(2026:HHC:48523

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1974 of 2026
Reserved on: 29.10.2026.
Decided on: 03.11.2026

Gafoor Mohammad .... Petitioner

Versus

State of H.P. .... Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] ***No.***

For the Petitioner : Mr K.S. Gill, Advocate.
For the Respondent/State : Mr Tarun Pathak, Deputy Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 216 of 2026 dated 15.07.2026 registered at Police Station Nalagarh, District Solan, H.P. for the commission of offences punishable under Sections 18 and 21 of the Narcotic Drugs and Psychotropic Substances Act (in short "NDPS Act")

2. It has been asserted that as per the prosecution, Gurpreet Singh, Santokh Singh and the petitioner were found in

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

possession of 265 grams of opium and 3.04 grams of heroin on 15.07.2026 at about 08:40 p.m. The police seized the contraband and arrested Gurpreet Singh, Santokh Singh and the petitioner. The police have completed the investigation and filed the charge sheet before the Court. The petitioner's custodial interrogation is not required. The petitioner is a permanent resident of Tehsil, Nalagarh, and there is no chance of his absconding. The petitioner 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 received secret information on 15.07.2026 at about 08:10 p.m. that Gurpreet Singh, Santokh Singh, and Gafoor Mohd, the present petitioner, were consuming heroin in Gurpreet Singh’s shop. A huge quantity of heroin could be recovered by searching the shop. The information was credible, and any delay in procuring the search warrant would have led to the destruction of the heroin. Hence, the information was reduced to writing and was sent to the Sub Divisional Police Officer (SDPO) Nalagarh. The police joined Nazir Khan and Surjan Lal and proceeded towards the spot indicated in the information. The police found three persons

sitting on a mat on the ground floor, who identified themselves as Gurpreet Singh, Santokh Singh and Gafoor Mohd. The police recovered one currency note of ₹10 and one transparent polythene containing 3.04 grams of heroin. The police also found 265 grams of opium. The police seized the contraband and arrested Gurpreet Singh, Santokh Singh and the petitioner. The contraband was sent to the FSL and, as per the report of analysis, the currency note contained traces of diacetylmorphine. The opium packed in the cloth parcel was found to be opium, and the exhibit stated as heroin was found to be diacetylmorphine (heroin). FIR No. 119 of 2025 and FIR No. 261 of 2025 have been registered against the petitioner. The police completed the investigation and filed the charge sheet before the learned Special Judge on 10.08.2026. The matter is listed for checking of copies on 21.01.2027. Hence, the status report.

4. I have heard. Mr K.S. Gill, learned counsel for the petitioner and Mr Tarun Pathak, learned Deputy Advocate General for the respondent/State.

5. Mr K.S. Gill, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. As per the prosecution case, the police had recovered

3.04 grams of heroin from the place where the petitioner and the co-accused were sitting. The police had recovered the opium from an almirah kept in the shop of the co-accused. *Prima facie*, the petitioner is not connected to the possession of the opium. The quantity of heroin found in the possession of the petitioner is 3.04 grams, which is a small quantity, and the petitioner is entitled to bail. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Tarun Pathak, learned Deputy Advocate General for the respondent/State, submitted that the petitioner was found in the shop from which the police had recovered heroin and opium. The petitioner would be in possession of both these substances. The petitioner has criminal antecedents, and he would indulge in the commission of the crime in case of his release on bail. 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*

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)

> "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.
>
> *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.]
>
> *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, based on 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 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)

xxxxxxx

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.
>
> **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.

11. The status report mentions that the police went to Gurpreet Singh's shop based on secret information. The police found Gurpreet Singh, Santokh Singh, and the petitioner sitting on a mat. The police found a currency note of ₹10 and a transparent packet containing 3.04 grams of heroin kept beneath the mat. The police carried out a further search of the shop and recovered 265 grams of opium from an almirah. These allegations show that the

opium was recovered from an almirah and not from the place where the petitioner was sitting. Only 3.04 grams of heroin was recovered from that place. Thus, *prima facie*, the prosecution's version that the petitioner was in possession of the opium is suspect.

12. It was rightly submitted on behalf of the petitioner that 3.04 grams of heroin is a small quantity and the offence is bailable. Therefore, the petitioner cannot be detained in custody based on the material placed before this Court in the status report.

13. The petitioner asserted that he is a permanent resident of Nalagarh, which was not stated to be incorrect. It means that the petitioner has roots in the society and there is no chance of his absconding. The police have also not mentioned that the petitioner had absconded in the earlier FIRs and had not attended the hearing in those FIRs. Therefore, there is no apprehension that the petitioner would not attend the trial.

14. It was submitted that the petitioner has criminal antecedents and he is not entitled to bail. This submission will not help the prosecution. The material on record *prima facie* connects the petitioner to the possession of a small quantity of heroin, which

is a bailable offence, and the petitioner cannot be detained in custody simply because he has criminal antecedents.

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

(I) The petitioner will not intimidate the witnesses, nor will he 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.

(2026:HHC:48523

16. 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.

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

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

(Rakesh Kainthla)
Judge

3rd November, 2026
(Nikita)

NIKITA THAKUR

Digitally signed by NIKITA THAKUR
Date: 2026.11.03 15:42:51 +0000