IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 443 of 2026
Reserved on: 21.04.2026
Date of Decision: 27.04.2026.

Prahlad Kumar .... Petitioner

Versus

State of HP .... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No

For the Petitioner : M/s Anjali Soni Verma & Shivani Tegta, Advocates.

For the Respondent/State: Mr Ajit Sharma, Deputy Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 167 of 2025, dated 29.12.2025, registered at Police Station Damtal, District Kangra, H.P., for the commission of offences punishable under Sections 20 & 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act.

2. It has been asserted that the petitioner was arrested on 01.02.2026 by the police based on inadmissible evidence for

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

the commission of offences punishable under Section 29 of the NDPS Act. The petitioner has no connection to the commission of the crime. The police have completed the investigation, and the petitioner's custodial interrogation is not required. The petitioner belongs to a respectable family and is a permanent resident of District Kangra. He would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

3. The petition is opposed by filing a status report asserting that the police were on patrolling duty in their vehicle near Tauki on 28.12.2025 at about 9:30 PM. They saw three people carrying a bag and talking to each other inside the rain shelter. The police became suspicious and stopped the vehicle. The people inside the rain shelter tried to run away after seeing the police, but the police apprehended them. The police associated Mohan Singh and Karan and enquired about the names of the apprehended persons, who identified themselves as Sonu @ Nittu, Mukesh Kumar @ Rinku and Balwinder @ Billa. The police checked the carry bag and found 1.852 kg of cannabis in it. The police seized the cannabis and arrested the

apprehended persons. The police interrogated the apprehended persons. Balwinder @ Billa revealed that he and Prahlad (the present petitioner) met each other in Sub Jail, Nurpur. He and the petitioner started selling the charas together. The petitioner had supplied the cannabis to him on 28.12.2025 and asked Sonu @ Nittu to contact Balwinder @ Billa for purchasing charas. Balwinder @ Billa was supplying charas to Sonu @ Nittu and Mukesh Kumar @ Rinku when they were apprehended by the police. The other accused also confirmed this version. The call detail record showed that all the people were in touch with each other. The police arrested the petitioner. The petitioner was convicted in FIR Nos. 7 of 2008, 43 of 2008 and 50 of 2009. The chargesheet has been filed before the court, and the matter is pending before the Court. Hence, the status report.

4. I have heard M/s Anjali Soni Verma and Shivani Tegta, learned counsel for the petitioner and Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State.

5. Ms Anjali Soni Verma, learned counsel for the petitioner, submitted that the petitioner is innocent and he was apprehended based on suspicion. There is no legally admissible

evidence against the petitioner, and the prosecution is relying upon the statement made by the co-accused, which is inadmissible. The police have filed the chargesheet, and no fruitful purpose would be served by detaining the petitioner in custody. Hence, she prayed that the present petition be allowed and the petitioner be released on bail. She relied upon the judgments of this Court in ***Shubham Chaudhary and State of H.P. 2026:HHC:6937*** and ***Liyakat Ali vs. State of H.P. 2026:HHC:6380*** in support of her submissions.

6. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the petitioner had supplied charas to Balwinder @ Billa and asked the co-accused Sonu @ Nittu to collect charas from him as per the statements made by the co-accused. These statements were confirmed by the call detail record between the petitioner and the co-accused. The petitioner had abetted the commission of an offence involving the commercial quantity of charas. The rigours of Section 37 of the NDPS Act apply to the present case, and the petitioner has not satisfied the twin conditions laid down under Section 37 of the NDPS Act. Hence, he prayed that the present petition be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. The parameters for granting bail were considered by the Hon'ble Supreme Court in ***Pinki v. State of U.P., (2025) 7 SCC 314: 2025 SCC OnLine SC 781,*** wherein it was observed at page 380:

> **(*i*) *Broad principles for the grant of bail***
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> **56.** In ***Gudikanti Narasimhulu v. High Court of A.P., (1978) 1 SCC 240: 1978 SCC (Cri) 115***, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of personal liberty of a person under trial, has laid down the key factors that should be considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)
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> > "7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence is also pertinent. The punishment to which the party may be liable, if convicted or a conviction is confirmed, also bears upon the issue.
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> > *8. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.* [***Patrick Devlin, "The Criminal Prosecution in England"*** (Oxford University Press, London 1960) p. 75 — Modern Law Review, Vol. 81, Jan. 1968, p. 54.]
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> > *9. Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to*

habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance." (emphasis supplied)

57. In ***Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280: 2001 SCC (Cri) 674***, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284-85, para 8)

"*8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles, having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge*." (emphasis supplied)

58. This Court in ***Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688***, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

> "*3. Grant of bail, though being a discretionary order, but, however, calls for the exercise of such a discretion in a judicious manner and not as a matter of course. An order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts do always vary from case to case. While the placement of the accused in society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, the same should always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — the more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.*" (emphasis supplied)

59. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977***, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

60. In Prasanta ***Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765***, this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under: (SCC p. 499, para 9)

> "*9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this*

Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(*i*) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence*;

(*ii*) *nature and gravity of the accusation*;

(*iii*) *severity of the punishment in the event of conviction*;

(*iv*) *danger of the accused absconding or fleeing, if released on bail*;

(*v*) *character, behaviour, means, position and standing of the accused*;

(*vi*) *likelihood of the offence being repeated*;

(*vii*) *reasonable apprehension of the witnesses being influenced; and*

(*viii*) *danger, of course, of justice being thwarted by grant of bail*." (emphasis supplied)

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62. One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is ***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170***, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (***Pappu Kumar v. State of Bihar, 2021 SCC OnLine Pat 2856*** and ***Pappu Singh v. State of Bihar, 2021 SCC OnLine Pat 2857***) of the High Court granting bail to the accused, observed as follows: (***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170]***), SCC p. 511, para 35)

"*35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly,*

> *when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record to enable a court to arrive at a prima facie conclusion. While considering an application for the grant of bail, a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.*" (emphasis supplied)

9. Hon'ble Supreme Court held in ***State of Rajasthan v. Balchand*, *(1977) 4 SCC 308: 1977 SCC (Cri) 594: 1977 SCC OnLine SC 261*** that the normal rule is bail and not jail, except where the gravity of the crime or the heinousness of the offence suggests otherwise. It was observed at page 308:

> **2.** The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.
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> **3.** It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also, the heinousness of the crime...."

10. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

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11. The status report shows that the police interrogated Balwinder @ Billa, Mukesh Kumar @ Rinku and Sonu @ Nitu and found that the petitioner had supplied charas to Billa with a direction to supply it to Sonu. The petitioner had also contacted Sonu and had asked him to collect charas from Balwinder @ Billa. The police relied upon the statements made by the co-accused during the custody and the call detail record to show that the petitioner and the co-accused were in touch with each other.

12. It was laid down by the Hon'ble Supreme Court in ***Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547: (2020) 2 SCC (Cri) 361: 2019 SCC OnLine SC 588*** that a statement made by co-accused during the investigation is hit by Section 162 of Cr.P.C. (corresponding to Section 181 of BNSS) and cannot be used as a piece of evidence. Further, the confession made by the co-accused is inadmissible because of Section 25 of the Indian Evidence Act (corresponding to Section 23 of BSA). It was observed at page 568: -

> "**44.** Such a person, viz., the person who is named in the FIR, and therefore, the accused in the eyes of the law, can indeed be questioned, and the statement is taken by the police officer. A confession that is made to a police officer would be inadmissible, having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section

> 24 of the Evidence Act, would also be inadmissible. A confession, unless it fulfils the test laid down in Pakala ***Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1: (1938-39) 66 IA 66: AIR 1939 PC 47*** and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains an admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC."

13. Similarly, it was held in ***Surinder Kumar Khanna vs Intelligence Officer Directorate of Revenue Intelligence 2018 (8) SCC 271*** that a confession made by a co-accused cannot be taken as a substantive piece of evidence against another co-accused and can only be utilised to lend assurance to the other evidence. The Hon'ble Supreme Court subsequently held in ***Tofan Singh Versus State of Tamil Nadu 2021 (4) SCC 1*** that a confession made to a police officer during the investigation is hit by Section 25 of the Indian Evidence Act. Therefore, no advantage can be derived by the prosecution from the confessional statement made by the co-accused to implicate the petitioner.

14. The police have also relied upon the call detail record to connect the petitioner with the commission of a crime. It was laid down by this Court in ***Saina Devi vs State of Himachal Pradesh 2022 Law Suit (HP) 211*** that where the police have no material

except the call details record and the disclosure statement of the co-accused, the petitioner cannot be kept in custody. It was observed: -

> "**[16]** In the facts of the instant case, the prosecution, for implicating the petitioner, relies upon firstly the confessional statement made by accused Dabe Ram and secondly the CDR details of calls exchanged between the petitioner and the wife of co-accused Dabe Ram. Taking into consideration the evidence with respect to the availability of CDR details involving the phone number of the petitioner and the mobile phone number of the wife of co-accused Dabe Ram, this Court had considered the existence of a prima facie case against the petitioner and had rejected the bail application as not satisfying the conditions of Section 37 of the NDPS Act.
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> **[17]** Since the existence of CDR details of the accused person(s) has not been considered as a circumstance sufficient to hold a prima facie case against the accused person(s), in ***Pallulabid Ahmad's case*** (supra), this Court is of the view that the petitioner has made out a case for maintainability of his successive bail application as also for grant of bail in his favour.
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> **[18]** Except for the existence of CDRs and the disclosure statement of the co-accused, no other material appears to have been collected against the petitioner. The disclosure made by the co-accused cannot be read against the petitioner as per the mandate of the Hon'ble Supreme Court in ***Tofan Singh Vs State of Tamil Nadu, 2021 4 SCC 1***. Further, on the basis of the aforesaid elucidation, the petitioner is also entitled to the benefit of bail.

15. A similar view was taken by this Court in ***Dabe Ram vs. State of H.P., Cr.MP(M) No. 1894 of 2023, decided on 01.09.2023, Parvesh Saini vs State of H.P., Cr.MP(M) No. 2355 of 2023, decided***

on 06.10.2023 and ***Relu Ram vs. State of H.P. Cr.MP(M) No. 1061 of 2023, decided on 15.05.2023.***

16. Therefore, there is *prima facie* insufficient material to connect the petitioner to the commission of a crime.

17. It was submitted that the petitioner abetted the possession of a commercial quantity of charas, and the rigours of Section 37 of NDPS apply to the present case. This submission is not acceptable. There is nothing to connect the petitioner to the commission of the crime except the calls made by him and the statements made by the co-accused, which, *prima facie,* are insufficient to connect the petitioner to the commission of the crime. Hence, the rigours of Section 37 of the ND&PS Act do not apply to the present case.

18. It was submitted that the petitioner was convicted in FIR No.7 of 2008, 43 of 2008 and 50 of 2009. He has criminal antecedents and is likely to commit the offence if released on bail. This submission would have been acceptable had the prosecution collected any material to connect the petitioner with the commission of the crime. In the absence of any such material, the petitioner cannot be detained in custody simply

because he was involved in the commission of some offence in the past.

19. The police have filed the chargesheet before the Court, and no fruitful purpose would be served by detaining the petitioner in custody.

20. The petitioner asserted that he is a permanent resident of District Kangra. This was not stated to be incorrect in the status report filed by the police. This means that the petitioner has roots in society, and there is no likelihood of his absconding.

21. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail in the sum of ₹1,00,000/- with one surety of the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following terms and conditions: -

(I) The petitioner will not intimidate the witnesses, nor will she influence any evidence in any manner whatsoever;

(II) The petitioner shall attend the trial on each and every hearing and will not seek unnecessary adjournments;

(III) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the SHO concerned, the Police Station concerned and the Trial Court;

(IV) The petitioner will surrender his passport, if any, to the Court; and

(V) The petitioner will furnish his mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

22. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

23. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, Lala Lajpat Rai District and Air Correctional Home, Dharamshala, District Kangra, H.P. and the learned Trial Court by FASTER.

24. The observations made hereinabove are regarding the disposal of this petition only and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

27th April, 2026
(Nikita)

CHANDER SHEKHAR
Digitally signed by CHANDER SHEKHAR
Date: 2026.04.27 15:17:02 +0530