2026:HHC:9354

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr.MMO No.170 of 2026**
**Date of Decision: 30.03.2026**

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**Sh. Mahavir Gupta** .....**Petitioner**

**Versus**

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

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**Coram**
**Hon'ble Mr. Justice Sandeep Sharma, Judge.**
**Whether approved for reporting?** ***Yes.***

**For the Petitioners:** Mr. Inderjit Singh Narwal, Advocate.

**For the Respondents:** Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General, with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General, for State.

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**Sandeep Sharma, J.** *(Oral)*

Petitioner herein, who despite his being granted regular bail in FIR No.227/2021, dated 17.08.2021, under Sections 20, 25 and 29 of the NDPS Act, and Sections 192 and 196 of the Motor Vehicles Act, registered at Police Station Kullu, District Kullu, Himachal Pradesh, is behind bars for his having not able to arrange surety amounting to ₹1,00,000/-, is aggrieved of order dated 11.11.2025 passed by learned Special Judge-II, Kullu, District Kullu, Himachal Pradesh, in Cr.MP No.360 of 2025 (Annexure P-2), whereby afore Court while allowing the application for modification of order dated 03.07.2025 passed in FIR, detailed hereinabove, proceeded to reduce the surety amount from ₹2,00,000/- to ₹1,00,000/-.

2. In nutshell, case of the petitioner as has been highlighted in the petition and further canvassed by Mr. Inderjit Singh Narwal, learned counsel representing the petitioner, is that petitioner being poor person is not in a position to furnish surety to the tune of ₹1,00,000/-. Mr. Narwal states that since factum with regard to financial position of the petitioner was brought to the notice of the Court concerned, coupled with the fact that Hon'ble Apex Court in catena of cases have held that amount of bond should depend upon the financial circumstances of the accused, there was no occasion, if any, for the Court below to call upon petitioner to furnish bond/surety to the tune of ₹1,00,000/-.

3. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, states that petitioner is a hardened criminal and in seven criminal cases, he has already been convicted. He states that earlier, Court, while considering his bail, had directed him to furnish personal bonds to the tune of ₹2,00,000/- with two local sureties each in the like amount, but taking note of his prayer for modification, same was reduced to ₹1,00,000/- with one surety. He states that since in past, petitioner absconded and for securing his presence, non-bailable warrants were issued, it may not be in the interest of justice to enlarge petitioner on bail, without there being any bond/surety.

4. Having heard learned counsel representing the parties and perused material available on record, this Court finds that there is no dispute that vide order dated 03.07.2025, learned Special Judge, Kullu, had enlarged the petitioner on bail in case FIR No.227 of 2021, dated 17.08.2021, under Sections 20, 25 and 29 of the NDPS Act and Sections 192 and 196 of the Motor Vehicles Act, subject to his furnishing bail bonds to the tune of ₹2,00,000/- with two local surety of equal amount. Since petitioner was unable to furnish surety in terms of afore order, he was not released from jail, but subsequently on his application for modification of afore order, Court reduced the bond amount from ₹2,00,000/- to ₹1,00,000/- with one surety of equal amount.

5. Careful perusal of order sought to be modified in the instant proceedings clearly reveals that petitioner vehemently argued before the Court below that on account of financial constraint, he is not in a position to furnish the bond money, but yet Court concerned proceeded to order furnishing of personal bond to the tune of ₹1,00,000/- with one surety of equal amount.

6. True it is that as per reply filed on behalf of respondent-Staet, petitioner herein stands convicted in seven criminal cases, but that may not be a relevant factor for deciding the issue at hand, especially when it is not in dispute that petitioner herein already stands

enlarged on bail in FIR, detailed hereinabove, but he was not released for his having not furnished the bonds to the tune of ₹1,00,000/- with one local surety of equal amount.

7. Hon'ble Apex Court in case tilted as ***Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar, Patna, (1980) 1 SCC 81***, has categorically held that amount of bond should depend upon the financial circumstances of the accused and in appropriate case, the Court should release undertrial prisoners without insisting on surety. In afore judgment, Hon'ble Apex Court held that Court must abandon the antiquated concept under which pretrial release is ordered only against bail with sureties. That concept is outdated and experience has shown that it has done more harm than good. In afore judgment, Hon'ble Apex Court held that if the Court is satisfied, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond, it can safely release the accused on his personal bond. To determine whether the accused has his roots in the community, the Could should take into account the various factors concerning the accused. Relevant Para of afore judgment read as under:

> *"4. It is high time that our Parliament realises that risk of monetary loss is not the only deterrent against fleeing from justice, but there are also other factors which act as equal deterrents against fleeing. Ours is a socialist*

*republic with social justice as the signature tune of our Constitution and Parliament would do well to consider whether it would not be more consonant with the ethos of our Constitution that instead of risk of financial loss, other relevant considerations such as family ties, roots in the community, job security, membership of stable organisations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation. Of course, it may be necessary in such a case to provide by an amendment of the penal law that if the accused wilfully fails to appear in compliance with the promise contained in his personal bond, he shall be liable to penal action. But even under the law as it stands today the courts must abandon the antiquated concept under which pre-trial release is ordered only against bail with sureties. That concept is outdated and experience has shown that it has done more harm than good. The new insight into the subject of pre-trial release which has been developed in socially advanced countries and particularly the United States should now inform the decisions of our courts in regard to pre-trial release. If the Court is satisfied, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond, it can safely release the accused on his personal bond. To determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the accused:*

> *"1. The length of his residence in the community,*
>
> *2. his employment status, history and his financial condition,*
>
> *3. his family ties and relationships,*
>
> *4. his reputation, character and monetary condition,*
>
> *5. his prior criminal record including any record of prior release on recognizance or on bail,*
>
> *6. the identity of responsible members of the community who would vouch for his reliability,*
>
> *7. the nature of the offence charged and the apparent probability of conviction and the likely sentence insofar as these factors are relevant to the risk of non-appearance, and*

*8. any other factors indicating the ties of the accused to the community or bearing on the risk of wilful failure to appear."*

*If the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is no substantial risk of non-appearance, the accused may, as far as possible, be released on his personal bond. Of course, if facts are brought to the notice of the court which go to show that having regard to the condition and background of the accused, his previous record and the nature and circumstances of the offence, there may be a substantial risk of his non-appearance at the trial, as for example, where the accused is a notorious bad character or a confirmed criminal or the offence is serious (these examples are only by way of illustration), the Court may not release the accused on his personal bond and may insist on bail with sureties. But in the majority of cases, considerations like family ties and relationship, roots in the community, employment status etc. may prevail with the Court in releasing the accused on his personal bond and particularly in cases where the offence is not grave and the accused is poor or belongs to a weaker section of the community, release on personal bond could, as far as possible, be preferred. But even while releasing the accused on personal bond it is necessary to caution the Court that the amount of the bond which it fixes should not be based merely on the nature of the charge. The decision as regards the amount of the bond should be an individualised decision depending on the individual financial circumstances of the accused and the probability of his absconding. The amount of the bond should be determined having regard to these relevant factors and should not be fixed mechanically according to a schedule keyed to the nature of the charge. Otherwise, it would be difficult for the accused to secure his release even by executing a personal bond. Moreover, when the accused is released on his personal bond, it would be very harsh and oppressive if he is required to satisfy the Court—and what we have said here in regard to the court must apply equally in relation to the police while granting bail—that he is solvent enough to pay the amount of the bond if he fails to appear at the trial and in consequence the bond is forfeited. The inquiry into the solvency of the*

*accused can become a source of great harassment to him and often result in denial of bail and deprivation of liberty and should not, therefore, be insisted upon as a condition of acceptance of the personal bond. We have no doubt that if the system of bail, even under the existing law, is administered in the manner we have indicated in this judgment, it would go a long way towards relieving hardship of the poor and help them to secure pre-trial release from incarceration. It is for this reason we have directed the undertrial prisoners whose names are given in the two issues of the Indian Express should be released forthwith on their personal bond. We should have ordinarily said that personal bond to be executed by them should be with monetary obligation but we directed as an exceptional measure that there need be no monetary obligation in the personal bond because we found that all these persons have been in jail without trial for several years, and in some cases for offences for which the punishment would in all probability be less than the period of their detention and, moreover, the order we were making was merely an interim order. The peculiar facts and circumstances of the case dictated such an unusual course."*

8. Reliance is also placed upon the judgment passed by the Hon'ble Apex Court in ***Moti Ram and Others Vs. State of Madhya Pradesh, (1978) 4 SCC 47***, which read as under: **Para 14.**

*"15. It is interesting that American criminological thinking and research had legislative response and the Bail Reforms Act, 1966 came into being. The then President, Lyndon B. Johnson made certain observations at the signing ceremony:*

> *"Today, we join to recognize a major development in our system of criminal justice: the reform of the bail system.*
>
> *This system has endured — archaic, unjust and virtually unexamined — since the Judiciary Act of 1789.*
>
> *The principal purpose of bail is to insure that an accused person will return for trial if he is released after arrest.*

> *How is that purpose met under the present system? The defendant with means can afford to pay bail. He can afford to buy his freedom. But the poorer defendant cannot pay the price. He languishes in jail weeks, months and perhaps even years before trial.*
>
> *He does not stay in jail because he is guilty.*
>
> *He does not stay in jail because any sentence has been passed.*
>
> *He does not stay in jail because he is any more likely to flee before trial.*
>
> *He stays in jail for one reason only—because he is poor....*
>
> *(emphasis added)"*

9. In the case at hand, since respondent-State has not been able to rebut the claim of the petitioner that he is a poor person and has no source of furnishing bail bonds to the tune of ₹1,00,000/- with one surety of equal amount, coupled with the fact that in the event of non-furnishing of bail bonds, very purpose and object of granting bail to the petitioner would be defeated, Court below instead of calling upon the petitioner to furnish personal bonds to the tune of ₹1,00,000/- with one surety of equal amount, ought to have called upon the petitioner to furnish bail bonds of some small amount.

10. Since no cogent and convincing material has been adduced on record by the prosecution to prove that in the event of petitioner being enlarged on bail, he may flee from justice and he has no roots in the society, prayer made in the instant petition for modification of order dated 11.11.2025 in FIR, detailed hereinabove, deserves to be allowed.

11. Consequently, in view of the above, present petition is allowed and order dated 11.11.2025 passed by learned Special Judge-II, Kullu, District Kullu, Himachal Pradesh, in Cr.MP No.360 of 2025, is modified to the extent that petitioner herein shall be furnishing personal bonds to the tune of ₹50,000/- only, within a period of ten days, instead of furnishing personal bonds to the tune of ₹1,00,000/- with one surety of equal amount. In the event of his doing the needful, in terms of directions contained in the instant order, petitioner herein shall be released from the jail, provided he is not required in some other case.

The petition stands disposed of in the aforesaid terms, along with all pending applications.

**March 30, 2026** **(Sandeep Sharma),**
*Rajeev Raturi* **Judge**