IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.2163 of 2026
Date of Decision: 5.11.2026

Nikhil Sharma .....Petitioner

Versus

State of Himachal Pradesh ... Respondent

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

For the Petitioner	**:**	Ms. Depmala Sharma, Advocate.
For the Respondent	**:**	Mr. Rajan Kahol, Additional Advocate General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, Judge(oral):

Bail petitioner namely Nikhil Sharma, who is behind bars since 15.01.2026, has approached this Court in the instant proceedings filed under Section 483 of Bharatiya Nagrik Suraksha Sanhita (hereinafter ***'BNSS'***) for grant of regular bail in FIR No.9 of 2026, dated 15.01.2026, under Sections 21 & 29 of ND & PS Act, registered at Police Station Bhuntar, District Kullu, Himachal Pradesh.

2. In terms of order dated 28.10.2026, respondent-State has filed status report and HC Tilak Raj has come present with record. Record perused and returned.

3. Close scrutiny of the status report/record reveals that on 14.01.2026 at 10:15 p.m., police, after having received secret information to the effect that persons staying in Room No. 205 at

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

Hotel Vibhavan, Bhuntar, had come with a consignment of narcotics, raided the aforesaid room in the presence of independent witnesses and recovered 104 grams of heroin. At the time of the raid, two persons, namely, Shiv Kumar and present bail-petitioner were found inside the room. Since both the above-named persons were unable to render plausible explanation for the possession of the intermediate quantity of contraband, police, after having completed necessary codal formalities, lodged an FIR against the petitioner as well as co-accused, arrested them on 15.01.2026 and since then, bail petitioner is behind bars along with co-accused Nikhil Sharma. Allegedly during investigation, above-named persons disclosed to the police that contraband had been supplied by a person namely, Vikramjit and, as such, Vikramjit also came to be named in the FIR. Now, the aforesaid Vikramjit as well as Shiv Kumar stand enlarged on bail.

4. Since challan stands filed in the competent Court of law and nothing remains to be recovered from the bail-petitioner, prayer has been made on behalf of the petitioner for grant of regular bail.

5. Mr. Rajan Kahol, learned Additional Advocate General, while fairly admitting the factum of filing of the challan in the competent Court of law, states that though nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of the offence alleged to have been committed by him, he does not deserve any leniency, rather needs to be dealt with severely. While

inviting attention of this Court to the status report, Mr. Kahol 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 such activities. He states that in past, two cases under ND&PS Act stand registered against him.

6. Having heard learned counsel for the parties and perused material available on record, this Court is not persuaded to agree with learned counsel for the petitioner that petitioner has been falsely implicated, rather, this Court finds that an intermediate quantity of contraband came to be recovered from a room in the presence of independent witnesses, where the petitioner was also present. However, having taken note of fact that petitioner is behind bars for more than nine months, coupled with the fact that one of the co-accused, who was also present in the room, already stands enlarged on bail, this Court is persuaded to consider the prayer of the petitioner for grant of regular bail.

7. Admittedly, as per status report, two cases stand registered against the petitioner under the ND&PS Act, but guilt, if any, of the petitioner in the aforesaid cases is yet to be established on record by leading cogent and convincing evidence. Though learned Additional Advocate General, vehemently argued that petitioner is a drug peddler, but no cogent and convincing evidence in that regard

has been placed on record, save and except factum of registration of the two cases under the ND&PS Act.

8. Possibility of the petitioner having become an addict cannot be ruled out and in that situation, it may not be appropriate to let him incarcerate in jail for indefinite period, rather, he is required to be provided medical treatment at the earliest so that he can be brought back into mainstream. Moreover, this Court finds that rigours of Section 37 of the ND&PS are not attracted on account of the recovery of an intermediate quantity of contraband. Since it is not in dispute that at the time of recovery of contraband, two persons, namely Shiv Kumar and present bail petitioner were present, coupled with the fact that contraband was recovered from the bag of co accused Shiv Kumar, who is already enlarged on bail, it would be too premature to conclude the complicity of the petitioner in the commission of offence, rather, prosecution has to lead evidence to connect the petitioner with recovered quantity of contraband.

9. Leaving everything aside, this Court finds that FIR in the case at hand was registered on 15.01.2026, but till date, not even a single prosecution witness has been examined, meaning thereby, considerable time is likely to be consumed in the conclusion of the trial. If, during the trial, petitioner is left to incarcerate in jail for an indefinite period, the same would not only amount to pre-trial conviction but would also violate Article 21 of the Constitution of India.

10. Hon'ble Apex Court as well as this Court have held in catena of cases that one is deemed to be innocent till the time his/her guilt is not proved, in accordance with law. Since guilt, if any, of the bail petitioner is yet to be established on record by the prosecution by leading cogent and convincing evidence, this court sees no reason to curtail the freedom of the bail petitioner for an indefinite period during trial. Apprehension expressed by learned Deputy Advocate General, that in the event of being enlarged on bail, bail petitioner may flee from justice can be best met by putting the bail petitioner to stringent conditions.

11. Needless to say, 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, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. 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.

12. 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.

13. 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.

14. 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.

15. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, bail-petitioner has carved out a case for grant of bail, accordingly, the petition is allowed and the bail-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.***

16. 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.

17. 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.

18. A downloaded copy of this order shall be accepted by the learned trial Court, while accepting the bail bonds from the petitioner

and in case, said court intends to ascertain the veracity of the downloaded copy of order presented to it, same may be ascertained from the official website of this Court.

(Sandeep Sharma),
Judge

November 5, 2026
Manjit