IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1923 of 2026
Reserved on: 29.10.2026.
Decided on: 02.11.2026

Gurbachan @ Guru .... Petitioner

Versus

State of H.P. .... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***No***

For the Petitioner : Ms Anamika Kohli, Advocate, vice Mr Ganesh Barowalia, Advocate.

For the Respondent/State : Mr Pawan Kumar Nadda, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 31 of 2026 dated 21.06.2026 registered at Police Station New Shimla, District Shimla for the commission of offences punishable under Section 21, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short "NDPS Act").

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

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2. It has been asserted that, as per the prosecution, the police had recovered 16.280 grams of heroin from a room occupied by co-accused Gopal Kumar at Pine View Home Stay, Kanlog on 20.06.2026. The co-accused Gopal Kumar made a disclosure statement that he had purchased the heroin from the petitioner. The police arrested the petitioner and recovered 161.6 grams of heroin and 3 electronic weighing machines from his rented flat at EMAAR Society, Mohali. The statement made by the co-accused against the petitioner is inadmissible. The flat was not in the possession of the petitioner, and co-accused Gopal Kumar was also residing with the petitioner for 10-12 days before the recovery. The police had not associated any independent witness. There is no evidence that the petitioner is involved in financing of the drug trade. The withdrawal of the money using the petitioner's ATM card will not implicate the petitioner. The police have completed the investigation and filed the charge sheet before the Court. The co-accused Gopal Kumar, from whose custody 16.280 grams of heroin was recovered, has been released on bail, and the petitioner is entitled to bail on the principle of parity. No fruitful purpose would be served by detaining the petitioner in custody. 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 20.06.2026 at about 07:30 p.m. that Gopal Kumar, staying in Pine View Home stay/hotel Kanlog, had brought a huge quantity of heroin which could be recovered by searching the room. 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 Supervisory Officer. The police joined Anshul Shandil and Atul Bohra and proceeded towards the room. Gopal Kumar was present in the room. The police searched the room in his presence and in the presence of the witnesses and recovered 16.280 grams of heroin. The police arrested Gopal Kumar and seized the heroin. Gopal Kumar was interrogated, and he revealed that he had purchased the heroin from Gurbachan and he could point out the place where the heroin was purchased by him. He led the police to EMAAR society, where the petitioner Gurbachan was found present. The police searched the room and recovered 161.6 grams of heroin. The police seized the heroin and arrested the petitioner. The heroin was confirmed to be

a sample of diacetylmorphine (heroin) after analysis. Dextromethorphan, levorphanol and codeine were detected in the blood and urine samples of the accused. The charge sheet was filed before the Court on 19.08.2026, and the matter is listed for consideration of charge on 29.10.2026. Hence, the status report.

4. I have heard Ms Anamika Kohli, learned vice counsel representing the petitioner and Mr Pawan Kumar Nadda, learned Additional Advocate General for the respondent/State.

5. Ms Anamika Kohli, learned vice counsel representing the petitioner, submitted that the petitioner is innocent and he was falsely implicated. There is no material to connect the petitioner to the commission of the crime except the statement made by the co-accused, which is inadmissible in evidence. The police have completed the investigation and filed the charge sheet before the Court. No fruitful purpose would be served by detaining the petitioner in custody. The petitioner would abide by the terms and conditions that the Court may impose. Hence, she prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Pawan Kumar Nadda, learned Additional Advocate General for the respondent/State, submitted that the petitioner was

found in possession of 161.6 grams of heroin, which is a huge quantity. The petitioner is involved in the sale/purchase of heroin, which adversely affects society. The petitioner would indulge in the commission of a similar offence 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***
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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.]

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 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*:
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> (*i*) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence*;
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> (*ii*) *nature and gravity of the accusation*;
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> (*iii*) *severity of the punishment in the event of conviction*;
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> (*iv*) *danger of the accused absconding or fleeing, if released on bail*;
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> (*v*) *character, behaviour, means, position and standing of the accused*;
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> (*vi*) *likelihood of the offence being repeated*;
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> (*vii*) *reasonable apprehension of the witnesses being influenced; and*
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> (*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.

11. The status report specifically mentions that Gopal Kumar made a disclosure statement that he could show the room where he had resided with petitioner Gurbachan. He led the police to the room and identified Gurbachan, the present petitioner. The police searched the room pursuant to the statement made by the petitioner and recovered 161.6 grams of heroin. It was laid down by the Hon'ble Supreme Court in ***Mehboob Ali v. State of Rajasthan*, *(2016) 14 SCC 640; (2016) 4 SCC (Cri) 412; 2015 SCC OnLine SC 1043***, that the information given by the accused, leading to the discovery of another accused from whom forged currency notes were recovered, is admissible under Section 27 of the Indian Evidence Act. It was observed at page 646: -

> "**15.** It is apparent that on the basis of the information furnished by accused Mehboob Ali and Firoz, and other accused, Anju Ali was arrested. The fact that Anju Ali was dealing with forged currency notes was not known to the police. The statements of both the accused have led to the discovery of the fact and arrest of the co-accused, which was not known to the police. They identified him, and ultimately, the statements have led to unearthing the racket of the use of fake currency notes. Thus, the information furnished by the

aforesaid accused persons vide information memos is clearly admissible, which has led to the identification and arrest of accused Anju Ali, and as already stated, from possession of Anju Ali's fake currency notes had been recovered. As per information furnished by the accused Mehboob and Firoz vide memos Exts. P-41 and P-42, the fact has been discovered by the police as to the involvement of the accused Anju Ali, which was not known to the knowledge of the police. The police were not aware of the accused Anju Ali, as well as the fact that he was dealing with fake currency notes, which were recovered from him. Thus, the statement of the aforesaid accused Mehboob and Firoz is clearly saved by Section 27 of the Evidence Act. The embargo put by Section 27 of the Evidence Act was clearly lifted in the instant case. The statement of the accused persons has led to the discovery of facts proving complicity of the other accused persons, and the entire chain of circumstances clearly makes out that the accused acted in conspiracy, as found by the trial court as well as the High Court.

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20. Considering the aforesaid dictums, it is apparent that there was a discovery of a fact as per the statement of Mehmood Ali and Mohd. Firoz. The co-accused was nabbed on the basis of an identification made by the accused Mehboob and Firoz. That he was dealing with fake currency notes came to the knowledge of the police through them. Recovery of forged currency notes was also made from Anju Ali. Thus, the aforesaid accused had knowledge about co-accused Anju Ali, who was nabbed at their instance and on the basis of their identification. These facts were not to the knowledge of the police; hence the statements of the accused persons leading to the discovery of the fact are clearly admissible as per the provisions contained in Section 27 of the Evidence Act, which carves out an exception to the general provisions about inadmissibility of confession made under police custody contained in Sections 25 and 26 of the Evidence Act."

12. Therefore, the statement made by the co-accused Gopal would be admissible, and the submission that the statement made by the co-accused is inadmissible in evidence cannot be accepted.

13. The police had found the heroin from the room being occupied by the petitioner, which *prima facie* shows that the petitioner was in possession of 161.6 grams of heroin.

14. It was submitted that the petitioner had resided with Gopal Kumar as per the disclosure statement. Therefore, the petitioner's exclusive possession has not been proved. This submission is only stated to be rejected. The petitioner was alone in the room on the date of the recovery. The police had already arrested Gopal Kumar, and he could not have put the heroin in the room. Therefore, the recovery of the heroin from the petitioner's room would *prima facie* connect him to the commission of the crime and the burden would shift upon the accused to rebut the presumption by producing satisfactory evidence.

15. In the present case, there is nothing on record to show that the petitioner was not in exclusive possession of the room. Thus, *prima facie* it has to be believed that the petitioner was in possession of 161.6 grams of heroin.

16. The quantity of heroin stated to have been recovered by the police is huge and could not have been meant for self-consumption. The police had also found the electronic weighing scale, which *prima facie* supports the prosecution version that the petitioner is a drug peddler and used the electronic weighing scale to weigh the heroin. It was rightly submitted on behalf of the State that consumption of heroin is harming society and the petitioner cannot be released on bail in these circumstances.

17. It was submitted that the petitioner has remained in custody for about 4 months and the petitioner's right to speedy trial is being violated. This submission cannot be accepted. The police would require some time to investigate the matter and thereafter file the charge sheet before the Court. The Court would also take some time to complete the formalities before framing the charges. Hence, the delay of 4 months in commencing the trial cannot be said to be excessive, justifying the grant of bail to the petitioner.

18. No other point was urged.

19. In view of the above, the present petition fails and is dismissed.

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20. 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

2nd November, 2026
(Nikita)