IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP (M) No.2177 of 2026

Date of Decision: 17.11.2026

Nipun Thakur @ Harsh ...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. Jagjeet Singh Bagga, Mr. Deepankar Singh Bagga and Ms. Vanshika Bagga, Advocates.

For the Respondent: Mr. Rajan Kahol, Additional Advocate General with Mr. Ravi Chauhan, Mr. R.P. Singh and Mr. Anish Banshtu, Deputy Advocates Generals.

Sandeep Sharma, J. (Oral)

Bail petitioner, namely Nipun Thakur @ Harsh Arora, who is behind the bars since 09.07.2026, has approached this Court in the instant proceedings filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, for grant of regular bail in case FIR No. 71 of 2026, dated 05.07.2026, registered at Police Station Aut, District Mandi, H.P., under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act ***(for short 'Act').***

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

2. Respondent-State has filed status report and ASI Mahesh has come present alongwith record. Record perused and returned.

3. Close scrutiny of the record/status report reveals that on 05.07.2026, at 7:30 PM, police, which was present near Army Camp Road, Aut, signalled car bearing registration No. HP-98-0566 (Tata Nexon), to stop. Since driver of the vehicle, namely Ashish Thakur got perplexed and started making excuses, police deemed it necessary to cause search of the car as well as driver and accordingly, after having associated independent witnesses, conducted the search of the car as well as driver and allegedly recovered one polythene bag containing 3.066 kg. of charas/ cannabis. Since no plausible explanation ever came to be rendered on record qua possession of aforesaid commercial quantity of contraband, police lodged FIR, as detailed hereinabove, and since then above-named Ashish Thakur is behind bars. Allegedly, above-named Ashish Thakur during investigation disclosed to the police that persons, namely Pardeep Kumar, Himanshu, and Rijul Chauhan are his friends and they all had gone to bail petitioner Nipun Thakur for purchase of contraband. Allegedly, Ashish Thakur disclosed to the police that co-accused and Himanshu Arora, had called him at Zirakpur for checking the sample of charas and thereafter they all came to Kullu where co-

accused Pardeep Kumar and Himanshu Arora introduced him to bail petitioner Nipun Thakur, from whom contraband was purchased for total consideration of ₹2.5 Lakh, out of which ₹2 Lakh was paid by Ashish Thakur, ₹18,000 by Rijul, ₹20,000 by Himanshu and ₹12,000 by Pardeep Kumar. In the aforesaid background, bail petitioner as well as other persons named above also came to be named in the FIR. Co-accused Pradeep Kumar, Himanshu Arora already stand enlarged on bail and present petitioner is behind the bars. Since investigation qua the bail petitioner is complete and nothing remains to be recovered from him, prayer has been made on his behalf for grant of regular bail.

4. Mr. Deepankar Bagga, learned counsel representing the petitioner, states that petitioner has been falsely implicated on the basis of confessional statement made by co-accused Ashish Thakur, from whose conscious possession commercial quantity of contraband was recovered. Mr. Bagga, states that save and except confessional statement, if any, made by co-accused Ashish Thakur, there is no evidence adduced on record suggestive of the fact that present bail petitioner had sold contraband to co-accused Ashish Thakur. He states that though claim is being made by prosecution that some amount was paid by co-accused to Ashish Thakur for purchase of contraband, but there is no record, if any,

with regard to financial transaction. He further states that there is no CDR suggestive of the fact that present bail petitioner was in touch with co-accused Ashish Thakur on the date of recovery, rather telephonic conversation, if any, *inter se them* is of the period prior to the date of recovery. While referring to judgment of Hon'ble Apex Court in **Tofan Singh versus State of Tamil Nadu (2021) 4 SCC 1,** Mr. Bagga states that confessional statement made by co-accused is not admissible. He also placed reliance upon judgment dated 24.03.2022 passed by this Court in case titled **Neel Chand vs. State of Himachal Pradesh,** Cr.MP(M) No.468 of 2022, wherein taking note of the fact that accused Neel Chand was roped in on the basis of statement made by co-accused, this Court, having relied upon judgment passed by Hon'ble Apex Court in Tofan Singh's case, proceeded to enlarge Neel Chand on bail in a case involving commercial quantity of contraband.

5. While fairly admitting that nothing remains to be recovered from the bail petitioner, Mr. Rajan Kahol, learned Additional Advocate General, states that since investigation qua some crucial aspects of the matter is yet to be completed, it may not be in the interest of justice to enlarge bail petitioner on bail being drug peddler. He states that there is overwhelming evidence adduced on record suggestive of the fact that contraband recovered from the conscious possession of co-accused Ashish

Thakur was sold by bail petitioner. He states that rigours of Section 37 of the Act are attracted in the present case and as such, prayer made on behalf of the bail petitioner for grant of bail deserves outright rejection. He further states that since evidence with regard to financial transaction is yet to be collected, it may not be in the interest of justice to enlarge the petitioner on bail, who in that event may not only tamper with prosecution evidence, but may again indulge in these activities again.

6. Having heard learned counsel for the parties and perused material available on record, this Court finds that commercial quantity of contraband was never recovered from the conscious possession of the present bail petitioner, rather same was recovered from the conscious possession of co-accused Ashish Thakur, who allegedly disclosed to the investigating agency that co-accused Pradeep Kumar and Himanshu Arora had introduced him to bail petitioner Nipun Thakur for purchase of contraband. Co-accused Ashish Thakur also disclosed to the police that contraband recovered from his conscious possession was purchased for sum of ₹2.5 Lakh, out of which sum of ₹20,000 and ₹12,000, respectively were paid by aforesaid co-accused.

7. Question, which needs to be determined in the case at hand, is whether statement made by co-accused with regard to alleged involvement of bail petitioner is sufficient to conclude

complicity of the bail petitioner in the case. Aforesaid question has been very aptly answered by the Hon'ble Apex Court in Tofan Singh's case, wherein it has been observed that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in trial of an offence under the NDPS Act.

8. At this stage, it would be profitable to take note of the judgment passed by Hon'ble Apex Court in case **Tofan Singh's** case (supra), wherein it has been held as under.

> "155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under section 42 or section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.
> 156. The judgment in Kanhaiyalal (supra) then goes on to follow Raj Kumar Karwal (supra) in paragraphs 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.
> 157. On the other hand, for the reasons given by us in this judgment, the judgments of Noor Aga (supra) and Nirmal are correct in law.
> 158. We answer the reference by stating:
> (i) 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.
> (ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

9. The Hon'ble Apex Court in case titled ***State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta and Anr, Special***

Leave to Appeal (Crl) No. 242 of 2022 (arising out of diary No. 22702 of 2020) decided on 10.1.2022, again reiterated that confessional statement recorded under Section 67 of the ND & PS Act, will remain inadmissible in the trial of an offence under the Act. Hon'ble Apex Court in this case upheld the order/judgment passed by the High Court of Karnataka granting bail to the accused arrested by the petitioner NCB on the basis of confessional/voluntary statement of the co-accused under Section 67 of the ND & PS Act. Apart from above, Hon'ble Apex Court in the aforesaid judgment has held that CDR of some of the accused or the allegations of tempering of evidence on the part of the respondents is an aspect that will be examined at the stage of the trial.

10. At this stage, it would be apt to take note of the following paras of the aforesaid judgment, passed by Hon'ble Apex Court herein below:-

> "9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the

prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

10. It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu. that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773- 74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless."

11. Bare reading of aforesaid judgment passed by Hon'ble Apex Court clearly reveals that the arrest made by NCB in that case on the basis of confession /voluntary statement to co accused under S.67 of the NDPS Act was not found to be in accordance with law and Hon'ble Apex Court specifically ordered that statement under statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. which was passed by High Court of Karnataka.

11. Hon'ble Apex Court in the aforesaid judgment has further ruled that CDR details of some of the accused or allegations of tampering evidence on the part of one of the accused is an aspect that will be examined at the later stage.

12. No doubt, rigours of Section 37 of the Act are attracted in the case at hand for the reason that commercial quantity of contraband came to be recovered from the conscious possession of one of the co-accused, Ashish Thakur, but bare perusal of Section 37 of the Act, nowhere suggests that there is a complete bar for granting bail in cases involving commercial quantity of contraband, rather in such cases Court after having afforded opportunity of being heard to the Public Prosecutor can always proceed to grant bail in case it is satisfied that applicant has been falsely implicated and in the event of his/her being released on bail, he/she may not indulge in these activities again.

13. Admittedly, in the case at hand, commercial quantity of contraband never came to be recovered from the conscious possession of the present bail petitioner and at present, save and except statement of co-accused Ashish Thakur from whose conscious possession contraband came to be recovered, there is no material adduced on record suggestive of the fact that co-accused Pradeep Kumar and Himanshu Arora had any role in purchase and sale of contraband. Moreover, there is nothing in the

status report suggestive of the fact that in past, case, if any, under the NDPS Act stands registered against the bail petitioner and as such, it would be too premature to conclude complicity, if any, of the petitioner in the case at hand.

14. Though, Mr. Rajan Kahol, learned Additional Advocate General, attempted to argue that on account of involvement of commercial quantity of contraband, rigours of Section 37 of the Act would apply, while considering the prayer made on behalf of the petitioner for grant of bail, but once contraband never came to be recovered from the conscious possession of the bail petitioner and there is no material adduced on record to prove financial transaction, if any, *inter se* Ashish Thakur and present bail petitioner, this Court is not persuaded to accept the aforesaid submission made at the behest of learned Additional Advocate General.

15. Similarly, this Court finds that Call Detail Reports adduced on record nowhere suggests that on the date of recovery present bail petitioner was in touch with co-accused Ashish Thakur. Co-accused Pradeep Kumar had lastly talked to co-accused Ashish Thakur on 02.07.2026 on his phone, whereas another co-accused Himanshu Arora had talked with co-accused Ashish Thakur on 03.07.2026 and 04.07.2026, but that may not be sufficient to conclude complicity of the bail petitioner in the case at hand.

16. By now it is well settled that freedom of an individual is of utmost importance and cannot be curtailed for indefinite period. Till the time guilt of accused is not proved, in accordance with law, he is deemed to be innocent. In the case at hand, the guilt, if any, of the bail petitioner is yet to be proved, in accordance with law.

17. The Hon'ble Apex Court in Criminal Appeal No.227/2018, ***Dataram Singh vs. State of Uttar Pradesh & Anr*** decided on 6.2.2018 has categorically held that freedom of an individual is of utmost importance and same cannot be curtailed merely on the basis of suspicion. Hon'ble Apex Court has further held that till the time guilt of accused is not proved, in accordance with law, he is deemed to be innocent. The relevant paras No.2 to 5 of the judgment are reproduced as under:-

> 2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.
> 3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused

> person is the right thing to do on the facts and in the circumstances of a case.
> 4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.
> 5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons.

18. 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.

19. The Hon'ble Apex Court in **Sanjay Chandra versus Central Bureau of Investigation** (2012)1 Supreme Court Cases 49; held as under:-

> "The 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. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India , it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."

20. The Hon'ble Apex Court in **Prasanta Kumar Sarkar v. Ashis Chatterjee and Another (2010) 14 SCC 496**, has laid down the following principles to be kept in mind, while deciding petition for bail:

> (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
>
> (ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;
(iv) danger of the accused absconding or fleeing, if released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail.

21. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court as well as this Court, bail 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 each 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.

22. 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.

23. 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 both the applications alone. The petitions stand accordingly disposed of.

24. 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 17, 2026
(shankar)