IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.M.P (M) No. 2217 of 2026
Decided on: 25th November, 2026

Ishar Singh ....Petitioner

versus

The State of Himachal Pradesh ...Respondent

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?[1]

For the petitioner: **Mr. Vinod Kumar Sharma, Advocate.**

For the respondents: **Mr. Amandeep Sharma, Additional Advocate General.**

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS') has prayed for grant of regular bail in respect of an FIR No.252 of 2024 dated 21.11.2024 under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act') registered at Police Station, Bhuntar, District Kullu, H.P.

2. As per the prosecution story, the petitioner was intercepted on 21.11.2024 at around 8 p.m. near Hurla Nag, Durga Stone Crusher, Tehsil Bhuntar, District Kullu, H.P., while sitting on the road side along with his co-accused Dine Ram with a bag containing charas in between them. On recovery of the contraband,

[1] *Whether the reporters of Local Papers may be allowed to see the judgment?*

the same was weighed and found to be 9.070 kg. A formal FIR was registered against the petitioner and Dine Ram and after completion of all codal formalities, the chemical analysis report was obtained.

3. The petitioner had earlier filed a bail application for enlarging him on bail before this Court, which was dismissed as withdrawn on 30.01.2026, when liberty was granted to him to file fresh bail application after three months. Thereafter, the petitioner again filed an application for enlarging him on bail, but the same was also withdrawn for the reason that the petitioner had not approached the learned Special Judge-II, Kullu, H.P. for grant of regular bail, which was permitted to be withdrawn with liberty to approach the said Court on 13.10.2026.

4. After withdrawal of the aforesaid bail application, the petitioner filed an application for enlarging him on bail before the Special Judge-II, Kullu, District Kullu, Himachal Pradesh, which came to be dismissed on 30.10.2026 holding that there is nothing on record even remotely to suggest that the petitioner is neither guilty of the alleged offence nor is likely to commit any offence while on bail. Therefore, in view of the rigors of Section 37 of the NDPS Act, the petitioner is not entitled for bail and furthermore, the matter is now listed for recording the evidence of prosecution on 21.01.2027 to 23.01.2027 and is likely to conclude.

5. The petitioner has now approached this Court by way of instant bail application *inter alia* on the grounds that the independent witness who has been examined on 14.07.2026 has not supported the case of the prosecution. Thereafter, the statement of only one witness has been recorded on 14.09.2026. The matter was listed for recording the prosecution evidence on 15.09.2026 and 16.09.2026, when no PWs were present. It has further been averred that the matter has now been listed for recording the prosecution evidence on 21.01.2027. The petitioner is behind bars since 21.11.2024 and more than two years have elapsed, but till date the trial has not been concluded. It has further been averred that since the investigation is complete, no fruitful result will be obtained to keep the petitioner behind bars. It has also been averred that there is no any civil/criminal matter pending/disposed against the petitioner in any Court, except the present case registered against him.

6. The respondent filed status report and averred that the total contraband recovered from the petitioner and another co-accused Dine Ram was 9.070 kilograms cannabis and as the petitioner is involved in commission of the offence under the NDPS Act, he is not entitled to bail.

7. I have heard the learned counsel for the parties and also perused the record carefully.

8. No doubt, as per the prosecution story, a commercial quantity of contraband is stated to have been recovered from the petitioner and another co-accused which is 9.070 kilograms, but this Court cannot lose sight of the fact that the petitioner is behind bars since 21.11.2024.

9. As per the zimni orders placed on record by the petitioner, the statement of independent witness namely, Shiv Ram was recorded on 14.07.2026 and thereafter, no PWs were present on 15.07.2026 and 16.07.2026. Thereafter, the matter was listed for recording the evidence of remaining prosecution witnesses on 14.09.2026 to 16.09.2026. The examination-in-chief of one witness was recorded on 14.09.2026 and his cross-examination was deferred for the reason that he is to be cross-examined with other spot witnesses, who are not present today, otherwise his defence would be prejudiced. Thereafter, when the matter was listed on 15.09.2026 and 16.09.2026, no PWs were present and thus, no statement was recorded. As per the order dated 16.09.2026, the matter is now being listed for recording the statement of the witnesses on 21.01.2027, 22.01.2027 and 23.01.2027.

10. Learned Additional Advocate General has vehemently argued that since the contraband recovered from the petitioner is involving commercial quantity, as per the provisions of Section 37 of the NDPS Act, the petitioner can be enlarged on bail, only if, twin tests are met by him.

11. Before delving on the twin tests, it is relevant to quote Section 37 of the NDPS Act, which reads as under:-

> ***"37. Offences to be cognizable and non-bailable.-*** *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—*
>
> *(a) every offence punishable under this Act shall be cognizable;*
>
> *(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
>
> *(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.*
>
> *(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."*

12. As per the aforesaid provision of Section 37, before enlarging an accused on bail, the Court has to record its satisfaction that there exists reasonable grounds for believing that accused is

not guilty of the offence charged; and second that he is not likely to commit any offence while on bail.

13. In the present case, as per the statement of independent witness recorded on 14.07.2026, he has not supported the prosecution case and declared hostile. Even in cross-examination, nothing has been elucidated from his statement to come to the definite conclusion that the petitioner has committed the offence registered against him.

14. The Special Judge while rejecting the bail application has mainly based her findings upon the fact that the quantity recovered from the petitioner and his co-accused is commercial quantity and thus, rejected the bail application.

15. The Hon'ble Apex Court in ***Mohd. Muslim alias Hussain*** vs. ***State (NCT of Delhi), (2023)*** 18 SCC 166 has elaborately discussed the import of Section 37 of the NDPS Act and held that where the accused is behind bars for long, the fetters of Section 37 of the NDPS Act will not apply. The relevant paras 9 to 23 of the same are reproduced as under:-

> *"9. Mr. Vikramjit Banerjee, learned Additional Solicitor General of India, appearing for the State, strongly opposed grant of bail, citing Section 37 of the NDPS Act. It was urged that the appellant was actively involved in the commission of the offence – with call records and bank transactions implicating him with the main*

accused Virender Singh @ Beerey. The ASG submitted that such cases are deeply concerning, as the accused persons are said to be involved in a drug peddling network. The public interest of protection against sale and use of illegal drugs, outweighed the concerns regarding individual liberty of the accused, and justified continued custody of the appellant. Provisions like Section 37 of the NDPS Act have been upheld by this court, as necessary to ensure public order and to prevent recurrence of serious crimes like drug dealing. The learned ASG also submitted that the role of the appellant, though 6 Order dated 10.12.2018 in Bail Application No. 2188/2018, and order dated 26.07.2018 in Bail Application No. 944/2018, respectively. He is a co-accused is prominent, as he appears to be the mastermind behind the supply and delivery of narcotic substances from Chhattisgarh.

Analysis and Conclusions

10. Section 37 of the NDPS Act reads as follows:

"Offences to be cognizable and non-bailable—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(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.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force, or granting of bail."

11. In this case, as it stands, the appellant has been in custody since 03.10.2015, barring grant of interim bail from time to time, for wedding ceremonies7 and to take care of his ailing mother8. It was observed by this court, in State of Madhya Pradesh v. Kajad9 while commenting on Section 37 of the NDPS Act, that a "liberal" approach should not be adopted: (Kajad case, pp.675-76 para 5)

"Negation of bail is the rule and its grant and exception under sub clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail."

12. This court has to, therefore, consider the appellant's claim for bail, within the framework of the NDPS Act, especially Section 37. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India 10, this court made certain crucial observations, which have a bearing on the present case while dealing with denial of bail to those accused of offences under the NDPS Act: (SCC pp. 747-48, para 15)

"15. On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [(1994) 3 SCC 569]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225] , release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered

imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right 10 [1994] Supp. 4 SCR 386: (1994) 6 SCC 731 guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters." (self emphasis supplied).

13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest –as observed in Vaman Narain Ghiya v. State of Rajasthan 11 ("the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal…."). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab 12 made observations to this effect. In Shaheen Welfare Association v. Union of India 13 again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on: (Shaheen Welfare case, SCC p.624, para 17)

"17….a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities

harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods."

14. In a recent decision, while considering bail under the Unlawful Activities Act (Prevention) Act, 1967, this court in Union of India v. K. A. Najeeb14 observed that: (SCC pp. 720-21, para 12)

"12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252] , Babba v. State of Maharashtra, (2005) 11 SCC 569 and Umarmia v. State of Gujarat, (2017) 2 SCC 731 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial.The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians."

The Court concluded that statutory restrictions like Section 43-D(5) of the UAPA, cannot fetter a constitutional court's ability to grant bail on ground of violation of fundamental rights.

15. Even in the judgment reported as Vijay Madanlal Chaudhary v. Union of India15 this court while considering bail conditions

under the Prevention of Money Laundering Act, 2002, held that: (SCC p. 269, para 325)

"325……If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the concerned offence by law."

16. In the most recent decision, Satender Kumar Antil v. Central Bureau of Investigation 16 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 436A17 (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, 1973 would apply: (SCC p. 127, para 86)

"86……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."

17. The facts in this case reveal that the recovery of ganja was made on 28.09.2015, from the four co-accused, including Nitesh Ekka. The present appellant was arrested at the behest, and on the statement of this Nitesh Ekka. The prosecution has relied on that statement, as well as the confessional statement of the present appellant; in addition, it has relied on the bank statements of Virender Singh @ Beerey, who allegedly disclosed that money used to be transferred to the appellant. As against this, the prosecution has not recovered anything else from the appellant; its allegation that he is a mastermind, is not backed by any evidence of extensive dealing with narcotics, which would reasonably have surfaced. The prosecution has not shown involvement of the appellant, in any other case. Furthermore, he was apparently 23 years of age, at the time of his arrest.

18. It is an undisputed fact that two co- accused persons (who also, were not present at the time of raid and from whom no contraband was recovered) - the accused (Virender Singh @ Beerey) who allegedly transferred money to the appellant's account as payment for the ganja, and the accused (Nepal Yadav @ Tony Pahalwan) from whom the original insurance papers and registration certificate of the car from which contraband was seized, was recovered18 - have both been enlarged on bail. The appellant has been in custody for over 7 years and 4 months. The progress of the trial has been at a snail's pace: 30 witnesses have been examined, whereas 34 more have to be examined.

19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a 18 As per the counter-affidavit dated 21.02.2023 filed by the respondent-state before this court. prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions.

20. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens

have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

21. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

22. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik19). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having 19 (2009) 2 SCC 624 regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

23. 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 31.12.2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 prisoners in the country. Of these 1,22,852 were convicts; the rest 4,27,165 were undertrials."

16. It has also been held by the Hon'ble Supreme Court in ***Balwinder Singh*** vs. ***State of Punjab, 2024 SCC OnLine SC 4354*** that an accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for defence. Further, an inordinate delay in the conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution of India. The relevant paras of the judgment read as under: -

"7. An accused has a right to a fair trial, and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in the conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.

8. It is not for nothing that the Author Oscar Wilde, in "The Ballad of Reading Gaol", wrote the following poignant lines while being incarcerated:

"I know not whether Laws be right,
Or whether Laws be wrong'
All that we know who be in jail
Is that the wall is strong;
And that each day is like a year,
A year whose days are long."

17. In the present case, as already noticed above, the petitioner is behind bars for last more than two years and, therefore, he has carved out a case for his enlargement on bail.

18. Consequently, the present petition is allowed and the petitioner is ordered to be enlarged on bail, subject to his furnishing personal bonds in the sum of Rs.1,00,000/- (one lakh) with two sureties of the like amount to the satisfaction of the learned trial Court. The petitioner, however, will abide by the following terms and conditions:-

(i) The petitioner will not intimidate the witnesses, nor will he influence any evidence in any manner whatsoever.

(ii) The petitioner shall attend the trial on each and every hearing and will not seek unnecessary adjournments.

(iii) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the SHO concerned, the Police Station concerned and the Trial Court.

(iv) The petitioner will surrender his passport, if any, to the Court; and

(v) The petitioner will furnish his mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through

SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

19. It is expressly made clear that in case of violation of any of aforesaid conditions, the prosecution will have a right to file a petition for cancellation of the bail.

20. The petition stands accordingly disposed of. A copy of this order be sent to the Superintendent, Sub Jail, Kullu, District Kullu, H.P. and the learned trial Court through *FASTER*.

21. Any observations made hereinabove shall remain confined to the disposal of this petition and will have no bearing whatsoever on the merit of the case.

(**Jiya Lal Bhardwaj**)
Judge

25th November, 2026
(naveen)

NAVEEN DEEPAK
Digitally signed by NAVEEN DEEPAK
Date: 2026.11.25 17:33:57 +0530