducing the bail amount on the application of the lawyer under S.440, CrPC/484 BNSS or release on personal bond. 3

3.3.3 UTPs accused of compoundable offences: The UTRC may recommend to the trial court to consider if the offence can be compounded between the complainant and the accused as per law.

3.3.4 UTPs eligible under Section 436 of Cr.P.C./478 BNSS: The UTRC may recommend to the trial court to consider releasing such an accused on personal bond in case he is unable to furnish bail bond within seven days of bail order.

3.3.5 UTPs who may be covered under Section 3 of the Probation of Offenders Act, namely accused of offence under Sections 379, 380, 381, 404, 420 IPC/303(2), 305, 306, 315, 318(4) BNS or alleged to be an offence not more than 2 years imprisonment: The UTRC may recommend to the trial court to consider invoking of Probation of Offenders Act in fit cases as also plea bargaining in appropriate cases.

3.3.6 Convicts who have undergone their sentence or are entitled to release because of remission granted to them: The UTRC may examine the reason for nonrelease of the convict and the Officer in-charge of prison may be recommended to look into the matter so that the convict is released as soon as possible.

3.3.7 UTPs become eligible to be released on bail under Section 167(2)(a)(i) & (ii) of the Code/ 187 (3) (i) & (ii) read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of Section 19 or Section 24 or Section 27A or for offences involving

commercial quantity) and where investigation is not completed in 60/90/180 days: The UTRC may recommend to the trial court to consider release of the accused in cases where chargesheet is not submitted within the statutory time frame.

3.3.8 UTPs who are imprisoned for offences which carry a maximum punishment of 2 years: The UTRC may recommend to the trial court to consider releasing of the UTP on bail in such cases.

3.3.9 UTPs who are detained under Chapter VIII of the Cr.P.C. i.e. under Sections 107, 108, 109 and 151 of Cr.P.C./126, 127, 128 and 170 of BNSS: The Executive Magistrate/ District Magistrate court may be recommended to release/discharge such persons with or without conditions or to make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

3.3.10 UTPs who are sick or infirm and require specialized medical treatment: The UTRC may examine the medical condition of the inmate and if it is found that the inmate is very sick and specialized treatment is essential for survival, then the UTRC may recommend the trial court to consider granting bail on medical ground, as provided under S.437, CrPC/480 BNSS, even for temporary period.

3.3.11 UTPs women offenders: Women under trial prisoners who are not accused of serious offences may be considered for release on bail under S.437, CrPC/480 BNSS, especially they are first time offenders by the concerned trial courts. The UTRC may also recommend suitable measures under the directions of the Hon'ble Court in R. D. Upadhyay vs State of A.P. & Ors. (AIR 2006 SC 1946).

3.3.12 UTPs who are first time offenders between the ages 19 and 21 years and in custody for the offence punishable with less than 7 years of imprisonment and have suffered at least

1/4th of the maximum sentence possible: The UTRC may request the trial court to consider granting bail to such young offenders. If the person is found guilty in the course of trial, benefit of S.3 or S.4 of the Probation of Offenders Act, 1958, may be given to the accused.

3.3.13 UTPs who are of unsound mind and must be dealt with Chapter XXV of the Code/ Chapter XXVII of the BNSS: UTRC may recommend the trial court to take appropriate steps in accordance with Chapter XXV of the Code/ Chapter XXVII of the BNSS and provide adequate treatment to such inmates.

3.3.14 UTPs eligible for release under Section 437(6) of Cr.P.C./ 480 (6) BNSS, wherein in a case triable by a Magistrate, the trial of a person accused of any nonbailable offence has not been concluded within a period of 60 days from the first date fixed for taking evidence in the case: UTRC may request the trial court to consider granting bail to such UTPs under Section 437(6) of Cr.P.C./ 480 (6) BNSS

3.4 The UTRC shall enter its recommendation in column no. 21-23 of Annexure-A and column no.15-17 of Annexure-B.

3.4.1 Recommendation of UTRC

3.4.2 Date of recommendation

3.4.2 Brief reasons for UTRC recommendation

3.5 The UTRC shall share recommendations with the concerned Trial Court/Jail Superintendent and Secretary, DLSA. Jail Superintendent shall bring it to the notice of UTP/Convict. Secretary, DLSA shall instruct the panel lawyers to move appropriate application in legal aided cases. The Trial Courts may deal with the recommendations in the manner deemed appropriate for each particular case with the assistance of Legal Aid/Private Lawyer.”

10. After receipt of complete information, DLSA shall inform District and Sessions Judge to convene UTRC meeting at the earliest, whereafter, under Step-3 of SOP, District and Sessions Judge shall convene the UTRC meeting and consider the cases shortlisted by the Secretary, DLSA and make recommendations for release/appropriate action. Clause 3.3.7 of Step-3 clearly provides that UTPs become eligible to be released on bail under Section 167(2)(a)(i) & (ii) of the Code/Section 187(3)(i) & (ii) read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of Section 19 or Section 24 or Section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days, the UTRC may recommend to the trial Court to consider release of the accused in cases where charge-sheet is not submitted within the statutory time frame.

11. Admittedly, in the case at hand, vide communication dated 15.10.2025, Secretary, District Legal Services Authority, Solan, informed Sh. D.K. Kaushal, Advocate, Solan, District Solan, Himachal Pradesh, with regard to his being appointed as Legal Aid Counsel on behalf of the bail petitioner for filing an application in the competent Court of law for his release on the basis of Under Trial Review Committee's recommendation made on 16.10.2026, wherein the case of the petitioner came to be identified in category 2.2.16 of Step-2,

which provides that UTPs who are above the age of 70 years can be recommended for consideration of bail.

12. Though above-named Advocate, while filing bail application before learned Special Judge-III, Solan, specifically mentioned therein factum with regard to his having received communication dated 15.10.2025 from the office of Secretary, District Legal Services Authority, Solan, addressed to Shri D.K. Kaushal, Advocate, Solan, with regard to petitioner being recommended for release on the basis of Under Trial Review Committee's recommendation, but, interestingly, Court below did not take note of the same, rather proceeded to dismiss the application of the petitioner on the premise that rigours of Section 37 of the ND&PS Act are attracted.

13. During proceedings, it also came to be submitted at the behest of the petitioner that besides making specific averment in the bail application with regard to the SOP as detailed hereinabove, judgment dated 07.07.2026 passed by this Court in *Nek Ram versus State of Himachal Pradesh* (Cr.MP(M) No. 900 of 2026) was also brought to the notice of learned Court below, but the same was also not noticed by learned Court below.

14. Though this Court is of the view that it is a discretionary power of the Court concerned to grant bail depending upon the facts and circumstances of each case, but once judgment passed by this

Court, which could have a direct bearing on the case at hand, was brought to the notice of the Court concerned, it was expected to take note of the same. Since specific averment was made with regard to SOP, Court was also under an obligation to deal with the same, but it appears that court below very conveniently ignored both the SOP as well as judgment passed by this Court, which act of it cannot be appreciated. This Court hopes and trusts that in future, Court concerned would be more vigilant and cautious.

15. Having carefully perused SOP framed by National Legal Services Authority in terms of judgment passed by Hon'ble Apex Court in *Inhuman Conditions in 1382 Prisons (supra)*, coupled with the fact that there is a provision to recommend the case of an undertrial prisoner who has attained the age of more than 70 years for grant of bail, this Court is persuaded to consider the prayer of the petitioner for grant of regular bail.

16. Besides above, this Court finds that petitioner is behind bars for more than 13 months, but till date charge has not been framed. Prosecution, with a view to prove its case, proposes to examine 45 witnesses, meaning thereby, considerable time is likely to be consumed in conclusion of trial and if during the aforesaid period, petitioner is left to incarcerate in jail, it would not only amount to pre-trial conviction, but would also violate Article 21 of the Constitution of India.

17. 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 Deputy 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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

his furnishing personal bond in the sum of Rs.10,00,000/- 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.

23. 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.

24. 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.

25. 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**

October 09, 2026
(sunil)