2026:HHC:48703

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. MP (M) No. : 2008 of 2026
Reserved on : 03.11.2026
Decided on : 04.11.2026
Uploaded on : 04.11.2026

Lucky ...Applicant

Versus

State of Himachal Pradesh ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1]

For the applicant : Mr. Yashveer Singh Rathore, Advocate.

For the respondent : Mr. Mohinder Zharaick, Mr. H.S. Rawat, Additional Advocates General.

Virender Singh, Judge

Applicant-Lucky has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), with a prayer to release him on bail, during the pendency of trial, in case arising out of **FIR No. 56 of 2025, dated 18.04.2025, registered with Police Station**

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[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

Gaggal, District Kangra, H.P., **under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act**, (hereinafter referred to as the 'ND&PS Act') and Section 281 of The Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as 'the BNS').

2. According to the applicant, he is innocent person and has falsely been implicated, in the present case, at the instance of the police.

3. According to the applicant, the FIR has been registered on the basis of concocted facts. The story of the police is highly improbable and the police could not collect any evidence to connect the applicant with the crime in question.

4. According to the applicant, during the investigation, the police could not collect any material i.e. bank transactions, call details or other connected material to show the indulgence of the applicant, in the crime in question.

5. As per the case of the applicant, trial against him has not yet been concluded. The applicant is stated to be in judicial custody for a period of more than one year

and five months and highlighting the fact that no useful purpose would be served by keeping the applicant in judicial custody.

6. The applicant has earlier tried his luck by moving similar application before learned Special Judge-III, Dharmshala, however, the same was dismissed. The applicant filed another bail application before this Court, bearing Cr. MP(M) No. 2891 of 2026, which was dismissed as withdrawn, from this Court. Thereafter, the applicant again approached the learned Special Judge-III, Dharmshala, and his application was also dismissed, vide order dated 23.05.2026.

7. On the basis of the above facts, Mr. Yashveer Singh Rathore, learned counsel appearing for the applicant, has given certain undertakings, to which, the applicant is ready to abide by, in case, the applicant is ordered to be released on bail, during the pendency of the trial.

8. When put to notice, the police has filed the status report, disclosing therein, that on 18.04.2025, after receiving the information regarding an accident, SI Kuldeep

Singh of Police Station Gaggal, along with C. Ravinder Kumar No. 471, has reached the spot i.e. old Airport Road. There one C. Ashwani Kumar, No. 585, got recorded his statement, disclosing therein, that he along with C. Sunil No. 587 was present near Airport, Gaggal, in connection with the duty to collect the information regarding Excise and Narcotics Drugs cases. Then, at about 2:10 PM, a secret information was received that vehicle bearing No. HP76-5965 (i-10) had entered the Airport from the old gate, in which, two persons were present and those might be having some narcotic substance in their possession. On this, he along with his companion had reached at spot in their vehicle No. HP96-1800. At the spot, they noticed vehicle No. HP76-5965 (i-10), being driven by its driver, found coming there.

8.1 When, the complainant made efforts to get the said vehicle stopped, the driver got perplexed and at once, tried to reverse the vehicle. In that process, the said vehicle had struck against vehicle No. HP01D-5903. Consequently, the said vehicle rolled down from the retaining wall. On hearing the noise, number of persons

gathered there. The owner of vehicle No. HP01D-5903 also reached there along with Pradhan Gram Panchayat Kuthma. On seeing the persons gathered there, the driver and his companion tried to flee away, who were nabbed by C. Ashwani Kumar along with his companion and other villagers.

8.2 Thereafter, the pungent smell of charas was felt by the complainant. On seeing the vehicle, he noticed orange coloured transparent carry bag, having stick shaped substance in it. On inquiry, the driver disclosed his name as Ganpat and the other person disclosed his name as Lucky (applicant). As such, he prayed that action be taken against both these persons, upon which, offences under Sections 20 and 29 of NDPS Act and Section 281 of BNS were found to be committed, as such, FIR in question was registered.

8.3 During investigation, the recovered charas was put in the same orange coloured carry bag and was sealed in a cloth parcel. Accused persons were arrested at about 9:50 and 9:55 PM, respectively. The contraband, weighing 1.300 kg was produced before the SHO for resealing along

with the accused persons. Other codal formalities were completed.

8.4 After completion of the investigation and after receiving the report from SFSL Junga, Shimla, charge-sheet has been filed against the accused persons. The case has been assigned to the Court of learned Additional Sessions Judge -II Dharamshala.

8.5 As per the status report, there are 19 witnesses, out of which, 11 have been examined.

9. On the basis of above facts, a prayer has been made to dismiss the application.

10. Heard.

11. Admittedly, the contraband recovered in the present case is stated to be 1.300 kg. The contraband, which has allegedly been recovered, in the present case, falls within the definition of 'commercial quantity'. Once, this fact has been stated by the police in the status report, then, admittedly, rigors of Section 37 of the NDPS Act are applicable in the present case.

12. When, rigors of Section 37 of the NDPS Act are applicable, in that eventuality, before releasing the

applicant, on bail, it is incumbent upon this Court to give findings, with regard to fulfillment of twin conditions, as enumerated, under Section 37(1)(b) of the NDPS Act. These conditions are (i) that the applicant is not guilty of such offences, and (ii) that while on bail, he will not commit any offence.

13. In a recent decision, in case, titled as ***Narcotics Control Bureau versus Mohit Aggarwal***, reported in ***AIR 2022 SC 3444***, the Hon'ble Supreme Court has reiterated the earlier view regarding compliance of the conditions, as enumerated in Section 37 of the NDPS Act. The relevant paras 10 to 15 of the judgment are reproduced, as under:

> *"10. The provisions of Section 37 of the NDPS Act read as follows:*
>
> *"[37. **Offences to be cognizable and non-bailable.**–(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*
>
> *(a) every offence punishable under this Act shall be cognizable;*
>
> *(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-*

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

11. It is evident from a plain reading of the non obstante clause inserted in sub-section (1) and the conditions imposed in subsection (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

12. The expression "reasonable grounds" has come up for discussion in several rulings of this Court. In "Collector of Customs, New Delhi v. Ahmadalieva Nodira", (2004) 3 SCC 549, a decision rendered by a Three Judges Bench of this Court, it has been held thus:

> *"7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds.* ***The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence."*** *[emphasis added]*

13. The expression "reasonable ground" came up for discussion in "State of Kerala and others Vs. Rajesh and others" (2020) 12 SCC 122 and this Court has observed as below:

> *"20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence.* ***The reasonable belief contemplated in the provision***

requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. *In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."*

[emphasis added]

14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail."

14. Also, the view of this Court is being guided by the decision of the Hon'ble Supreme Court in ***Criminal Appeal No. 5544 of 2024***, titled as '***Narcotics Control Bureau versus Kashif***', ***Citation No.2024 INSC 1045***, wherein, it has been held that in case of commercial quantity of the contraband, the accused shall generally be not released on bail, until or unless, the conditions, as per Section 37 of the NDPS Act, are held to be existed in favour of the applicant. Relevant paragraphs 8 and 39 of the said judgment are reproduced, as under:-

> ***"8.*** *There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act. Apart from the granting opportunity of hearing to the Public Prosecutor, the other two conditions i.e., (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.*
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> ***Xxx xxx xxx xxx***
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> ***39.*** *The upshot of the above discussion may be summarized as under:*

> *(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.*
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> *(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.*
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> *(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.*
>
> *(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused."*
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> *(self-emphasis supplied)*

15. Now, this Court would proceed further whether the twin conditions as per Section 37(1)(b) of the Act, are existing in favour of the applicant, or not.

16. In this case, it has rightly been highlighted by the learned counsel for the applicant that the FIR, in question, has been registered on the statement of C.

Ashwani Kumar No. 585 and his statement is totally silent about the fact whether the contraband i.e. charas weighing 1.300 kg, was found in the conscious and exclusive possession of the applicant.

17. According to him, when the vehicle driven by Ganpat was reversed, in that process, the said vehicle had hit vehicle No. HP01D-5903. Consequently, the said vehicle rolled down from the retaining wall and number of persons gathered there. A pungent smell was found there in the vehicle No. HP76-5965. The status report is totally silent about the fact whether the contraband was weighed on the spot or not and what documents were prepared by the I.O. on the spot. C. Ashwani Kumar is stated to be a person, who made the statement to SI Kuldeep Singh. When the status report is silent about the weighment of the contraband and other description, then, at this stage, from the story of the prosecution, as set up, there is no legal hesitation for this Court to hold that, at this stage, it can be said that there are reasonable grounds for beleiving that the applicant is not guilty of such offence and while on bail, he is not likely to commit any offence.

18. The status report is a document, upon which, the fate of the application is to be decided, about the entitlement of the applicant to be released on bail.

19. So far as the other cases, which have been registered against the applicant, as per the status report are concerned, admittedly, in the said cases, he has not been convicted, by the Competent Court of Law. As such, applicant cannot be declined the relief, for which, he is otherwise entitled to, in the present case.

20. Considering all these facts, this Court is of the view that the bail application is liable to be allowed and is accordingly allowed.

21. Consequently, the applicant is ordered to be released, on bail, in case **FIR No. 56 of 2025, dated 18.04.2025,** registered with **Police Station Gaggal, District Kangra, H.P., under Sections 20 and 29 of the ND&PS Act and Section 281 of BNS**, on his furnishing personal bonds in the sum of Rs.50,000/-, with two sureties of the like amount, to the satisfaction of the learned trial Court.

22. This order, however, shall be subject to the following conditions:-

> *"a) The applicant shall make himself available for the purpose of investigation, 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 the appropriate application;*
>
> *b) The applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;*
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> *c) The applicant shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer, and*
>
> *d) The applicant shall not leave the territory of India without the prior permission of the Court.*
>
> *e) The applicant shall furnish affidavit, in the first week of every month, before the learned trial Court, disclosing therein that he has not been named, as accused, in any crime, during that period."*

23. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

24. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions, is found to be violated by the applicant.

25. The Registry is directed to forward a soft copy of the bail order to the Superintendent of Jail, Model Central Jail Dharamshala, through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

26. In case, the applicant is not released within a period of seven days from the date of grant of bail, the Superintendent of Jail, Model Central Jail Dharamshala, is directed to inform this fact to the Secretary, DLSA, Kangra at, H.P. The Superintendent of Jail, Model Central Jail Dharamshala, is further directed that if the applicant fails to furnish the bail bonds, as per the order passed by this Court, within a period of one month from today, then, the said fact be submitted to this Court.

(Virender Singh)
Judge

04th November, 2026
(Pramod Kumar)

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