IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1965 of 2026
Reserved on: 04.11.2026
Date of Decision: 05.11.2026
Uploaded on: 05.11.2026

Jaiki ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram
Hon'ble Mr Justice Chirag Bhanu Singh, Judge.
Whether approved for reporting?[1]

For the Petitioner : Mr. Jaidev Thakur, Advocate.

For the Respondent/State : Mr. Lokender Kutlehria, Additional Advocate General.

Chirag Bhanu Singh, Judge

The petitioner has preferred an application under Section 483 of Bharatiya Nagarik Suyraksha Sanhita, 2023 (in short "BNSS") seeking post-arrest bail in Case FIR No. 77 of 2026, dated 28.06.2026 registered at Police Station Dhanotu, District Mandi, H.P., under Sections 20, 25 & 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the Act").

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

2. The facts which emerge from the status report, so filed by the State is that the on 28.06.2026, ASI Bhanu Pratap, along with the police team, had laid a naka near Tarot Bus Stand on the Mandi Sundernagar four-lane road. At about 6:05 PM, a white Ford Eco Sports Car bearing registration No. RJ 18CB-3954, has reached the spot. Four persons, namely Ashish Kumar, Virender Kumar, Jackie and Pramod, were found sitting in the car. On being confronted, they got nervous. Suspicious having arisen the Investigating Officer associated two independent witnesses and conducted a search of the vehicle. During the search, five cylindrical packets containing charas were recovered from beneath the mat in the boot of the car. On weighing, the recovered contraband was found to be 1.055 kgs.

3. After completing all the codal formalities, the recovered contraband and the vehicle were taken into possession. All the four came to be arrested at the spot. The petitioner is presently in judicial custody. The other three accuseds allegedly stand enlarged on bail by the learned Trial Court.

4. I have heard the learned counsel for the parties and gone through the records meticulously.

5. It was urged with vehemence by the learned counsel for the petitioner that through "commercial" quantity of contraband had been shown to be recovered from the petitioner but actually it has been found to be weighing only 935 grams and as such, the rigors of Section 37 would not apply with the same force. No doubt, one other case stand registered against the petitioner, however, in the said case too only 93 grams of ganja had been allegedly recovered from him, which is "small" quantity. Seeing to the quantity of contraband recovered, the petitioner was entitled to the discretion of bail. Moreover, since all the three accuseds have already been enlarged on bail.

6. *Per contra,* Mr. Lokender Kutlehria, the learned Additional Advocate General for the State has vociferously urged that keeping in view the past antecedents of the petitioner, it seems that his *modus operandi* is to carry intermediate/small quantity of contraband. There are chances that the petitioner may again indulge in same and similar activities in the future

too. The discretion of bail, thus, cannot be exercised in his favour.

7. The perusal of the report does show that the quantity of contraband recovered in the present case is indeed "less than commercial", being 935 grams of charas and as such, the rigors of Section 37 will not *stricto sensu* apply in the facts and circumstances of the present case with the same vigour. The recovery is also not solely attributed to the petitioner. Three other occupants of the car have also been found complicit in the occurrence.

8. The registration of the earlier cases under the Act is, however, suggestive of the fact that the petitioner is an habitual offender. However, the contraband recovered in the said case was small in quantity.

9. It further transpires from the record that the charge-sheet has already been filed. The culmination of the trial is thus likely to take sufficient time. Pre-trial incarceration is otherwise generally loathed by the Courts, as has been held by the Hon'ble Supreme Court in catena of decisions including ***Union of India vs. K.N. Nazeeb 2021 (3) SCC 713 & Javed Gulam Nabi Shaikh vs. State***

of Maharashtra & ***Another (Criminal Appeal No.2787 of 2024 decided on 03.07.2024).***

10. "Bail, not jail" is the golden thread which has been running right through the various judgments rendered by the Hon'ble Supreme Court starting from ***Gurbaksh Singh Sibbia & Others v. State of Punjab, (AIR 1980 SC 1632)***, which has consistently been followed till the decision rendered in ***P. Chidambaram v. Directorate of Enforcement, (AIR 2019 SC 4198)***. The object of granting bail was further elucidated in ***Sanjay Chandra & Others v. Central Bureau of Investigation, (AIR 2012 SC 830)***. The Hon'ble Supreme Court has further reiterated that grant of bail was a general rule, as was categorically held in ***Dataram Singh v. State of Uttar Pradesh, [(2018) 3 SCC 22 : AIR 2018 SC 980]***.

11. The Hon'ble Supreme Court and this Court, in a catena of decisions, have repeatedly held that an accused is presumed to be innocent until proven guilty. The trial is still at its inception and is likely to take sufficient time. Even otherwise, the quantity of contraband recovered in the present case is intermediate. Three other accused also found complicit in the

occurrence and they already have been enlarged on bail by the learned Trial Court itself.

12. Though a repeat offender under normal circumstances this Court would not have exercised discretion in his favour but seeing to the peculiar circumstances, discussed above and keeping in view the fact that the quantity of contraband recovered from the accused in the present case is "less than commercial" and the trial is likely to take time, it would in the interest of justice and fairplay that the discretion of bail is exercised in his favour, but subject to strict terms. The other three co-accused have already been granted bail.

13. As a sequel, while allowing the present petition, it is directed that in case the petitioner is, henceforth, found to be indulging in any similar activity and an FIR is registered against him under the provisions of the Act, not only the present bail granted shall stand forfeited but, the State would be at liberty to take steps for seeking preventive detention of the petitioner or for sending him for treatment or reformation.

14. For all the reasons discussed hereinabove, the bail petition is thus allowed. As a sequel, the petitioner is ordered to

be released on bail subject to his furnishing bail bonds to the tune of Rs.50,000/- with two local sureties of the like amount, to the satisfaction of the learned trial Court subject to the following conditions:-

> "i) That the petitioner shall not tamper with the prosecution evidence nor intimidate, threaten or coerce the witnesses conversant with the facts of the case;
>
> ii) That the petitioner shall put in appearance before the Court as and when directed;
>
> iii) That the petitioner shall not leave the territory of India without the express permission of the Court, he shall surrender passport, if any, before the investigating agency;
>
> iv) The petitioner shall not indulge in any similar activity again."

15. 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 for the purposes of the disposal of the present petition.

16. A copy of this order be sent to the Superintendent, **Sub-Jail, Mandi, District Mandi, H.P. and the learned Trial Court by FASTER.**

17. Petition stands disposed off in the aforesaid terms, so also the pending miscellaneous applications, if any.

(Chirag Bhanu Singh)
Judge

05th November, 2026
(Shamsh Tabrez)

SHAMSH TABREZ
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