IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1655 of 2026
Reserved on: 11.9.2026
Decided on: 16.9.2026

Vijay Bihari .... Petitioner

Versus

State of HP .... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***No.***

For the Petitioner : Mr T.K. Verma, Advocate.

For the Respondent/State : Mr. Tarun Pathak, Deputy Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for grant of bail in FIR No. 22 of 2026, dated 08.02.2026, registered at Police Station West, District Shimla, HP, for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. It has been asserted that the petitioner has been falsely implicated based upon the confessional statement made by the co-accused. The petitioner has no role in the commission

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

of the offence. The police have filed the chargesheet, and the petitioner's custodial interrogation is not required. The petitioner has remained in custody for more than seven months. The petitioner belongs to a respectable family and has roots in society. The petitioner would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

3. The petition is opposed by filing a status report asserting that the police received telephonic information on 08.02.2026 that some boys, sitting in the bus bearing registration No. HP10A-9536, were concealing something after tearing the seat. The police went to ISBT and found the bus parked near the exit gate. The driver, conductor, and two passengers were found in the bus. The driver identified himself as Vishal Kumar, the conductor identified himself as Dheeraj Guleria, the person occupying seat No. 31 identified himself as Vishal Verma, and the person occupying seat No. 30 identified himself as Rahul. The police searched the bus and found one plastic box concealed in the seat cover of seat No. 26. The police checked the plastic box and recovered a burnt currency note of ₹100/- and beige coloured substance. The police checked the

2026:HHC:39399

substance and found it to be heroin. Its weight was found to be 30.700 grams. The police seized the heroin and the burnt currency note and arrested Vishal Verma and Rahul. They revealed during interrogation that they had purchased the heroin from auto driver David for ₹60,000/-. Vishal Verma also identified the place where he had purchased the heroin and the ATM from which currency notes of ₹10,000/- were withdrawn. The police also arrested Vijay, the present petitioner, who had sold the heroin to Rahul and Vishal Verma. The petitioner was also arrested in FIR No. 19 of 2026 registered at Police Station Theog; FIR No. 10 of 2026 registered at Police Station Kumarsain; and FIR No. 6 of 2026. The data has not been retrieved from the mobile phone of the petitioner, and the result of analysis is awaited. Rahul was released on bail by the learned Sessions Judge, Shimla, and Vishal Verma was released by this Court. The matter was listed for consideration of charge on 07.09.2026. Hence, the status report.

4. I have heard Mr T.K. Verma, learned counsel for the petitioner, and Mr Tarun Pathak, learned Deputy Advocate General for the respondent-State.

2026:HHC:39399

5. Mr T.K. Verma, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated based upon the confessional statement made by the co-accused, which is inadmissible in evidence. There is no material to connect the petitioner to the commission of the crime. The police have filed the chargesheet before the Court, and the petitioner's custodial interrogation is not required. The petitioner would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Tarun Pathak, learned Deputy Advocate General for the respondent-State, submitted that the petitioner had abetted the possession of heroin by co-accused. Heroin is adversely affecting society, and no leniency should be shown to the petitioner. The petitioner has criminal antecedents, and he would indulge in the commission of a similar offence in case of his release on bail. Therefore, it was prayed that the present petition be dismissed.

7. I have given considerable thought to the submissions made at the Bar and have gone through the record carefully.

2026:HHC:39399

8. The parameters for granting bail were considered by the Hon'ble Supreme Court in ***Pinki v. State of U.P., (2025) 7 SCC 314: 2025 SCC OnLine SC 781,*** wherein it was observed at page 380:

> **(*i*) *Broad principles for the grant of bail***
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> **56.** In ***Gudikanti Narasimhulu v. High Court of A.P., (1978) 1 SCC 240: 1978 SCC (Cri) 115***, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of personal liberty of a person under trial, has laid down the key factors that should be considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)
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> > "7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence is also pertinent. The punishment to which the party may be liable, if convicted or a conviction is confirmed, also bears upon the issue.
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> > *8. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.* [***Patrick Devlin, "The Criminal Prosecution in England"*** (Oxford University Press, London 1960) p. 75 — Modern Law Review, Vol. 81, Jan. 1968, p. 54.]
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> > *9. Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the*

criminal record of a defendant, is therefore not an exercise in irrelevance." (emphasis supplied)

57. In ***Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280: 2001 SCC (Cri) 674***, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284-85, para 8)

"*8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles, having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge*." (emphasis supplied)

58. This Court in ***Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688***, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

"*3. Grant of bail, though being a discretionary order, but, however, calls for the exercise of such a discretion in a judicious manner and not as a matter of course. An order*

for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts do always vary from case to case. While the placement of the accused in society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, the same should always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — the more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter." (emphasis supplied)

59. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977***, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

60. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765***, this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under: (SCC p. 499, para 9)

"*9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are*:

(*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.*" (emphasis supplied)

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62. One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is ***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170***, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (***Pappu Kumar v. State of Bihar, 2021 SCC OnLine Pat 2856*** and ***Pappu Singh v. State of Bihar, 2021 SCC OnLine Pat 2857***) of the High Court granting bail to the accused, observed as follows: (***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170]***), SCC p. 511, para 35)

"*35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time, while considering an application for bail, courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record to enable a court to arrive at a prima*

> *facie conclusion. While considering an application for the grant of bail, a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.*" (emphasis supplied)

9. Hon'ble Supreme Court held in ***State of Rajasthan v. Balchand*, *(1977) 4 SCC 308: 1977 SCC (Cri) 594: 1977 SCC OnLine SC 261*** that the normal rule is bail and not jail, except where the gravity of the crime or the heinousness of the offence suggests otherwise. It was observed at page 308:

> **2.** The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.
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> **3.** It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also, the heinousness of the crime...."

10. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

11. The status report mentions that the police interrogated Vishal Verma and Rahul, and they revealed that they

had purchased the heroin from Zirakpur for ₹20,000/-. They had paid the money in cash at Zirakpur. Vishal identified the place where he had purchased the heroin and the ATM from which the money was withdrawn. Thus, the police are relying upon the statements made by co-accused to connect the petitioner to the commission of the crime. It was laid down by the Hon'ble Supreme Court in ***Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547: (2020) 2 SCC (Cri) 361: 2019 SCC OnLine SC 588*** that a statement made by an accused during the investigation is hit by Section 162 of Cr.P.C. and Section 25 of the Indian Evidence Act and cannot be used as a piece of evidence. It was observed at page 568: -

> **44.** Such a person, viz., the person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned, and the statement is taken by the police officer. A confession that is made to a police officer would be inadmissible, having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act, would also be inadmissible. A confession, unless it fulfils the test laid down in ***Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1: (1938-39) 66 IA 66: AIR 1939 PC 47]*** and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains an admission, the statement being one

> under Section 161, it would immediately attract the bar under Section 162 CrPC."

12. 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 utilised 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.

13. 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.

14. 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

2026:HHC:39399

statement of the co-accused, the petitioner cannot be kept in custody. It was observed: -

> "**[16]** In the facts of the instant case, 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 the 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 the 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.

15. The police also relied upon the statement made by the co-accused Rahul disclosing the place where he had purchased the heroin and the ATM from which the money was withdrawn. It is undisputed that no recovery was effected from the places pointed out by the co-accused. Therefore, the statements made

by the co-accused will not be admissible under Section 23 of the Bharatiya Sakshya Adhiniyam, 2023.[2]

16. It was submitted that the petitioner has criminal antecedents and he would indulge in the commission of a similar offence in case of his release on bail. This submission will not help the prosecution. It was laid down by the Hon'ble Supreme Court in ***Ayub Khan v. State of Rajasthan, 2024 SCC OnLine SC 3763: 2024:INSC:994*** that the criminal antecedents may not be a reason to deny bail to the accused when no *prima facie* case is made out against him. It was observed:

> "**10.** The presence of the antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by him. In a given case, if the accused makes out a strong *prima facie* case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to deny bail. There may be a case where a Court can grant bail only on the grounds of long incarceration. The presence of antecedents may not be relevant in such a case. In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents."

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[2] *Gajrani vs. Emperor, AIR 1933 Allahabad 394 and State of Maharashtra Versus Damu Gopinath Shinde, AIR 2000 S.C. 169*

17. Therefore, the petitioner cannot be detained in custody because he has criminal antecedents.

18. It is undisputed that the co-accused have been released on bail. The police have filed the chargesheet before the Court, and no fruitful purpose would be served by detaining the petitioner in custody.

19. The petitioner asserted that he is a permanent resident of District Ambala. This was not stated to be incorrect. It means that the petitioner has roots in society and there is no chance of his absconding.

20. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail subject to his furnishing bail bonds in the sum of ₹1,00,000/- with one surety in the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following 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.

2026:HHC:39399

(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.

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

22. The petition stands accordingly disposed of. A copy of this order be sent to the Jail Superintendent, Sub Jail, Kaithu, District Shimla, H.P. and the learned Trial Court by FASTER.

23. The observations made hereinabove are regarding the disposal of this petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

16th September, 2026
(Chander)

CHANDER SHEKHAR
Digitally signed by CHANDER SHEKHAR
Date: 2026.09.16 14:46:22 +0530