 2026:HHC:47173

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. : 2085 of 2026
Decided on : 28.10.2026

Akshay Kewla ...Applicant

Versus

State of Himachal Pradesh ...Respondent

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

For the applicant : Ms. Kanta Thakur, Advocate.

For the respondent : Mr. Mohinder Zharaick & Mr. H.S. Rawat, Additional Advocates General with Mr. Rohit Sharma, Deputy Advocate General, assisted by SI Naresh Kumar, I.O. Police Station, Theog, District Shimla.

Virender Singh, Judge (Oral)

Applicant-Akshay Kewla, has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as the 'BNSS'), seeking the relief of bail, during the pendency of the trial, arising out of **FIR No.78 of 2025, dated 21.07.2025**, registered with **Police Station, Theog, District Shimla,**

---

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

H.P., under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the 'NDPS Act').

2. According to the applicant, he is innocent person and has falsely been implicated, in this case, by the police.

3. As per the applicant, he has nothing to do with the crime in question, for which, he has been arrested by the police.

4. Investigation, in the present case, is stated to be complete and according to the applicant, his custodial interrogation is no longer required by the police. As such, no useful purpose would be served by keeping the applicant in the judicial custody.

5. The applicant has tried his luck by moving similar application before the Court of learned Special Judge-II, Shimla, which was dismissed on 08.10.2026.

6. The applicant has claimed the relief on the basis of parity, as his co-accused Rahul Verma, has already been released on bail, by this Court, vide order

dated 14.09.2026, passed in Cr.MP(M) No. 1573 of 2026, titled as Rahul versus State of H.P.

7. Apart from this, the learned counsel appearing on behalf of the applicant, has given certain undertakings, on behalf of the applicant, for which, the applicant is ready to abide by, in case, ordered to be released, on bail, during the pendency of the trial.

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

9. When put to notice, the police has filed the status report, disclosing therein, that on 21.07.2025, HC Manoj Kumar No.195, I.O. Special Cell, Shimla, submitted a rukka to Police Station Theog, for registration of FIR, mentioning therein, that on 21.07.2025, he, along with other police official, was on patrolling duty, in private vehicles No.HP52C-6525 and HP52C-5517, to detect the crime relating to narcotics, towards Dhalli, Kufri Theog Matyana and Narkanda etc.

9.1. At about 6.50 p.m., when, the police party reached at Matyana market, then, the I.O., received a secret information that on the road leading to Baragaon

side, a vehicle bearing registration No.HP09C-5119 has been parked, in which, 2-3 persons are there and selling charas.

9.2. As per the information, in case, the said vehicle is searched, large quantity of Charas can be recovered and in case of delay, the possibility of removal of the said vehicle, as well as, the contraband is also there.

9.3. The information was found to be authentic and reliable, as such, the I.O. has complied with the provisions of Section 42(2) of the NDPS Act and submitted the same to his superior officer.

9.4. Thereafter, the I.O., along with other police officials, proceeded towards the spot at Matiana Baragaon road and from Matiana, at about 300-400 meters ahead, when, they reached near Roni village, then, on the left side of the road, one vehicle bearing registration No.HP09-5119 was found parked.

9.5. As soon as, the I.O., and the police officials reached near the said car, two persons alighted down from the car and fled away, whereas, the person, who was on the wheel was nabbed by the Police. Meanwhile, from

Matiana side, two persons were found coming, who were apprised about the factual position and were requested to be the witnesses. On inquiry, they disclosed their names as Nishant and Sewak Ram.

9.6. In the presence of those witnesses, name and address of the person has been inquired, who has disclosed his name as Rahul Verma son of Shri Sunder Singh (hereinafter referred to as 'A-1'). When the I.O, inquired from him about the persons, who fled away from the car, he disclosed the name of one person as Akshay Kewala (applicant), however, according to him, he does not know the name of other person (hereinafter referred to as A-3), who had fled away from the spot.

9.7. In the presence of the witnesses, the vehicle was searched, and on searching, an electronic weighing machine, as well as, contraband weighing, 2.290 kgs, was found.

9.8. After completing other codal formalities, the FIR in question, was registered and the contraband, so recovered, was taken into possession. The accused was arrested.

9.9. Thereafter, the I.O. prepared the spot map and recorded the statements of the witnesses. A-1 was medico-legally examined and the contraband was, thereafter, handed over to MHC Police Station, Theog. Thereafter, A-1 was produced before the Court, from where, he was remanded to police custody till 24.07.2025.

9.10. As per the status report, on 24.07.2025, applicant, as well as, A-3, voluntarily appeared before the police. They were associated in the investigation. During investigation, both applicant and A-3, disclosed that on 21.07.2025, both of them were in the vehicle of A-1 and were on the way to Matiana, along with Charas. When, they were at Roni curve, then, they saw a vehicle, from which, some persons alighted down, and apprehending the said persons, as Police personnel, the applicant and A-3 fled away from the spot, towards the nearby orchard. On finding the involvement of the applicant and A-3, both were arrested and Section 29 of NDPS Act was added.

9.11. After completion of the investigation, police filed the charge sheet, which is pending in the trial Court and is listed for PWs on 16th 17th and 18th November, 2026.

9.12. As per the status report, FIR No.63 of 2024, dated 26.04.2024, under Section 323, 341, 506 read with Section 34 IPC has been found to be registered against the applicant.

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

11. Admittedly, the contraband, allegedly recovered, in this case, falls within the definition of 'commercial quantity. In view of the law laid down by Hon'ble Supreme Court in ***Narcotics Control Bureau versus Kashif***, ***(2024) 11 SCC 372,*** before releasing the person, involved in the crime, it is obligatory upon the Court to record the findings, which should be more than *prima-facie* findings, regarding existence of the twin conditions, as enumerated under Section 37(1)(b)(ii) of the NDPS Act. In other words, it can be said that before releasing the person, involved in the crime in issue, findings have to be recorded by the Court, about the fact that there are reasonable grounds for believing that the accused is not guilty of such offence, and while on bail, he is not likely to commit any offence.

12. Provisions of Section 37(1)(b)(ii) of the NDPS Act, are reproduced, as under:-

> *(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.*

13. In this case, admittedly, the applicant was not arrested on the spot. His name was allegedly disclosed by his co-accused Rahul Verma, who was allegedly nabbed with the contraband weighing 2.290 Kgs of Charas. Admittedly, Rahul was in police custody at that time. The 'custody' and 'arrest' are two different terms.

14. Hon'ble Apex Court in ***Vikram Singh and ors*** *versus* ***State of Punjab; AIR 2010 Supreme Court 1007*** titled as have distinguish between the word 'arrest' and the word 'custody' as used in Section 27 of the Evidence Act. Relevant Paras-12 & 16 of the judgment, are reproduced, as under:-

> *"12. Mr. Sharan has, however, referred us to Section 46(1) of the Code of Criminal Procedure to argue that till the appellants had been arrested in accordance with the aforesaid provision they could not be said to be in police custody. We see that Section 46 deals with 'Arrest how made'. We are of the opinion that*

word "arrest" used in Section 46 relates to a formal arrest whereas Section 27 of the Evidence Act talks about custody of a person accused of an offence. In the present case the appellants were undoubtedly put under formal, arrest on the 15th February 2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused is an offence at the time of their apprehension on the 14th February 2005. Moreover, in the light of the judgment in the Constitution Bench and the observation that the words in Section 27 "accused of any offence" are descriptive of a person making the statement, the submission that this Section would be operable only after formal arrest under Section 46(1) of the Code, cannot be accepted. This argument does not merit any further discussion.

xxx xxx xxx

16. It is also significant that Jasvir Singh also disclosed that he had kept concealed the dead body in the fields of village Daulatpur and that it had been removed from Darshan Kaur's house in the Chevrolet car belonging to him and the three appellants had further revealed that the dead body had been disposed of in the fields of village Daulatpur and the dead body was recovered and taken into possession by Memo Ex.PGGG signed by Manohar Lal as also Sub-Inspector Jeevan Kumar. We are unable to accept Mr. Sharan's bare submission that the evidence of Manohar Lal and Sub-Inspector Jeevan Kumar should not be believed as they were interested in the successful outcome of the prosecution, as no other material adverse circumstance has been brought to our notice."

15. Full Bench of Hon'ble Lahore High Court in ***Hakam Khuda Yar*** *versus* ***Emperor; AIR 1940 Lahore 129,*** have also defined the word 'custody' and held that the

police custody does not necessarily means custody after formal arrest. Relevant portion of the judgment, is reproduced, as under:-

> *".....As regards the first point, the term "custody" is not defined either in the Criminal Procedure Code or in the Evidence Act. There is, of course, no doubt that an accused person will be in the "custody" of the police after his arrest; but the question is whether he can be considered to be in "custody" at any time earlier, when he has not been formally arrested, but is merely detained by the police for the purpose of the investigation. Section 27 is anomalous in so far as it applies only to information leading to a discovery when received from an accused person in the custody of the police, but not if he is not in the custody of the police. If the information is relevant when it comes from a person in the custody of the police, there seems no good reason why it should not be so when it comes from an accused person, who is not in the custody of the police and therefore not under the influence of the police. The real intention of the Section very probably is to make information from an accused person which leads to discovery relevant even when the person is in police custody. But the language of, the Section makes such information relevant only when it comes from an accused person in the custody of the police.*
>
> *The language used in the Section thus leads to the curious result probably never intended--that when such information is given by an accused person, who is not in the "custody" of the police it will not be covered by the Section. However, apart from the above anomaly, the intention of the Section seems, I think, clear enough and that is to make information leading to a discovery relevant, even when it comes from an accused person who is in the custody of the police and thus subject to police influence. Ordinarily*

> *information coming from an accused person, who is liable to be influenced by the police will be open to suspicion. But if the information leads to the discovery of a relevant fact, that discovery is considered to be a guarantee of the truth of the information as has been pointed out already and hence such information is made relevant by Section 27. Now there can be little doubt, that even before his formal arrest, an accused person, who is detained by the police owing to suspicion against him, is liable to be influenced by the police. This Court has therefore put a wide interpretation on the word "custody" as used in Section 27. In AIR 1933 Lah 609, it was held by a Division Bench of this Court consisting of Sir Shadi Lal and Coldstream J. that 'police custody' does not necessarily mean custody after formal arrest and that it also includes 'some form of police surveillance and restriction on the movements of the person concerned by the police.*

16. In view of the above, whatsoever disclosed by accused Rahul Verma, was disclosed by him, when, he was in police custody. In view of the law laid down by the Hon'ble Supreme Court in ***'Tofan Singh*** *versus* ***State of Tamil Nadu', (2021) 4 Supreme Court Cases 1***, the said statement cannot be taken into account, in order to convict the accused, under the provisions of NDPS Act. Relevant paragraph 158.1 of the judgment is reproduced as under:

> *"158.1 That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers' within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be*

barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act."

17. According to the police, the applicant, along with A-3, voluntarily appeared before the Police, is a fact, which can be taken into consideration to conclude that, there are reasonable grounds to believe that the applicant is not guilty of such offence and it can be said, at this stage, that in case, he is ordered to be released on bail, he is not likely to commit any offence.

18. The alleged voluntariness of the applicant to put appearance is a fact, which had not been clarified by the prosecution, neither in the status report, nor, in the charge-sheet, which had been filed before the learned trial Court.

19. Even otherwise, for the second condition, as enumerated under the provisions of Section 37(1)(b)(ii) of the NDPS Act that the applicant is not likely to commit any offence, while on bail, reasonable conditions, can be imposed upon him. Consequently, the twin conditions, are found to be existing in favour of the applicant.

20. Considering all these facts, this Court has no legal hesitation 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.

21. Even otherwise, on the ground of parity, the applicant is entitled to the relief, as claimed in the application, as his co-accused Rahul, has already been released on bail, by this Court, vide order dated 14.09.2026, passed in Cr.MP(M) No. 1573 of 2026, titled as 'Rahul versus State of Himachal Pradesh'.

22. So far as the criminal history of the applicant is concerned, admittedly, he has not been convicted in the said case, nor, any efforts have been made by the Police to get the bail cancelled, in that matter, by moving appropriate application in the competent Court of law.

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

24. Consequently, the applicant is ordered to be released on bail in case **FIR No.78 of 2025, dated**

21.07.2025, registered with **Police Station, Theog, District Shimla, H.P.**, under Sections 21 and 29 of the NDPS Act, on his furnishing personal bond in the sum of Rs.1,00,000/-, with two sureties, in the like amount, to the satisfaction of learned trial Court.

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

> *a) Applicant shall 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) Applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;*
>
> *c) 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) 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.*

26. 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 application.

27. 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.

28. The Registry is directed to forward a soft copy of the bail order to the Superintendent Jail, District Jail, Kaithu, District Shimla, through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

29. In case, the applicant is not released within a period of seven days from the date of grant of bail, the Superintendent Jail, District Jail, Kaithu, District Shimla, is directed to inform this fact to the Secretary, DLSA, Shimla. The Superintendent Jail, District Jail, Kaithu, District Shimla, is further directed that if the applicants fail 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

October 28, 2026 *(ps)*

PRADEEP
Digitally signed by PRADEEP
Date: 2026.10.28 16:00:44 +0530