IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MP(M) No. 1931 of 2026
Reserved on 28th October, 2026
Decided on 29th October, 2026

Kashish **…Petitioner**

Versus

State of Himachal Pradesh **…..Respondent**

Coram

Hon'ble Mr. Justice Chirag Bhanu Singh, Judge.
[1]Whether approved for reporting?

For the petitioner : **Mr. Vikrant Chandel, Advocate.**

For the respondents/State : **Mr. Prashant Sen, Deputy Advocate General.**

Chirag Bhanu Singh, Judge

The petitioner has preferred an application under Section 483 of Bharatiya Nagarik Suyraksha Sanhita, 2023 (in short "BNSS") seeking post-arrest bail in Case FIR No. 113 of 2026, dated 14.05.2026 registered at Police Station Sunder Nagar, District Mandi, under Sections 21, 25 & 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the Act").

2. The facts which emerge from the status report, so filed by the State is that on 14.05.2026, the Investigating Officer, SI

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

Daulat Ram and his team had set up a naka at Pungh on the National Highway. At about 10:20 AM, an Alto car bearing Registration No. HP 82 A 0373 had been signaled to stop. On seeing the police party, the two occupants of the car had become nervous. Suspicion having arisen, after associating independent witnesses, the Investigating Officer had asked the occupants to disclose their names. The driver of the car had disclosed his name as Kashish (the petitioner), while the person sitting on the co-driver's seat had disclosed his name as Ratul Thakur.

3. During the course of the search of the vehicle, the police had however, recovered one transparent polythene packet lying below the footmat of the co-driver's seat and on opening, 6 grams of heroin (Chitta) was recovered thereof.

4. Both the accused came to be apprehended at the spot. The petitioner is presently in judicial custody.

5. I have heard the learned counsel for the parties and gone through the records meticulously.

6. It was urged with vehemence by the learned counsel for the petitioner that “intermediate” quantity of contraband had been recovered from the petitioner, and as such, the rigors of Section 37

would not apply with the same force. No doubt, two other cases stand registered against the petitioner under the Act, but in the other two cases too, the quantity recovered from him was “intermediate” only and in one he already stands acquitted. Seeing to the quantity of contraband recovered, the petitioner is entitled to the discretion of bail.

7. Per contra Mr. Prashant Sen, learned Deputy Advocate General for the State has vociferously urged that keeping in view the past antecedents of the petitioner, it seems that his ***modus operandi*** is to carry small quantity of contraband. There are chances that the petitioner may again indulge in same and similar activities in the future too. The discretion of bail, thus, cannot be exercised in his favour.

8. The perusal of the status report does show that the quantity of contraband recovered in the present case is indeed “less than commercial”, being 6 grams of heroin (Chitta) and as such, the rigors of Section 37 will not ***stricto sensu*** apply in the facts and circumstances of the present case with the same vigour. The recovery is also not solely attributed to the petitioner.

9. The registration of the earlier cases under the Act is,

however suggestive of the fact that the petitioner is a habitual offender. However, in both cases, the contraband recovered was “intermediate” too and in one he already stands acquitted.

10. It further transpires from the record that the charge-sheet has already been filed. The culmination of the trial is thus likely to take sufficient time. Pre-trial incarceration is otherwise generally loathed by the Courts, as has been held by the Hon’ble Supreme Court in catena of decisions including ***Union of India vs. K.N. Nazeeb 2021 (3) SCC 713*** & ***Javed Gulam Nabi Shaikh vs. State of Maharashtra*** & ***Another (Criminal Appeal No.2787 of 2024 decided on 03.07.2024).***

11. “Bail, not jail” is the golden thread which has been running right through the various judgments rendered by the Hon'ble Supreme Court starting from ***Gurbaksh Singh Sibbia & Others v. State of Punjab, (AIR 1980 SC 1632)***, which has consistently been followed till the decision rendered in ***P. Chidambaram v. Directorate of Enforcement, (AIR 2019 SC 4198)***. The object of granting bail was further elucidated in ***Sanjay Chandra & Others v. Central Bureau of Investigation, (AIR 2012 SC 830)***. The Hon'ble Supreme Court has further reiterated that grant of bail was a general

rule, as was also categorically held in ***Dataram Singh v. State of Uttar Pradesh, [(2018) 3 SCC 22 : AIR 2018 SC 980]***

12. The Hon'ble Supreme Court and this Court, in a catena of decisions, have repeatedly held that an accused is presumed to be innocent until proven guilty. The trial is still at its inception and is likely to take sufficient time. Even otherwise, the quantity of contraband recovered in the present case is intermediate. The recovery is also not solely attributed to the petitioner.

13. Though a repeat offender under normal circumstances this Court would not have exercised discretion in his favour but seeing to the peculiar circumstances, discussed above and keeping in view the fact that the quantity of contraband recovered from the petitioner/accused in the present case is less than 'commercial' and the trial is likely to take time, it would in the interest of justice and fairplay that the discretion of bail is exercised in his favour, but subject to strict terms.

14. As a sequel, while allowing the present petition, it is directed that in case the petitioner is, henceforth, found to be indulging in any similar activity and an FIR is registered against him under the provisions of the Act, not only the present bail granted

shall stand forfeited but the State would be at liberty to take steps for seeking preventive detention of the petitioner.

15. For all the reasons discussed hereinabove, the bail petition is thus allowed. As a sequel, the petitioner is ordered to be released on bail subject to his furnishing bail bonds to the tune of Rs.50,000/- with two local sureities of the like amount, to the satisfaction of the learned trial Court subject to the following conditions:-

i) That the petitioner shall not tamper with the prosecution evidence nor intimidate, threaten or coerce the witnesses conversant with the facts of the case;

ii) That the petitioner shall put in appearance before the Investigating Officer or the Court as and when directed;

iii) That the petitioner shall not leave the territory of India without the express permission of the Court, he shall surrender passport, if any, before the investigating agency;

iv) If the bail petitioner is found to be indulging in similar cases in the future and an FIR is registered against him under the NDPS Act, his bail shall be liable to be cancelled forthwith and the State shall also be at liberty to take steps for seeking preventive detention of

the petitioner.

16. The observations, made hereinabove, shall not be taken, as an expression of opinion, on the merits of the case, as these observations are confined only for the purposes of the disposal of the present petition.

17. The petition stands accordingly disposed of. A copy of this order be sent to the Superintendent, District Jail Mandi, District Mandi, H.P. and the learned Trial Court by **FASTER.**

18. Petition stands disposed off in the aforesaid terms, so also the pending miscellaneous applications, if any.

(Chirag Bhanu Singh)
Judge

29th October, 2026
(Ritu)

RITU RANI
Digitally signed by RITU RANI
Date: 2026.10.29 14:38:15 +0545