IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP (M) No.2019 of 2026

Date of Decision: 26.10.2026

Bilal ...Petitioner

Versus

State of Himachal Pradesh …Respondent

Coram:
The Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?[1]

For the Petitioner:	Mr. K.S. Gill, Advocate.
For the Respondent:	Mr. Rajan Kahol, Additional Advocate General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, J. (Oral)

Bail petitioner, namely Bilal, who is behind the bars since 05.09.2025, has approached this Court in the instant proceedings filed under Section 483 of Bharatiya Nagrik Suraksha Sanhita, for grant of regular bail in case FIR No. 143 of 2025, dated 05.09.2025, registered at Police Station Majra, District Sirmaur, Himachal Pradesh under Sections 22, 29, 25- 61-85 of the Narcotic Drugs and Psychotropic Substances Act ***(for short 'Act)*** and Sections 192 and 182A (4) of the Motor Vehicles Act.

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[1] Whether reporters of the local papers may be allowed to see the judgment?

2. Respondent-State has filed status report and HC Sachin Kumar has come present with record. Record perused and returned.

3. Close scrutiny of the status report/record reveals that on 04.09.2025, police party present near village Fatehpur, after having received secret information that person, namely Bilal, S/o Gulzar, was going towards Bata river with a consignment of capsules, went towards Bata River and intercepted one motorcycle, which at the relevant time was being driven by person namely, Bilal i.e. present bail petitioner. Since aforesaid person got perplexed and started making excuses, police deemed it necessary to effect search of the motorcycle as well as above named person. During search, one polythene bag was found hanging on the handle of the motorcycle. Police allegedly recovered 456 capsules of Spasmore containing Acetaminophen, Tramadol Hydrochloride and Dicyclomine Hydrochloride from the polythene bag in presence of independent witnesses. Since no plausible explanation ever came to be rendered on record qua possession of aforesaid quantity of contraband, police arrested aforesaid person and since then he is behind bars. During investigation, bail petitioner Bilal allegedly disclosed to the police that co-accused Usman had sent him to make delivery of these medicines to some person. Since challan stands filed in the

competent Court of law and nothing remains to be recovered from the petitioner, he has approached this Court in the instant proceedings for grant of regular bail.

4. While fairly admitting factum with regard to filing of the challan in the competent Court of law, Mr. Ravi Chauhan, learned Deputy Advocate General, states that though nothing remains to be recovered from the petitioner, but keeping in view gravity of the offence alleged to have been committed by him, he does not deserve any leniency, rather needs to be dealt with severely. He states that petitioner is a drug peddler and in the event of his being enlarged on bail, he may not only flee from justice, but may again indulge in these activities. He further states that rigors of Section 37 of the Act are attracted in the case at hand, because quantity of contraband recovered from the conscious possession of petitioner is commercial.

5. Having heard learned counsel for the parties and perused the material adduced on record, this Court doesn't find any force in the submission of Mr. Kulwant Singh Gill, learned counsel for the petitioner that petitioner has been falsely implicated, rather, this Court finds that contraband came to be recovered from conscious possession of petitioner in presence of independent witnesses. However, having taken note of SFSL report, this Court is persuaded to agree with Mr. Kulwant Singh

Gill, learned counsel for the petitioner that rigors of Section 37 of Act are not attracted in the present case on account of recovery of intermediate quantity of contraband.

6. Admittedly, in the case at hand, 456 capsules of Spasmore containing Acetaminophen, Tramadol Hydrochloride and Dicyclomine Hydrochloride came to be recovered and total weight thereof was found to be 250.800 grams. Mr. Ravi Chauhan, learned Deputy Advocate General, states that taking note of total weight of capsules, which comes out to 250.800 grams, recovery in the case can be said to be of commercial quantity. However, having perused the report submitted by SFSL, dated 10.09.2025, this Court is not persuaded to agree with Mr. Ravi Chauhan, learned Deputy Advocate General.

7. As per aforesaid report, total weight of powder containing prohibited substance was found to be 205.200 grams. Average weight of shell of the capsule was found to be 550.0 mg and average weight of powder in one capsule was found to be 450.0 mg per capsule. Since total weight of powder has been found to be 205.200 grams, it cannot be said that contraband recovered from the conscious possession of bail petitioner was of commercial quantity.

8. Though Mr. Ravi Chauhan, learned Deputy Advocate General, vehemently argued that entire substance is required to be

taken into consideration, while ascertaining quantity of contraband, but this Court is not persuaded to agree with Mr. Chauhan for the reason that shell of the capsule is not a mixture, rather same is only a shell containing the mixture. In no circumstance, shell can be mixed with the substance. If it is so, weight of shell is not to be included, while ascertaining actual weight of contraband/prohibited substance contained in one capsule. Though, in the case at hand, 456 capsules were recovered, but as has been noticed hereinabove, total weight of powder contained therein was found to be 205.200 grams. If it is so, it is less than commercial quantity i.e. 250 grams. In view of the above, rigours of Section 37 of the NDPS Act are not attracted in the present case, hence prayer made on behalf of the petitioner for grant of bail deserves to be considered.

9. At this stage, this Court finds it necessary to take note of Section 2(xx) of the NDPS Act, which reads as under:-

> **"preparation", in relation to a narcotic drug or psychotropic substance, means any one or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances;**

10. Having perused aforesaid definition of preparation, this Court is persuaded to agree with Mr. K.S. Gill, learned counsel for the petitioner that preparation in relation to narcotic drug or psychotropic substance would definitely mean any one or more or such drugs or substances in dosage form or any solution or

mixture, but certainly shell used to contain such powder cannot be said to be a mixture or substance which can be used for preparation of narcotic substance.

11. In this regard, reliance is placed upon the judgment passed by High Court of Kerala at Ernakulum in case titled **Devine Mathew vs. State of Kerala** in Bail Application No.3577 of 2021, wherein it has been held as under:-

> "6. The counsel relied on Annexure-A2 order of this Court in which this Court observed that it is an arguable point which is to be decided by the trial court. The relevant portion of the order dated 8.3.2021 in BA No.1718/2021 is extracted hereunder :
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> "8. The admitted case of the prosecution is that only a small quantity of ganja is seized from the possession of the petitioner. The only question to be decided is whether the petitioner was in possession of commercial quantity of LSD stamp. The point raised by the counsel for the petitioner is that the contraband article seized from the petitioner are really falling under the category of small quantity as the weight shown in the mahazar is 0.490 gms which includes the weight of stamp. According to the counsel, it does not conclusively establish that the contraband is above the intermediary quantity. The counsel also submitted that only a quantitative analysis can establish the real quantity of the contraband article. It is an admitted fact that final report is filed in this case before the court below and now the matter is pending B.A.No.1718 of 2021 6 trial. Admittedly, the petitioner is in custody from 19.2.2020 onwards. After going through the Judgment of the Bombay High Court, which I mentioned earlier, I think an arguable point is raised by the petitioner. The Bombay High Court considered the decision in Hira Singh (supra) also. The relevant portion of the judgment of the Bombay High Court is extracted hereunder:

“8. I have perused the First Information Report, Recovery Panchanamas and Chemical Analyser's report. At the outset, it may be stated that the most common form of LSD is drop of LSD solution dried onto piece of paper or gelatin sheet, pieces of blotting papers which releases the drop when swallowed/consumed. In this case, drug was found in the form of drops dried onto 23 pieces of papers. Thus, process of drying LSD solution on a piece of paper, merely facilitates consumption of drug. This process neither changes the substance of the drug or its chemical composition. It is argued by the State, that since dried LSD drops of LSD solution, cannot be segregated or separated from the papers, it amounts to a 'mixutre' and therefore the weight of the paper is to be counted with 'LSD dots' for determining the quantity of drug which was more than 0.1 gram. The learned APP relies on Entry-239 of the Table and Footnote-(4) appended thereto of the NDPS Act. Entry No.239 and Footnote-(4) reads as under:

239. Any mixture or preparation that of with or without a neutral material, of any of the above drugs. Lesser of the Small quantity between the quantities given against the respective narcotic drugs or psychotropic substances mentioned above forming part of the mixture.

Lesser of the Commercial quantity between the quantities given against the respective narcotic drugs or psychotropic substances mentioned above forming part of the mixture.

“4. The quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug content.”

9. In my view, though after swallowing piece of paper, which causes release of drug but since that paper only carries drug and facilitates its consumption, the paper with LSD drops, as a whole, is neither “preparation”, within the meaning of Section

2(xx), nor a “mixture” within the meaning of the NDPS Act. So far as the judgment of the Hon'ble Apex Court in the case of Hira Singh (supra) is concerned, issue therein was, whether mixture of narcotic drug or psychotropic substances with one or more neutral substances, quantity of neutral substances can be excluded while determining the small or commercial quantity of narcotic drug and psychotropic substances. However herein, the papers containing dried LSD drops of LSD solution, not being a mixture, and the paper being not a neutral substance, judgment of the Apex Court, has no application to the facts of this case. 9. The learned Judge, as it appears from the impugned order, has accounted weight of papers “while calculating and determining quantity of the LSD as a “commercial quantity”. In addition, while holding quantity of charas recovered from the applicant was 'commercial quantity', is equally incorrect because charas allegedly recovered from the applicant was 970 gms i.e.less than 1 kg. 10. Thus in consideration of the facts of the case, the findings of the learned Judge that weight of the paper containing dried LSD drops of LSD solution is required to be accounted while determining its quantity; whether small or otherwise is incorrect. In this case, the Chemical Analyser's report, shows quantity of LSD drops solution was 0.4128 milligrams, which was below 0.1 gm of commercial quantity. Therefore, rigors of Section 37 of the NDPS Act, are not applicable to the facts of this case. 11. Herein, the applicant has no criminal antecedents. He is in custody since June, 2019. Therefore, in the facts of the case, the applicant is admitted to bail on following terms and conditions.

9. This is a bail application filed under Section 439 of the Cr.P.C I don't want to decide this question while considering this bail application because it will affect the case of the prosecution itself. I leave open this question to be decided by the trial court. But considering the entire facts and circumstances of the case and also considering the fact that the petitioner is in custody from 19.2.2020 onwards and the petitioner is aged only 19 at the time of the offence and also considering the fact that there is no

> criminal antecedents against the petitioner, I think this bail application can be allowed on stringent conditions."

12. Hon'ble Apex Court and this Court in a catena of cases have repeatedly held that one is deemed to be innocent, till the time, he/she is proved guilty in accordance with law. In the case at hand, complicity, if any, of the bail petitioner is yet to be established on record by the investigating agency, as such, this Court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial, especially when nothing remains to be recovered from him. Apprehension expressed by learned Deputy Advocate General, that in the event of being enlarged on bail, bail petitioner may flee from justice or indulge in such offences again, can be best met by putting the bail petitioner to stringent conditions.

13. Hon'ble Apex Court in Criminal Appeal No. 227/2018, ***Dataram Singh vs. State of Uttar Pradesh & Anr*** decided on 6.2.2018 has held that freedom of an individual cannot be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has been further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty.

14. Hon’ble Apex Court i***n Sanjay Chandra versus Central Bureau of Investigation (2012)1 Supreme Court Cases 49*** has held that gravity alone cannot be a decisive ground to deny

bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative.

15. In ***Manoranjana Sinh alias Gupta versus CBI***, ***(2017) 5 SCC 218***, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of bail and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

16. The Apex Court in ***Prasanta Kumar Sarkar versus Ashis Chatterjee and another (2010) 14 SCC 496***, has laid down various principles to be kept in mind, while deciding petition for bail viz. prima facie case, nature and gravity of accusation, punishment involved, apprehension of repetition of offence and witnesses being influenced.

17. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, petitioner has carved out a case for grant of bail, accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to his furnishing personal bond in the sum of Rs. 5,00,000/- with two local sureties in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, with following conditions:

(a) He shall make himself available for the purpose of interrogation, 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 appropriate application;

(b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer; and

(d) He shall not leave the territory of India without the prior permission of the Court.

(e) He shall surrender his passport, if any, before the investigating agency.

18. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

19. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall

remain confined to the disposal of this application alone. The petition stands accordingly disposed of.

20. The petitioner is permitted to produce copy of the order downloaded from the High Court Website and the trial court shall not insist for certified copy of the order, however, it may verify the order from the High Court website or otherwise.

(Sandeep Sharma)
Judge

October 26, 2026
(shankar)