IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP (M) No.2175 of 2026

Date of Decision: 18.11.2026

Tushar Chander ...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. Hemant Vaid, Advocate.
For the Respondent:	Mr. Anup Rattan, Advocate General with Mr. Rajan Kahol, Additional Advocate General and Mr. Ravi Chauhan, Mr. R.P. Singh and Mr. Anish Banshtu, Deputy Advocates Generals, for the respondents/ State.

Sandeep Sharma, J. (Oral)

Bail petitioner, namely Tushar Chander, who is behind the bars since 18.01.2026, has approached this Court in the instant proceedings filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail in case FIR No.06 of 2026, dated 18.01.2026, registered at Police Station Sadar, Shimla, District Shimla, H.P., under Section 21 of NDPS Act.

2. Respondent-State has filed status report and SI Purender Kumar has also come present with record. Record perused and returned.

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

3. Close scrutiny of the record/status report reveals that on 17.01.2026, police party, which at the relevant time, was present near Old Bus Stand, Shimla, received a secret information that bail petitioner indulges in illegal trade of narcotics and at present he can be apprehended with contraband in his car bearing No. HP-86-3392 parked near western command. On the basis of aforesaid information, police intercepted the aforesaid vehicle and allegedly recovered 10.660 grams of chitta from the dashboard of the car. Since no plausible explanation ever came to be rendered on record qua possession of aforesaid intermediate quantity of contraband, police after having completed necessary codal formalities, lodged FIR, as detailed hereinabove, and since then bail petitioner is behind bars. Since challan stands filed in the competent court of law and nothing remains to be recovered from bail 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 bail petitioner, but keeping in view gravity of offence alleged to have been committed by him, he does not deserve any leniency. Mr. Chauhan, states that there is overwhelming evidence adduced on record suggestive of the fact

that bail 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. To substantiate his aforesaid plea, he specifically referred to the status report, wherein it is mentioned that in past, two cases under NDPS Act already stand registered against the petitioner. Mr. Chauhan, further contends that trial has already commenced and as such, prayer made on behalf of petitioner for enlargement on the ground of inordinate delay in conclusion of trial cannot be accepted.

5. Having heard learned counsel representing the parties and perused material available on record, this Court is not persuaded to agree with learned counsel representing the petitioner that bail petitioner has been falsely implicated, rather this Court finds from the record that intermediate quantity of contraband came to be recovered from the conscious possession of the petitioner in presence of the independent witnesses. However, having taken note of fact that bail petitioner is behind bars for more than three months, coupled with the fact that till date prosecution has been able to examine only four witnesses, out of 31 witnesses, this Court is persuaded to consider the case of petitioner for grant of bail.

6. No doubt, in past, two cases under NDPS Act stand registered against petitioner, but that may not be sufficient to

conclude that bail petitioner is a drug peddler, rather having taken note of quantity of contraband involved in all the cases, this Court is persuaded to agree with learned counsel representing the petitioner that bail petitioner has become a drug addict and as such, no fruitful purpose would be served by keeping him behind the bars, rather he is required to be provided medical treatment at first opportunity so that he is brought back to mainstream at the earliest.

7. Moreover, rigours of Section 37 of the Act are not attracted in the case at hand on account of recovery of intermediate quantity. FIR in the case at hand was registered on 18.01.2026, but till date prosecution has been able to examine only four witnesses, out of 31 witnesses, meaning thereby considerable time is likely to be consumed in conclusion of trial and in case bail petitioner is left to incarcerate in jail for indefinite period during trial, that would not only amount to pre-trial conviction, but would also violate Article 21 of Constitution of India, as has been repeatedly held by Hon'ble Apex Court in catena of judgments.

8. Hon’ble Apex Court in ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another***, Criminal Appeal No.2787 of 2024, decided on 03.07.2024, adversely commented upon the approach of trial Court as well as High Court while considering the prayer for grant of bail. In the aforesaid judgment, Hon’ble

Supreme Court having taken note of the fact that appellant in that case was in jail for last four years and Court till that date was not able to frame charges, proceeded to enlarge accused on bail in a case registered under the provisions of Unlawful Activities (Prevention) Act, 1967. In no uncertain terms, Hon'ble Apex Court in aforesaid judgment held that, however serious a crime may be, an accused has right to speedy trial, as enshrined in Article 21 of the Constitution of India. Relevant Paras of aforesaid judgment are reproduced herein below, which reads as under:

> "7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are inclined to exercise our discretion in favour of the appellant herein keeping in mind the following aspects:
> (i) The appellant is in jail as an under-trial prisoner past four years;
> (ii) Till this date, the trial court has not been able to even proceed to frame charge; and
> (iii) As pointed out by the counsel appearing for the State as well as NIA, the prosecution intends to examine not less than eighty witnesses.
> 8. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.
> 9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.
> 10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor***, High Court reported in (1978) 1 SCC 240. We quote:
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> > "What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox] :
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> > > "I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."
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> 11. The same principle has been reiterated by this Court in ***Gurbaksh Singh Sibba v. State of Punjab*** reported in (1980) 2 SCC 565 that the object of bail is to secure the attendance of the accused at the trial, that 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 and that it is indisputable that bail is not to be withheld as a punishment.

12. Long back, in ***Hussainara Khatoon v. Home Secy., State of Bihar*** reported in (1980) 1 SCC 81, this court had declared that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and content of Article 21 as interpreted by this Court". Remarking that a valid procedure under Article 21 is one which contains a procedure that is "reasonable, fair and just" it was held that:

> "Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just"unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of along delayed trial in violation of his fundamental right under Article 21."

13. The aforesaid observations have resonated, time and again, in several judgments, such as ***Kadra Pahadiya & Ors. v. State of Bihar*** reported in (1981) 3 SCC 671 and ***Abdul Rehman Antulay v. R.S. Nayak*** reported in (1992) 1 SCC 225. In the latter the court re-emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

> "The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case maybe, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one,may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial."

14. In ***Mohd Muslim @ Hussain v. State (NCT of Delhi)*** reported in 2023INSC 311, this Court observed as under:

> "21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail,may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31stDecember 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.
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> 22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the KeralaHigh Court in A Convict Prisoner v. State reported in 1993Cri LJ 3242, as "a radical transformation" whereby the prisoner:

> "loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom,status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."
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> 23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"(also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore,have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

15. The requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 (hereinafter being referred to as "the 2008 Act") mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the 2008.

16. A three-Judge Bench of this Court in ***Union of India v. K.A. Najeeb*** reported in (2021) 3 SCC 713] had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act and observed as under : (SCC p. 722, para 17)

> "17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed,both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings,the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safe-guard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

17. In the recent decision, ***Satender Kumar Antil v. Central Bureau of Investigation*** reported in (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973would apply:

> "We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the

> rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."
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> 18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents,juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, maybe, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.
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> 19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

9. Hon'ble Apex Court as well as this Court in catena of cases have repeatedly held that one is deemed to be innocent till the time guilt, if any, of his/her is not proved in accordance with law. In the case at hand also, guilt, if any, of the accused is yet to be proved in accordance with law, by leading cogent and convincing material on record and as such, his incarceration for indefinite period is clear cut violation of Fundamental Right guaranteed under Article 21 of the Constitution of India. Apprehension expressed by the learned Deputy Advocate General that in the event of petitioner's being enlarged on bail, he may flee from justice, can be best met by putting the bail petitioner to

stringent conditions as has been fairly stated by the learned counsel for the petitioner.

10. 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.

11. Hon'ble Apex Court in ***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.

12. 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.

13. 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.2,00,000/- 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.

14. 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.

15. 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.

16. 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

November 18,2026
(shankar)