IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP (M) No.2196 of 2026

Date of Decision: 18.11.2026

Karan ...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. Bhishm Sharma, 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, Karan, who is behind the bars since 25.08.2026, has approached this Court in the instant proceedings filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita for grant of regular bail in case FIR No.110 of 2025, dated 25.12.2025, under Sections 21 and 29 of the NDPS Act, registered at police Station, Sadar, District Shimla, Himachal Pradesh.

2. Pursuant to order dated 02.11.2026, respondent-State has filed status report and HC Om Prakash has come present alongwith the 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 25.12.2025, at about 12.45 PM, police patrolling party present near ISBT, Shimla, after having received secret information that persons, namely Ankush @ Sudama and Parveen Chauhan @ Bobby, who reside in Set No.05, Block-D, Third Floor, Rajiv Awas Yojna indulge in illegal trade of narcotics, raided the aforesaid premises in the presence of independent witnesses and allegedly recovered 6.360 grams of chitta/heroin. Since no plausible explanation ever came to be rendered on record qua possession of aforesaid quantity of contraband, police after having registered the FIR, as detailed hereinabove, arrested both the persons, named hereinabove. Since during investigation, above named persons allegedly disclosed to the police that they had purchased chitta from co-accused Sagar, who is resident of Ludhiana (Punjab), police also arrested the afore co-accused on 29.12.2025, but he stands enlarged on bail vide order dated 12.03.2026 passed by this Court in Cr.MP(M) No.223 of 2026. During investigation, police found some financial transactions *inter se* present bail petitioner and Sagar, who had also allegedly disclosed to police that he had been purchasing contraband from present bail petitioner Karan. In the aforesaid background, petitioner also came to be named in the FIR and he is behind bars since 25.08.2026.

4. Though, before filing the petition at hand, bail petitioner had filed anticipatory bail bearing Cr.MP(M) No. 659 of 2026, this Court vide order dated 24.04.2026 granted interim bail to petitioner with direction to join investigation, but since he failed to join the investigation, interim protection granted vide aforesaid order was vacated vide order dated 24.04.2026, as a consequence thereof, petitioner was arrested on 25.08.2026 and since then he is behind bars.

5. Mr. Bhishm Sharma, learned counsel representing the petitioner, states that petitioner has been falsely implicated in the case and as such, needs to be enlarged on bail. He states that contraband never came to be recovered from the conscious possession of the petitioner, rather he has been roped in the case on the basis of the statement made by co-accused Sagar, which is not permissible under law. He states that since nothing remains to be recovered from him, prayer made on his behalf for bail deserves to be allowed. To substantiate his aforesaid submission, he placed reliance upon judgment passed by Hon'ble Apex Court in ***Tofan Singh v. State of Tamil Nadu*** (2021) 4 SCC 1, wherein it came to be revealed that confession statement recorded under Section 67 of NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act

6. Mr. Anish Banshtu learned Deputy Advocate General, while fairly admitting factum with regard to filing of the challan in the competent Court of law, contends that though nothing remains to be recovered from the bail petitioner, but keeping in the gravity of offence alleged to have been committed by him, he does not deserve any leniency. He states that petitioner is a drug peddler, as is evident from the statement made by the co-accused Sagar, who categorically deposed before the police that he had been frequently purchasing contraband from the bail petitioner. To substantiate his aforesaid argument, learned Deputy Advocate General invited attention of this Court to the financial transaction interse co-accused, named hereinabove, and the bail petitioner. He states that substantial amount has been transferred in the bank account of the petitioner in one year, which itself suggests that petitioner is in drug peddling and in the event of his being enlarged on bail , he may not only flee from justice, but may again indulge in these activities.

7. Having heard learned counsel for the parties and perused the material available on record, this Court finds that contraband, which is of intermediate quantity, was never recovered from the conscious possession of the petitioner, rather same came to be recovered from the conscious possession of co-accused Ankush @ Sudama and Parveen Chauhan @ Bobby. It is

admitted case of the prosecution that petitioner herein has been named in the FIR on the basis of the disclosure statement made by co-accused Sagar, who already stands enlarged on bail.

8. Though, having taken note of aforesaid facts, this Court is not persuaded to agree with learned counsel representing the petitioner that petitioner has been falsely implicated, but having taken note of the fact that he has been arrayed as an accused on the basis of confessional statement made by co-accused, coupled with the judgment passed by Hon'ble Apex Court in **Tofan Singh case(supra**), wherein it has been ruled that confession statement recorded under Section 67 of the Act will remain inadmissible in the trial of an offence under the Act, this Court is persuaded to consider the prayer made on behalf of the petitioner for grant of bail. Moreover, on account of recovery of intermediate quantity of contraband, rigours of Section 37 of the Act are not attracted in the present case. At this stage, it would be profitable to reproduce relevant paras of the judgment rendered by Hon'ble Apex Court i***n Tofan Singh*** case(supra) herein below:-

> "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.
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> 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.
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> 157.On the other hand, for the reasons given by us in this judgment, the judgments of Noor Aga (supra) and Nirmal Singh Pehlwan v. Inspector, Customs (2011) 12 SCC 298 are correct in law.
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> 158.We answer the reference by stating:
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> > (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. Recently 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 NDPS 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 NDPS Act. Apart from above, Hon'ble Apex Court in the aforesaid judgment has held that CDR details 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. Bare reading of aforesaid judgment passed by Hon'ble Apex Court clearly reveals that arrest made by NCB in that case on the basis of confessional/voluntary statement of the co-accused under Section 67 of the Act was not found to be in accordance with law and Hon'ble Apex Court specifically ordered that statement of the respondents or the co-accused under Section 67 of the Act cannot form the basis for overturning the impugned orders releasing them on bail, which was passed by High Court of Karnataka.

11. Since in the case at hand, quantity of contraband never came to be recovered from the conscious possession of the bail petitioner and he came to be named in the case, only on the basis of the statement of co-accused, prayer for grant of bail, made on behalf of bail petitioner deserves to be considered.

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. Similarly, it was held in **Surinder Kumar Khanna vs Intelligence Officer Directorate of Revenue Intelligence 2018 (8) SCC 271** that a confession made by a co-accused cannot be taken as a substantive piece of evidence against another co-accused and can only be utilized to lend assurance to the other evidence. The Hon'ble Supreme Court subsequently held in **Tofan Singh Versus State of Tamil Nadu 2021 (4) SCC 1** that a confession made to a police officer during the investigation is hit by Section 25 of the Indian Evidence Act and is not saved by the provisions of Section 67 of the NDPS Act. Therefore, no advantage can be derived by the prosecution from the confessional statement made by the co-accused implicating the petitioner.

14. A similar situation arose before this Court in **Dinesh Kumar @ Billa Versus State of H.P. 2020 Cri. L.J. 4564**, and it was held that a confession of the co-accused and the phone calls are not sufficient to deny bail to a person.

15. It was laid down by this Court in **Saina Devi vs State of Himachal Pradesh 2022 Law Suit (HP) 211** that where the police have no material except the call details record and the disclosure statement of the co-accused, the petitioner cannot be kept in custody. It was observed: -

> "[16] In the facts of the instant case also the prosecution, for implicating the petitioner, relies upon firstly the confessional statement made by accused Dabe Ram and secondly the CDR details of calls exchanged between the petitioner and the wife of co-accused Dabe Ram. Taking into consideration the evidence with respect to the availability of CDR details involving the phone number of the petitioner and the mobile phone number of the wife of co-accused Dabe Ram, this Court had considered the existence of a prima facie case against the petitioner and had rejected the bail application as not satisfying the conditions of Section 37 of the NDPS Act.
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> [17] Since the existence of CDR details of accused person(s) has not been considered as a circumstance sufficient to hold a prima facie case against the accused person(s), in Pallulabid Ahmad's case (supra), this Court is of the view that petitioner has made out a case for maintainability of his successive bail application as also for grant of bail in his favour.
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> [18] Except for the existence of CDRs and the disclosure statement of the co-accused, no other material appears to have been collected against the petitioner. The disclosure made by the co-accused cannot be read against the petitioner as per the mandate of the Hon'ble Supreme Court in Tofan Singh Vs State of Tamil Nadu, 2021 4 SCC 1. Further, on the basis of the aforesaid elucidation, the petitioner is also entitled to the benefit of bail."

16. A similar view was taken by this Court in **Dabe Ram vs. State of H.P., Cr.MP(M) No. 1894 of 2023**, decided on 01.09.2023, **Parvesh Saini vs State of H.P., Cr.MP(M) No. 2355 of 2023**, decided on 06.10.2023 and **Relu Ram vs. State of H.P.** Cr.MP(M) No. 1061 of 2023, decided on 15.05.2023.

17. Though the case at hand, is to be decided by learned court below in the totality of evidence led on record by Investigating Agency, but having taken note of the aforesaid glaring aspects of the matter, this court sees no reason to let the present bail

petitioner incarcerate in jail for an indefinite period during trial, especially when guilt of the present bail petitioner is yet to be established.

18. Hon'ble Apex Court and this Court in a catena of cases have repeatedly held that one is deemed to be innocent, till the time, he/she is proved guilty in accordance with law. In the case at hand, complicity, if any, of the bail petitioner is yet to be established on record by the investigating agency, as such, this Court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial, especially when nothing remains to be recovered from him. Apprehension expressed by learned Deputy Advocate General, that in the event of being enlarged on bail, bail petitioner may flee from justice or indulge in such offences again, can be best met by putting the bail petitioner to stringent conditions.

19. 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.

20. 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.

21. 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.

22. 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.

(e) He shall surrender his passport, if any, before the investigating agency.

23. 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.

24. 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.

(Sandeep Sharma)
Judge

November 18,2026
(shankar)