IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MP(M) No. 2104 of 2026
Reserved on 30th October, 2026
Decided on 31st October, 2026

Ashwani Kumar **…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. Akshay Katoch, Advocate.**

For the respondent/State **Mr. Lokender Kutlehria, Additional Advocate General.**

Chirag Bhanu Singh, Judge

The petitioner has preferred an application under Section 483 of Bharatiya Nagarik Suyraksha Sanhita, 2023 (for short "BNSS") seeking post-arrest bail in Case FIR No. 152 of 2026, dated 12.07.2026 registered at Police Station Solan, District Solan, under Sections 21& 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act").

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

2. The facts which emerge from the status report so filed by the State is that on 11.07.2026, Inspector Sanjeev Kumar, along with police party, had left for patrolling. At about 11:55 PM, a secret information had been received that a vehicle bearing registeration No. HP 27A 2527 was proceeding from Kumarhatti towards Solan, in which, one Tenzin Geshe Negi and Ashwani Kumar were carrying narcotics. If intercepted, a huge quantity of contraband may be recovered from them.

3. Acting swiftly, the Investigating Officer, Inspector Sanjeev Kumar, recorded the reasons of belief under Section 42(2) of the Act and sent the same through Constable Naveen Kumar to the supervisory officer. At about the same time, one person was found coming from the new bus stand side. He had disclosed his name as Aryan Mongya. He was apprised about the situation and requested to join the police party as an independent witness. One Constable-Ajay Pal had also been associated as an independent witness.

4. At about 12:15 AM, the aforesaid vehicle was noticed coming. It was signaled to stop. After the vehicle had been

apprehended, in the presence of the independent witnesses, the Investigating Officer had asked the occupants to disclose their names. The driver of the vehicle has disclosed his name as Tenzin Geshe Negi, while the person sitting on the co-driver's seat had disclosed his name as Ashwani Kumar. After having offered, the search of the raiding party to the occupants of the car, the Investigating Officer had conducted the search of the vehicle. During the course of search, a transparent polythene was found in the console beneath the hand brake. On opening the polythene, light yellow colored granular substance was found. After testing it with the help of a drug deduction kit, it was found to be heroin (Chitta). On weighing, it was found to be 17.92 grams.

5. After following the codal formalities, the Investigating Officer had taken the contraband into possession. The petitioner, alongwith co-accused came to be arrested at the spot. The present petitioner is in judicial custody, while the co-accused has been released on bail. One more case under the NDPS Act has been reported to be pending against the present petitioner.

6. I have heard learned counsel for the parties and gone

through the records meticulously.

7. The perusal of the record shows that yet another case stands registered against the petitioner under Sections 21 & 29 of the Act in case FIR No.59 of 2025 dated 23.05.2025, apart from two other cases registered under the different provisions of the Indian Penal Code.

8. 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, yet another case stands registered against the petitioner under the Act, but that is also in relation to the intermediate quantity. The other co-accused Tanzin Geshe Negi already stands enlarged on bail. The petitioner was also thus entitled to the discretion of bail.

9. Per contra, Sh. Lokender Kutlehria, 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, may not be exercised in his favour.

10. The perusal of the status report does show that the quantity of contraband recovered in the present case is indeed “intermediate”, being 17.92 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. Moreover the recovery in the present case is not solely attributed to the petitioner. Both the occupants of the car had been arrested for the same offence.

11. The registration of the earlier case against the petitioner also is in respect to an intermediate quantity.

12. 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).

13. “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]***

14. 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. Co-accused Ashwani Kumar is also alleged to have been complicit in the commission of the offence. The earlier case registered against the petitioner also pertains to an “intermediate” quantity, he can thus be enlarged on bail subject to strict terms.

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 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, he shall surrender passport, if any, before the investigating agency;*
>
> *iv) The bail petitioner shall not indulge in any similar offence hereinafter, in case he is found to be indulging in similar activities, his bail in the present case shall also stand forfeited.*

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 Sub-Jail Solan, District Solan, 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

31st October, 2026
(Ritu)

RITU RANI
Digitally signed by RITU RANI
Date: 2026.10.31 13:47:08 +0545