IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 2118 of 2026
Reserved on: 02.11.2026.
Decided on: 05.11.2026

Suraj Chauhan .... Petitioner

Versus

State of H.P. .... Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No

For the Petitioner : Mr Vinay Thakur, Advocate.

For the Respondent/State : Mr Pawan Kumar Nadda, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No.133 of 2026 dated 06.07.2026 registered at Police Station, Shimla West (Boileauganj), District Shimla, H.P. for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short, "NDPS Act").

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

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2. It has been asserted that, as per the prosecution, the police received secret information on 06.07.2026 while they were on patrolling duty that Inder Dev @ Danu, Moti Sharma and the present petitioner were transporting the contraband in a huge quantity. The information was reduced to writing and was sent to the Supervisory Officer. The police intercepted the vehicle at about 2.15 a.m. at Shoghi. The petitioner was driving the vehicle, Moti Sharma was sitting on the front seat, and Inder Dev was sitting on the rear seat. The police checked the backpack lying on the rear seat and recovered 242.2 grams of heroin. Inder Dev, co-accused, made a disclosure statement that he had purchased the contraband from one Rajinder Singh, resident of Zirakpur, and he could show the place from where the contraband was purchased. These allegations are false. The petitioner was not found in the conscious possession of the heroin, and the petitioner was employed as a driver by the owner. The quantity of heroin stated to have been recovered by the police is intermediate, and rigours of Section 37 of the NDPS Act do not apply to the present case. The police have completed the investigation, and no fruitful purpose would be served by detaining the petitioner in custody. The petitioner belongs to a respectable family and no other case has been registered against him. He would

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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 had received secret information on 06.07.2026 at 1.00 a.m. that a Bolero Camper bearing registration No. HP-52C-8386 was transporting a huge quantity of heroin. The information was credible, and the delay in procuring the search warrant would have led to the destruction of the case property. Hence, the information was reduced to writing and was sent to the Supervisory Officer. The police intercepted the vehicle at about 3.10 a.m. Prem Verma, Constable Ajay Sharma and Constable Ajay Kumar were joined as witnesses. The driver identified himself as Suraj Chauhan (the present petitioner), the person occupying the front seat identified himself as Moti Sharma, and the person sitting on the rear seat identified himself as Inder Dev @ Danu. The police found a backpack kept on the rear seat, which was opened and was found to be containing 242.2 grams of heroin and other articles. The police seized the heroin and arrested the occupants. Inder Dev @ Danu made a disclosure statement that he could show the place where he had purchased the heroin. He led the police to the Auto

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Stand near Zirakpur, and the police prepared the spot map. Dev Raj and Manoj, employees of Chandel Filling Station near Shoghi, identified Inder Dev @ Danu as the person who had filled the diesel in his vehicle from the petrol pump. The police also seized the entries from Hotel Sun Park near Railway Station, Chandigarh. As per the analysis report, the exhibit stated to be heroin was found to be a sample of Diacetylmorphine. The chargesheet was filed before the Court after completion of investigation, and the matter is listed before the learned trial Court for checking of copies on 30.10.2026. Hence, the status report.

4. I have heard Mr Vinay Thakur, learned counsel for the petitioner and Mr Pawan Kumar Nadda, learned Additional Advocate General for the respondent/State.

5. Mr Vinay Thakur, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. There is no material to connect the petitioner to the commission of the crime. The co-accused Inder Dev made a disclosure statement that he had purchased the heroin from Zirakpur, showing that he was in possession of the heroin. The police have completed the investigation and filed the charge-sheet

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before the Court. No fruitful purpose would be served by detaining the petitioner in custody. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Pawan Kumar Nadda, learned Additional Advocate General for the respondent/State, submitted that the quantity of heroin stated to have been recovered from the vehicle is huge and could not have been meant for self-consumption. Consumption of heroin is harming society, and no leniency should be shown to the petitioner. The petitioner would indulge in the commission of a similar crime in case of his release on bail. Hence, he 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 records carefully.

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

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granting bail, which are extracted as under: (SCC p. 244, paras 7-9)

> "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 bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the*

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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

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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*:
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> (*i*) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence*;
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> (*ii*) *nature and gravity of the accusation*;
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> (*iii*) *severity of the punishment in the event of conviction*;
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> (*iv*) *danger of the accused absconding or fleeing, if released on bail*;
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> (*v*) *character, behaviour, means, position and standing of the accused*;
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> (*vi*) *likelihood of the offence being repeated*;
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> (*vii*) *reasonable apprehension of the witnesses being influenced; and*
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> (*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:

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> 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 status report mentions that the petitioner was driving the vehicle from which the police had recovered 242.2 grams of heroin. In ***Madan Lal versus State of H.P. (2003) 7 SCC 465: 2003 SCC (Cri) 1664: 2003 SCC OnLineSC 874*****,** the contraband was recovered from a vehicle, and it was held that all the occupants of the vehicle would be in conscious possession of the contraband. It was observed:

> "19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle, and as noted by the trial court, they were known to each other, and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.
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> 20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act, which relates to offences for possession of such articles. It is submitted that to make the possession illicit, there must be conscious possession.

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21. It is highlighted that unless the possession was coupled with the requisite mental element, i.e., conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression "possession" is a polymorphous term that assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in the ***Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52]*** to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness of a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in ***Gunwantlal v. State of M.P. [(1972) 2 SCC 194: 1972 SCC (Cri) 678: AIR 1972 SC 1756],*** possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.

25. The word "possession" means the legal right to possession (see ***Heath v. Drown [(1972) 2 All ER 561: 1973 AC 498: (1972) 2 WLR 1306 (HL)]***). In an interesting case, it was observed that where a person keeps his firearm in his mother's flat, which is safer than his own home, he must be considered to be in possession of the same. (See ***Sullivan v. Earl of Caithness [(1976) 1 All ER 844: 1976 QB 966: (1976) 2 WLR 361 (QBD)]***.)

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54, where a presumption is also available to be drawn from possession of illicit articles.

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> 27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act."

11. Therefore, *prima facie*, the petitioner was found in possession of 242.2 grams of heroin, and the burden would shift upon him to show that he was not in possession as per Sections 35 and 54 of the NDPS Act.

12. It was submitted that the co-accused Inder Dev had made a statement to the police that he could show the place from where he had purchased the heroin. This clearly shows that the petitioner was not in possession of the heroin, but co-accused Inder Dev was in possession. This submission will not help the petitioner. No recovery was effected from the place 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]

13. A statement made by the co-accused to the police during the investigation is inadmissible and cannot be used for any purpose. It was laid down by the Hon'ble Supreme Court in ***Dipak***

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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*

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bhai Jagdish chandra 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 cannot be used as a piece of evidence. It was also held that the confession made by the co-accused is inadmissible under Section 25 of the Indian Evidence Act. 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 eyes 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."

14. Thus, not much advantage can be derived from the statement made by the co-accused.

15. The status report shows that the police have filed the charge-sheet before the Court and the matter was listed for checking of copies on 30.10.2026. The petitioner specifically asserted that he is the first offender and no other case has been

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registered against him. This was not stated to be incorrect in the status report. The petitioner, being the first offender, is entitled to reform himself and should be afforded a chance to do so. Keeping him inside the jail would expose him to hardened criminals, which would make his chances of reformation bleak.

16. The petitioner was found to be in possession of 242.2 grams of heroin as per the prosecution, which is less than commercial quantity and the rigours of Section 37 of the NDPS Act do not apply to the present case.

17. The petitioner asserted that he is a permanent resident of District Shimla, which was not stated to be incorrect in the status report. It means that the petitioner has roots in the society and there is no chance of his absconding.

18. It was submitted that the petitioner would intimidate the witnesses and indulge in the commission of a similar crime in case of his release on bail. This submission will not help the prosecution because the apprehension expressed by the prosecution can be removed by imposing the conditions and is not sufficient to deny bail to the petitioner.

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19. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail in FIR No.133 of 2026 dated 06.07.2026 registered at Police Station, Shimla West (Boileauganj), District Shimla, H.P. for the commission of offences punishable under Section 21 of NDPS Act, subject to his furnishing personal bond 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.

(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.

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

21. A copy of this order be sent to the Jail Superintendent, District Jail Kaithu, District Shimla, and the learned Trial Court by FASTER.

22. 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

05 November, 2026
(GR)

GANGA RAM SHARMA
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