2026:HHC:48777

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP (M) No. : 1991 of 2026
Decided on : 02.11.2026

Suresh Kumar ...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. Sangram Singh Chandel, Advocate.

For the respondent : Mr. Mohinder Zharaick, Additional Advocate General, with Ms. Ranjna Patial, Deputy Advocate General.

Virender Singh, Judge (Oral)

Applicant-Suresh Kumar, 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 the trial arising out of **FIR No.65 of 2024, dated 18.03.2024**, registered under **Sections 21, 29, 8C and 27A of the Narcotic Drugs & Psychotropic**

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

Substances Act (hereinafter referred to as the 'NDPS Act'), with Police Station Nalagarh, District Solan, H.P.

2. According to the applicant, he is an innocent person and has falsely been implicated in the present case.

3. According to the applicant, the police could not collect any evidence to connect him with the crime, in question.

4. As per the applicant, after completion of the investigation, report under Section 173 of the CrPC has been filed against the accused persons, under the provisions of Sections 21, 29, 8(c), and 27(A) of the NDPS Act.

5. It is the further case of the applicant that he is in judicial custody from the date of his arrest and, as such, according to him, no useful purpose would be served by keeping the applicant in judicial custody.

6. The applicant has also asserted the fact that out of the 29 witnesses, the prosecution could examine only 11 witnesses, in the present case, till date. Highlighting the fact that the witnesses, cited by the

prosecution, when, appeared before the learned trial Court, have not supported the case of the prosecution.

7. The relief of bail has also been sought by the applicant on the ground of parity, as his co-accused Mahavir has been released on bail, by the Hon'ble Apex Court, by way of order dated 10.08.2026, passed in Special Leave Petition (Criminal) No.10573 of 2026, and another co-accused, Veer Chand, has also been released on 21.09.2026, by the Hon'ble Apex Court, in an order passed in Special Leave Petition (Criminal) No.17801 of 2026. As such, it has been asserted that the applicant is also entitled to the same relief.

8. The applicant has tried his luck by moving a similar application before the Court of Additional Sessions Judge-II, Shimla; however, his application has been dismissed on 26.08.2025. Thereafter, he has filed Cr.MP(M) No.2782 of 2025, which was dismissed as withdrawn on 17.12.2025. Thereafter, again Cr.MP(M) No.1466 of 2026 has been filed, by the applicant, which was also dismissed as withdrawn on 21.08.2025.

9. On the basis of the above facts, Shri Sangram Singh Chandel, Advocate, appearing for the applicant, has given certain undertakings, for which, he is ready to abide by, in case, ordered to be released on bail, during the pendency of the trial.

10. When put to notice, the police has filed the status report, disclosing therein, that on 18.3.2024, SDPO Nalagarh, along with other police officials, was present at village Vodala. They had put picketing to prevent the trafficking of illicit liquor, in view of the ensuing Lok Sabha Election. They were checking the vehicles crossing from that spot.

10.1. At about 06.30. p.m., from Ratyod side, one person was noticed coming on foot, who, on inquiry, disclosed his name as Joginder Singh, son of Shri Mast Ram. He has also disclosed that he is Ward Member of Ward No.11, of Gram Panchayat Dabhota.

10.2. In the meanwhile, from Ratyod side, at about 6.35 p.m., one Pick-up vehicle bearing No.HP93-9431 Marka Tata Yodha, being driven by its driver, was found coming. The SDPO has signalled him to stop, but, the

driver, at once tried to reverse the vehicle. Consequently, with the help of police officials, the vehicle was intercepted and was stopped. The driver was found to be perplexed.

10.3. On inquiry, the driver disclosed his name as Suresh Kumar son of Shri Nand Lal, but, could not give the satisfactory answers to the queries, as such, on the basis of suspicion, the vehicle was searched, but, nothing incriminating was found.

10.4. Keeping in view the fact that the driver was perplexed, a suspicion raised, in the mind of the SDPO, that he might be concealing something illegal, in his vehicle. Consequently, the bonnet of the vehicle was opened and on the conductor side of the bonnet, five carton boxes were found to be concealed. 'Diphenoxylate Hydrochloride & Atropine Sulphate Tablets IP Lomotil' was found to be written on every box.

10.5. The SDPO, with the help of police officials opened those boxes and total 28140/- tablets of Lomotil were found. The said person i.e. Suresh Kumar, could not produce any document to transport the same.

10.6. Consequently, the said contraband was taken into possession and rukka was sent to the Police Station for registration of the FIR. Accused was arrested.

11. After completion of the codal formalities, the contraband, so recovered, was sent to SFSL Junga. During the Police custody, the accused was taken to Sikandra Pharmacy (Agra), Agra, where, Mahabir Singh, was associated and arrested.

12. It is the further case of the police that on 12.8.2024, Nand Lal, father of accused Suresh Kumar, made a complaint to the police that the contraband, which was allegedly found from the possession of his son was meant for being delivered to Veer Chand and for that, according to the father of Suresh Kumar, on 15.3.2024, Veer Chand has transferred a sum of Rs.27,000/- in the account of his son.

13. Consequently, the Bank statement of Suresh Kumar (applicant) was obtained and on perusing the same, the said fact was found to be correct.

14. Thereafter, CDR was also obtained and on checking the CDR of mobile phone of applicant Suresh

Kumar, from 1.2.2024 to 18.3.2024, from the mobile phone of applicant Suresh Kumar, 26 calls were found to have been made to the mobile number of Veer Chand. On 15/16.03.2024, accused Veer Chand was found to be in touch with applicant Suresh Kumar.

15. On 12.8.2024, accused Veer Chand was associated in the investigation and was arrested. Thereafter, the statement of Bank account of accused Veer Chand was obtained. Till 14.08.2024, in the bank account of accused Veer Chand, a sum of Rs.5,35,918/- was found as balance, whereas, in the same Bank, he was having the Fds, total amounting to Rs.17,30,538/-. Relevant documents were taken into possession and accused were arrested.

16. It has also been found, in the investigation, that from 30.11.2023 to 15.3.2024, accused Veer Chand from his Bank account, maintained in Union Bank of India, Nalagarh, has transferred a sum of Rs.3,55,502/- through online transfer to Bank Account of applicant Suresh Kumar, which was maintained in State Bank of India, Nalagarh Branch.

17. Similarly, It has also been found that from the Bank account of applicant Suresh Kumar, from 30.11.2023 to 17.3.2024, a sum of Rs.4,23,060/- has been found to be transferred in the Bank account of Mahaveer, who, as per the police report, was running a medical store in Sikandra (Agra).

18. It has also been pleaded, in the status report, that the statement of account of accused Veer Chand, from his banker Union Bank of India Nalagarh, has been obtained, according to which, in the bank account of accused Veer Chand bearing No.520101203173461, a sum of Rs,5,35,918/- has been shown to be balance as on 14.08.2024. Apart from this, he was having four FDs of Rs.17,30,538/-. Those documents were taken into possession.

19. During investigation, it has been found that accused Veer Chand used to transfer amount in the account of his co-accused Suresh Kumar (applicant) for purchasing the prohibited Lomotil Tablets, as such, Sections 27A and 8C of the NDPS Act was added in the present case.

20. It is the further case of the Police that as per statement of account from 30.11.2023 to 15.03.2024, accused Veer Chand transferred a sum of Rs.3,55,502/- through online mode from his account bearing account No.520101203173461, in the bank account of Suresh (applicant) bearing No.55156299763, maintained with State Bank of India, Nalagarh Branch.

21. Lastly, it has also been apprehended that in case the applicant is released on bail, he may again indulge in the same activities.

22. Investigation, in the present case, is complete and the police has filed the charge-sheet, before the competent Court of law, which is now listed for PWs on 05.12.2026.

23. On all these submissions, a prayer has been made to dismiss the application.

24. The contraband, allegedly recovered, in this case, is 28140 tablets of Lomotil, which falls within the definition of 'commercial quantity'.

25. Once, it has been held that the contraband allegedly recovered from the possession of the accused falls

in the category of 'commercial quantity', as per the Notification issued by the Central Government, then, the rigors of Section 37 of the NDPS Act come into play.

26. 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-*
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> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
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> *(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 sub-section (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.*
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> *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."*

27. The Hon'ble Supreme Court in ***'Narcotics Control Bureau versus Kashif', (2024) 11 SCC 372***, has again reiterated the law, as enumerated by it, in ***Mohit Aggarwal***'s case (supra). The Hon'ble Supreme Court, in this case, has held that the provisions of Section 37 of

NDPS Act are mandatory in nature. 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*
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> *39. The upshot of the above discussion may be summarized as under:*
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> *(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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> *(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs*

and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(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.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act."

(self-emphasis supplied)

28. As per the case of the prosecution, when the police intercepted the vehicle driven by the applicant, then, he was found to be perplexed and could not give satisfactory answers. Thereafter, the vehicle driven by him was searched, and contraband, i.e., 28140 Lomotil tablets, was found from his possession.

29. Admittedly, the applicant was the sole person, who was present in the vehicle bearing registration No.HP-93-9431. As such, the role alleged against the applicant is altogether different from the role alleged against the persons, who have been released on bail, by the Hon'ble Apex Court, as referred to above.

30. In order to get the benefit on the principle of parity, the applicant has to demonstrate that the role attributed to him is the same, which has been alleged against his co-accused, who have been released on bail.

31. Out of 29 witnesses, 11 have been examined. From the said fact, the applicant is not able to make out a case that there is undue delay in the trial, against the applicant.

32. Considering all these facts, it is very difficult for this Court to record the findings, at this stage, that there are reasonable grounds for believing that the applicant is not guilty of such offence and in case, he is ordered to be released, on bail, he is not likely to commit any offence. Consequently, the bail application is dismissed.

33. Any of the observations, made herein above, 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.

(Virender Singh)
Judge

November 02, 2026*(ps)*