IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP(M) No. 2075 of 2026
Decided on: 06.11.2026

Keshav Sharma ...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. Manohar Lal Sharma, Advocate.

For the respondent: Mr. Lokender Kutlehria, Additional Advocate General.

Chirag Bhanu Singh, Judge *(Oral)*

The present bail petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking post arrest bail in case FIR No.201 of 2026, dated 07.07.2026, registered under Section 108 of the Bharatiya Nyaya Sanhita, 2023 (BNS) at Police Station Nalagarh, District Solan, Himachal Pradesh.

2. The perusal of the status report so filed by the State is suggestive of the fact that on 07.07.2026, ASI Inder Kumar along with the police team was on patrolling duty. At about 01:15 PM,

secret information was received by the Investigating Officer (I.O.) that one Rahul Bhardwaj, son of late Pravin Kumar, resident of Village Kashmirpur, Nalagarh, District Solan, was dealing in narcotics. Presently, he was sitting in a car bearing registration No. HP-12-P-9517 near the shop of one Keshav Halwai at Subhan Majra, and in case the said car is searched, a huge quantity of narcotics could be recovered. At about 1:50 PM, the Investigating Officer, ASI Inder Kumar, recorded the reasons of belief under Section 42(2) of the NDPS Act and sent the same through Constable Maninder Singh to the SDPO, Nalagarh. Thereafter, the Investigating Officer associated one Bhagar Ram, Panchayat Pradhan, Gram Panchayat Pandhera, and one Sunil Kumar as independent witnesses, and reached the spot near Subhan Majra. At the spot, the said car was found parked near the shop of Keshav Halwai. One person was found sitting inside the vehicle, who, upon enquiry, disclosed his identity as Rahul Bhardwaj.

3. After complying with all the codal formalities, the Investigating Officer searched the vehicle. During the course of the search, one digital weighing machine was found near the gear

lever of the car, while a transparent polythene packet tied with a knot was recovered from the dashboard.

4. On the basis of experience and the disclosure made by the accused, the recovered contraband was found to be 'chitta' (heroin). Upon weighing the contraband, it was found to be 6.58 grams. The accused was accordingly arrested at the spot.

5. During the course of the investigation, the said co-accused is stated to have made a disclosure statement that he had procured the contraband from one Keshav Verma, the present petitioner. Further, eighteen financial transactions amounting to ₹44,100/- were found to have been made by the said co-accused with the present petitioner. Consequently, the petitioner was arrested on 20.07.2026 and is presently in judicial custody.

6. I have the heard learned counsel for the parties and perused the records carefully.

7. 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, one case stands registered against the petitioner under the Act,

but in the said case too, the quantity recovered from the petitioner was small in quantity, being 5.25 grams of chitta. Seeing to the quantity of contraband recovered, the petitioner was entitled to the discretion of bail. Moreover, the petitioner has been arrested on the basis of a disclosure statement made by the co-accused Rahul Bhardwaj, which otherwise is not admissible in law. Even otherwise, the co-accused has already been enlarged on bail.

8. *Per contra,* Mr. Lokender Kutlehria, the learned Additional 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.

9. The perusal of the report does show that the quantity of contraband recovered in the present case is indeed "less than commercial", being 06.58 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.

10. The registration of the earlier cases under the Act is, however, suggestive of the fact that the petitioner is an habitual offender. However, the contraband recovered in the said case was also small in quantity.

11. 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)***.

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

13. 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, in the other case registered against the petitioner, the contraband recovered was of intermediate quantity. The recovery is also not attributed to the petitioner.

14. The petitioner came to be arrested on the basis of a disclosure statement made by the said co-accused Rahul Bhardwaj, and that too that he had procured the contraband.

15. By now, it is fairly settled that a statement made by the co-accused is inadmissible in law.

16. The Hon'ble Supreme Court of India in ***Tofan Singh vs. State of Tamil Nadu 2021 (4) SCC 1*** has in uncertain terms held that

any disclosure made under Section 67 (or even under Section 23 of BNS) is inadmissible and cannot be used as a confessional statement in the trial. In a case titled as ***State By (NCB) Banguluru vs. Pallulabid Ahmad Arimutta and Anr. [SLP (Crl.) No. 242 of 2022, decided on 10.1.2022]*** the Hon'ble Supreme Court has further reiterated the aforesaid proposition of law regarding inadmissibility of the confessional statement and has further gone on to hold that even the Bank details collected in this respect will have to be examined at the stage of trial.

17. Even otherwise, merely the existence of the Bank Statement details of the accused cannot be said to be a circumstance, which alone may suffice to hold that the petitioner was complicit in the crime. Suspicion howsoever strong cannot take the place of proof.

18. 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 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.

19. 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 or for sending him for treatment or reformation.

20. 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 her furnishing bail bonds to the tune of Rs.50,000/- with two sureties 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, she shall surrender passport, if any, before the investigating agency."

21. 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.

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

23. Pending miscellaneous application(s), if any, also stands disposed off accordingly.

(Chirag Bhanu Singh)
Judge

06th November, 2026
(Shamsh Tabrez)

SHAMSH TABREZ

Digitally signed by SHAMSH TABREZ
Date: 2026.11.06 16:29:35 +0530