



2026:HHC:8469

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP(M) No. 343 of 2026

Decided on: 23.03.2026

Ajay Kumar

.....Petitioner

Versus

State of Himachal Pradesh

....Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the Petitioner : Mr. Vijender Katoch, Advocate.

For the Respondent : Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

ASI Yogesh Dhiman, Police Station Dehra, District Kangra, HP, present in person.

Sandeep Sharma, Judge (oral):

Bail petitioner Ajay Kumar, who is behind bars since 26.11.2025, has approached this Court by way of present petition filed under Section 483 of Bharatiya Nagrik Suraksha Sanhita, for grant of regular bail in case FIR No.123 of 2025, dated 22.11.2025, registered at Police Station Dehra, District Kangra, Himachal Pradesh, under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act (in short "**ND & PS Act**").

¹ Whether the reporters of the local papers may be allowed to see the judgment?



2. Pursuant to order dated 11.03.2026, respondent-State has filed status report and ASI Yogesh Dhiman has come present with record. Record perused and returned.

3. Close security of record/status report reveals that on 22.11.2025, police, after having received secret information that person namely Ram Pal, S/o Sh. Vishambar Dass, R/o Village Surajpur, PO Dhaliara, Tehsil Dehra, District Kangra, Himachal Pradesh, indulges in illegal trade of narcotics, raided his house and allegedly recovered 3.628 Kg of charas in the presence of independent witnesses. Though at the time of recovery of aforesaid contraband, above named Ram Pal was not present in his house, but raid was conducted in presence of his family members and the recovery was effected from his room. However, afore Ram Pal was arrested on the same day. Since, no plausible explanation ever came to be rendered on record qua possession of aforesaid contraband, police, after having completed necessary codal formalities, lodged FIR, detailed hereinabove against the above named Ram Pal, who allegedly during investigation disclosed that bail-petitioner namely Ajay Kumar, who is a taxi driver, had taken him to Kullu for purchase of contraband. He alleged that he, after having hired the taxi of Ajay Kumar i.e., bail-petitioner, had gone to Kullu, from where he had purchased 4Kg charas from some unknown person for a sum of Rs.1,95,000/-. In the afore background, bail-petitioner also came to be named in the FIR and at present, case under Section 29 of ND & PS Act has been registered against him. Since 26.11.2025, bail-petitioner is behind bars. Since



challan stands filed in the competent Court of law and nothing remains to be recovered from the bail-petitioner, petitioner has approached this Court in the instant proceedings for grant of regular bail.

4. Mr. Vijender Katoch, learned counsel for the petitioner, vehemently argued that bail-petitioner has been falsely implicated. He states that commercial quantity of contraband never came to be recovered from the conscious possession of the bail-petitioner, rather same was recovered from the house of the co-accused Ram Pal. He states that name of the bail-petitioner has been incorporated in the FIR on the basis of confessional statement made by the co-accused Ram Pal, which is not permissible.

5. While fairly acknowledging factum with regard to filing of challan in competent Court of law, Mr. Vishal Panwar, learned Additional Advocate General, states that though nothing remains to be recovered from the bail-petitioner, but keeping in view the gravity of offence alleged to have been committed by him, he does not deserve any leniency and as such, his prayer for grant of regular bail deserves outright rejection. While fairly admitting that contraband never came to be recovered from the conscious possession of the bail-petitioner, Mr. Panwar, states that statement of co-accused clearly reveals that bail-petitioner indulges in illegal trade of narcotic. He further states that in the event of his being enlarged on bail, bail-petitioner may not only flee from justice, but may again indulge in such activities, as such, prayer for grant of bail made on his behalf deserves to be rejected.



6. Having heard learned counsel for the parties and perused material available on record, this court finds that commercial quantity of contraband was never recovered from conscious possession of the bail petitioner, rather same was recovered from the house of co-accused Ram Pal, who allegedly disclosed to the Police that he was taken to Kullu by the bail-petitioner in his taxi for purchase of contraband. Admittedly, in the case at hand, bail-petitioner came to be named in the FIR on the basis of disclosure statement made by the co-accused Ram Pal, which is not permissible.

7. Hon'ble Apex Court in case Tofan Singh v. State of Tamil Nadu (2021) 4 SCC 1, has categorically held that disclosure statement, if any, made under Section 67 of the ND & PS Act, is inadmissible and same cannot be used as confessional statement in the trial of an offence under Section 67 of the Act. Relevant para of the aforesaid judgment reads as under:

“155.Thus, to arrive at the conclusion that a confessional statement made before an officer designated under section 42 or section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156.The judgment in Kanhaiyalal (supra) then goes on to follow Raj Kumar Karwal (supra) in paragraphs 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these



judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

157. On the other hand, for the reasons given by us in this judgment, the judgments of Noor Aga (supra) and Nirmal are correct in law.

158. We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

8. The Hon’ble Apex Court in case titled **State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta and Anr**, Special Leave to Appeal (Crl) No. 242 of 2022 (arising out of diary No. 22702 of 2020) decided on 10.1.2022, again reiterated that confessional statement recorded under Section 67 of the NDPS Act, will remain inadmissible in the trial of an offence under the Act. Hon’ble Apex Court in this case upheld the order/judgment passed by the High Court of Karnataka granting bail to the accused arrested by the petitioner NCB on the basis of confessional/voluntary statement of the co-accused under Section 67 of the NDPS Act. Apart from above, Hon’ble Apex Court in the aforesaid judgment has held that CDR of some of the accused or the allegations of tempering of evidence on the part of



the respondents is an aspect that will be examined at the stage of the trial.

9. True, it is that keeping in view the commercial quantity of contraband recovered in the case at hand, rigours of S.37 of the Act are attracted but that does not mean that this court is estopped from enlarging the bail petitioner on bail in the case at hand. Bare perusal of S.37 of the Act clearly reveals that there is no complete bar for the court to grant bail in the cases involving commercial quantity, but court while doing so, at the first instance is required to provide adequate opportunity of being heard to the public prosecutor and thereafter, if it has reason to presume and believe that the person, seeking bail, has been falsely implicated and there is no likelihood of his indulging in such activities again, it can proceed to grant bail in cases involving commercial quantity of contraband. Though, aforesaid aspect of the matter is required to be considered and decided by learned trial court, in the totality of evidence collected on record by investigating agency, but keeping in view the aforesaid aspects of the matter, this court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial, especially when nothing remains to be recovered from the bail petitioner.

10. Hon'ble Apex Court and this Court in a catena of cases have repeatedly held that one is deemed to be innocent, till the time, he/she is proved guilty in accordance with law. In the case at hand, complicity, if any, of the bail petitioner is yet to be established on record by the investigating agency, as such, this Court sees no reason



to let the bail petitioner incarcerate in jail for an indefinite period during trial, especially when nothing remains to be recovered from him. Apprehension expressed by learned Deputy Advocate General, that in the event of being enlarged on bail, bail petitioner may flee from justice or indulge in such offences again, can be best met by putting the bail petitioner to stringent conditions.

11. Needless to say, object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

12. Hon'ble Apex Court in Criminal Appeal No. 227/2018, **Dataram Singh vs. State of Uttar Pradesh & Anr** decided on 6.2.2018 has held that freedom of an individual cannot be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has been further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty.

13. Hon'ble Apex Court in **Sanjay Chandra** versus **Central Bureau of Investigation** (2012)¹ Supreme Court Cases 49 has held that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while



exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative.

14. In **Manoranjana Sinh alias Gupta** versus **CBI**, (2017) 5 SCC 218, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of bail and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

15. The Apex Court in **Prasanta Kumar Sarkar** versus **Ashis Chatterjee and another** (2010) 14 SCC 496, has laid down various principles to be kept in mind, while deciding petition for bail viz. prima facie case, nature and gravity of accusation, punishment involved, apprehension of repetition of offence and witnesses being influenced.

16. In view of above, bail petitioner has carved out a case for himself, as such, present petition is allowed. Bail petitioner is ordered to be enlarged on bail, subject to furnishing bail bonds in the sum of Rs.2,00,000/- with two local sureties in the like amount,



to the satisfaction of the learned Trial Court, besides the following conditions:

- (a) He shall make himself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;
- (b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- (c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer; and
- (d) He shall not leave the territory of India without the prior permission of the Court.

17. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

18. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of this petition alone. The petition stands accordingly disposed of.

19. A downloaded copy of this order shall be accepted by the learned trial Court, while accepting the bail bonds from the petitioner and in case, said court intends to ascertain the



veracity of the downloaded copy of order presented to it, same may be ascertained from the official website of this Court.

(Sandeep Sharma)
Judge

March 23, 2026
(sunil)