IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 2058 of 2026
Reserved on: 30.10.2026
Date of Decision: 31.10.2026
Uploaded on: 31.10.2026

Satish Kumar ...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. Pawan Raj Singh Chandel, 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. 107 of 2026, dated 14.08.2026 registered at Police Station Padhar, District Mandi, H.P., under Sections 21 & 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 13.08.2026, the Investigating Officer, HC Suresh Kumar, along with a police party, had set up a *naka* at Padhar Bazar. At about 8:30 PM, a silver-coloured Kia Seltos car bearing registration No. HP-86-7046 arrived at the spot. The vehicle was signalled to stop. When the driver stopped the vehicle and was asked to produce documents, he appeared nervous. He attempted to leave the spot by asserting that he was serving in the Army and had some urgent work at home. Suspicion having arisen, the Investigating Officer associated independent witnesses, namely Shri Kiran Singh and Shri Naginder Pal, in the raiding team.

3. In the presence of the independent witnesses, the Investigating Officer searched the vehicle bearing registration No. HP-86-7046. Inside the dashboard, a foil paper was found containing three transparent polythene pouches. The said pouches contained a brownish sticky substance, which, on the basis of experience, was identified to be *chitta* (heroin). On weighing, the contraband was found to be 23 grams.

4. After completion of all the codal formalities, the contraband was taken into possession and the petitioner/accused came to be arrested at the spot. He is presently in judicial custody.

5. The other two co-accused, namely Mohammad Qasim and Kushla Devi, with whom the accused is said to have been dealing in narcotics, have already been enlarged on bail by the learned trial Court itself. The challan stands filed in the competent Court of law.

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

7. It was urged with vehemence by the learned counsel for the petitioner that “intermediate” quantity of contraband had been recovered from the petitioner, and as such, the rigors of Section 37 would not apply with the same force. No doubt, only one case stands registered against the petitioner under the Act. The quantity of contraband recovered from the petitioner vide FIR No. 71 of 2025, dated 18.04.2025, under Section 27 of the ND&PS Act, also indicates that the petitioner was entitled to the discretion of bail, being an addict and not a peddler.

8. *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 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.

9. The perusal of the report does show that the quantity of contraband recovered in the present case is indeed "less than commercial", being 23 grams of heroin *(Chitta)* 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.

10. The registration of the earlier case under the Act is, however, suggestive of the fact that the petitioner though an habitual offender. However, since, the contraband recovered was under Section 27 of the Act, it was apparently for self consumption.

11. 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).***

12. "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) 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].***

13. 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.

14. 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 exercised in his favour, but subject to strict terms.

15. 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.

16. 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 temper 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 Investigating Officer or 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) If the bail petitioner is found to be indulging in similar cases in the future and an FIR is registered against him under the NDPS Act, his bail shall be liable to be cancelled forthwith."

17. 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.

18. The petition stands accordingly disposed of. A copy of this order be sent to the Superintendent, **District Jail, District Mandi, H.P. and the learned Trial Court by FASTER.**

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

(Chirag Bhanu Singh)
Judge

31st October, 2026 ***(Shamsh Tabrez)***

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