

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 341 of 2026

Reserved on: 18.03.2026

Date of Decision: 25.3.2026.

Purnima Lapang

.... Petitioner

Versus

State of HP

.... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioner : Mr Ram Lal Verma, Advocate.

For the Respondent/State : Mr Jitender K. Sharma,
Additional Advocate General
with ASI Rakesh Kumar, I.O.
P.S. Dhalli, District Shimla,
H.P.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail in FIR No. 5 of 2026, dated 16.01.2026, registered at Police Station Dhalli, District Shimla, H.P., for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act.

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

2. It has been asserted that, as per the prosecution, the police were on patrolling duty near Dhalli area on 16.01.2026. They received a secret information that Nityam Dhir and a female were selling heroin in a room in Ram Lal's building. The information was credible. The police completed the necessary formalities, searched the room and found a polythene bag containing 50.340 grams of heroin. The police arrested the occupants of the room and seized the heroin. The prosecution's story is false, and the petitioner has nothing to do with the crime. The petitioner was not even present in the room. The petitioner has worked in various Non-Government Organisations (NGOs), and she was participating in various social upliftment and education programmes. She was employed on an online platform. She met the co-accused Nityam Dhir, whose father is residing at Shimla. She visited Shimla and was given a separate room. The petitioner was not in exclusive possession of the room from which the recovery was effected. The contraband was not recovered from her possession. There is no material to connect the petitioner to the commission of crime. The police have filed the charge sheet, and no fruitful purpose would be served by detaining the petitioner in custody. 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 were on patrolling duty on 16.01.2026. They were present at Bhatakuffar chowk at about 3:20 p.m. when they received a secret information that Nityam Dhir and a girl were selling heroin from their room, and a huge quantity of heroin could be recovered by searching the room. The information was credible. It was reduced to writing and was sent to the Supervisory Officer, Police Station Dhalli, through HHG Vikas at about 3:35 p.m. The police joined Sunil Kumar, Mohinder Singh and Seema Vijan (the owner of the building) and went towards a building. Seema Vijan identified the room of Nityam Dhir. The police knocked on the door. Nityam Dhir and Purnima Lapang (present petitioner) were present in the room. The police searched the room and found a polythene bag kept inside the trunk. The police checked the polythene and found 50.340 grams of heroin in it. The police arrested the occupants of the room and seized the heroin. The heroin was sent to the SFSL, Junga, and was found to be Diacetylmorphine (heroin) after the analysis. The blood samples of the occupants of the

room were also sent, but no drug was detected in them. The police recorded the statements of the witnesses as per their version, and filed the charge sheet before the Court on 11.03.2026 after the completion of the investigation. The matter was fixed before the court of the learned Additional District Judge, Shimla, for an office report on 24.03.2026. Hence, the status report.

4. I have heard Mr Ram Lal Verma, learned counsel for the petitioner and Mr Jitender K. Sharma, learned Additional Advocate General for the respondent/State.

5. Mr Ram Lal Verma, learned counsel for the petitioner, submitted that the petitioner is innocent and she was falsely implicated. The quantity of heroin stated to have been found in the petitioner's possession is less than a commercial quantity, and the rigours of Section 37 of the NDPS do not apply to the present case. The petitioner was a casual visitor, and there is nothing to connect her to the heroin. The petitioner is a woman and is entitled to special consideration under Section 437 of the Code of Criminal Procedure (Cr.P.C.). The police have filed the charge-sheet before the learned Trial Court, and 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. He relied upon the following judgments in support of his submissions: -

- *Anjali vs. State of H.P. 2022: HHC:12279;*
- *Mahesh Thakur vs. State of H.P. 2025: HHC:24720;*
- *Shubham Bitalu & Ors. vs. State of H.P. (2020) 02 SHI CK 0020;*
- *Saneesh Soman vs. Narcotics Control Bureau 2025: DHC:5860;*
- *Seema vs. State of H.P. HLJ 2021(HP) (1)435*
- *Muskan vs. State of Rajasthan, through PP 2024: RJ-JD-43565; and*
- *Manjeet Kaur @Mallo vs. State of Punjab passed by Punjab and Haryana at Chandigarh in Cr.MP No. 3598 of 2026 decided on 29.01.2026.*

6. Mr Jitender K. Sharma, learned Additional Advocate General, submitted that the police had recovered 50.340 grams of heroin, which is a huge quantity. The heroin is adversely affecting the young generation, and no leniency should be shown to the petitioner. The petitioner was found in the room from which the recovery was made, and, *prima facie*, the petitioner was in possession. The presumption under Sections 35 and 54 of the NDPS Act applies to the present case, and the burden is upon the petitioner to prove that her possession was not conscious. This burden can be rebutted by leading evidence during the trial,

and it is premature to contend that the petitioner was not in possession. The petitioner is a resident of a different State and would abscond in case of her release on bail. Therefore, 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

56. In *Gudikanti Narasimhuluv. 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)

“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.

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.]

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 Deviv. 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 so as 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.

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 bail. 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 specifically mentions that the petitioner was present in the room from which a recovery was effected. The petitioner herself asserted in her petition that she was residing with the co-accused. Prima facie, the petitioner was in possession of the room and everything lying in it; hence, a presumption under Sections 35 and 54 of the NDPS Act applies to the present case, and the burden shifts upon the petitioner to rebut the presumption and show that her possession was not conscious.

12. In *Anjali* (supra), no findings were recorded by the Court, and the Court had specially asserted in para 20 that it had not commented upon the merits of the case. In *Mahesh Thakur* (supra), *Subham Bitalu* (supra) and *Saneesh Soman* (supra), the persons were casual visitors. In *Seema* (supra), the petitioner was a student, the recovery was made after digging the

courtyard, and it was held that she was not in possession. In the present case, the recovery was made from the trunk lying in the room where the petitioner was present. Hence, the cited judgments do not apply to the present case.

13. Hence, the submissions made on behalf of the petitioner that she was not in conscious possession cannot be accepted, and the prosecution's version has to be, *prima facie*, accepted as correct that she was in possession of the heroin.

14. As per the prosecution, the police had recovered 50.340 grams of heroin, which is an intermediate quantity and the rigours of section 37 of the NDPS Act do not apply to the present case. The petitioner is a woman. Section 480 of Bhartiya Nagrik Surkasha Sanhita (BNSS) provides that the Court may direct a person accused of or suspected of the commission of any non-bailable offence to be released on bail if such person is a child or a woman, or is sick or infirm. This provision applies to a person brought before the Court other than the High Court or Court of Session, but the Courts have to keep this special provision in mind while considering the bail application of persons falling in the categories mentioned in Section 480 of

BNSS. It was laid down by the Karnataka High Court in *Nethra vs State of Karnataka* (12.05.2022 - KARHC): MANU/KA/2055/2022 that a woman can be released on bail even in case of murder because of special provisions under Section 437 of CrPC. It was observed:

“In terms of Section 437 of the Cr.P.C., bail can be granted in a non-bailable offence in three circumstances as depicted in the proviso: (i) being a person below 16 years of age, (ii) a woman, and (iii) sick or infirm. The petitioner is a woman. She is entitled to consideration under Section 437 of the Cr.P.C. Before applying the aforesaid provision to the facts of the case and considering the case of the petitioner for enlargement on bail, it is germane to notice the application of the said provision by coordinate Benches of this Court, all in the case of offences punishable under Section 302 of the IPC and they being women.

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All the afore-quoted judgments rendered by the coordinate Benches of this Court were considering the purport of Section 437 of the Cr.P.C. and were cases where the accused No. 1 therein were women, and all of them were alleged of an offence punishable under Section 302 of the IPC for the commission of murder. It is also a matter of record that the alleged accomplice in the act of murder, Vijay Kumar, was granted bail on 13-04-2022 by the learned Sessions Judge. For the aforesaid facts, the statute, i.e., Section 437 of the Cr.P.C. and its application in the judgments of three coordinate Benches would ensure the benefit of the petitioner to be enlarged on bail, notwithstanding the fact that the offence alleged is under Section 302 of the IPC. It is not the law that bail should always be denied in a case where the offence punishable is

death or life imprisonment. In exceptional cases, if the statute permits and the facts are not being so gory and grave criminal antecedents shrouding the culprit, the consideration in such cases would be different.”

15. The petitioner stated that no other criminal case was registered against her. This was not stated to be incorrect. Thus, the petitioner has no criminal antecedents, and there is no impediment in granting bail to her.

16. The police have filed the charge sheet, and no useful purpose would be served by detaining the petitioner in custody.

17. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail, subject to her 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 she 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 her passport, if any, to the Court; and
- (V) The petitioner will furnish her 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.

18. 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.

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

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

(Rakesh Kainthla)
Judge

25th March, 2026
(ravinder)