

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CrMP(M) No. : 1136 of 2026****Decided on : 6.7.2026**

Ashok Kumar

...Applicant

Versus

State of Himachal Pradesh & anr.

...Respondents

*Coram***The Hon'ble Mr. Justice Virender Singh, Judge.***Whether approved for reporting?¹*

For the applicant : Mr. Sunny Rawat, Advocate.For the respondent : Mr. Mohinder Zharaick, Addl.
Advocate General, assisted by Mr.
Vipan Jamwal, I.O., Police Station,
Damtal, Police District Nurpur,
District Kangra, H.P.

Virender Singh, Judge. *(Oral)*

Applicant-Ashok Kumar, by way of the present application, filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), has sought his release, on bail, during the pendency of the trial, arising out of **FIR No.126 of 2023**,

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

dated 01.08.2023, registered under Sections 21 and 29 of the Narcotic Drugs & Psychotropic Substances Act (hereinafter referred to as the 'NDPS Act'), with Police Station Damtal, District Kangra, H.P.

2. According to the applicant, he has falsely been arrested by the police, in this case, on 01.08.2023, for allegedly possessing contraband, weighing 261 gms of chitta/heroin, as, he is innocent and has not committed the alleged offence.

3. As per the stand of the applicant, the investigation, in the present case, is almost complete, as such, no useful purpose would be served, by keeping him in the judicial custody, any further.

4. The relief of bail has also been sought on the ground that the applicant is the sole bread winner, in his family, having his wife and two school going children and in case, bail is not granted to him, his whole family will suffer and they are at the verge of starvation.

5. The applicant has sought his release, mainly, on the ground of inordinate delay in trial, as, according to the applicant, the challan, in this case, has been presented

before the Court on 25.05.2024, however, till date, no evidence has been recorded so far.

6. Apart from this, the learned counsel appearing on behalf of the applicant, has given certain undertakings, on behalf of the applicant, for which, the applicant is ready to abide by, in case, ordered to be released, on bail, during the pendency of the trial.

7. Relief of bail has also been sought on the ground that there is undue delay in the trial, as out of 34 witnesses, till date prosecution has examined 16 witnesses and trial against the applicant has yet not been concluded.

8. Relief of bail has also been sought on the ground that PWs 14 and 15, when, appeared in the witness box, before the learned trial Court, have admitted that the case property has not been shown to them. As such, according to the applicant, the case against him would end into acquittal.

9. Apart from this, it has also been highlighted that PW- Suresh is a stock witness. In addition to this, the applicant has also given the following details of earlier bail applications, which have been filed, before this Court, as well as, before the learned Special Judge-I, Kangra at

Dharamshala, District Kangra, H.P. in para-6 of the application:

“i. Bail Application No. 562/2023 decided on 23.12.2023 by Ld. Special Judge-I, Kangra at Dharamshala, District Kangra, H.P. is Annexure P/3.

ii. CrMP(M) No. 210 of 2024, before High Court dismissed as withdrawn, vide order dated 29.02.2024 Annexure P/4.

iii. CrMP(M) No. 1849 of 2024, before High Court dismissed as withdrawn, vide order dated 29.08.2024 Annexure P/5.

iv. CrMP(M) 2395 of 2024, before High Court dismissed as withdrawn, vide order 12.11.2024 Annexure P/6.

v. CrMP(M) 2939 of 2024, before High Court dismissed as withdrawn, vide order 30.12.2024 Annexure P/7.

vi. CrMP (M) No. 444 of 2025 before High Court, dismissed vide order, dated 19.03.2025 Annexure P/8.

vii. Bail Application No. 293/2025 decided on 18.08.2025 by Ld. Special Judge-I, Kangra at Dharamshala, District Kangra, H.P. is Annexure P/9.

viii. CrMP (M) No. 2295 of 2025 dismissed by High Court, vide order dated 30.10.2025 is Annexure P/10.

ix. Bail Application No. 19/2026 decided on 24.02.2026 by Ld. Special Judge-I, Kangra at Dharamshala, District Kangra, H.P. order dated 24.02.2026 is Annexure P/11.

x. CrMP (M) No. 486 of 2026 dismissed by High Court, vide order dated 12.05.2026 is Annexure P/12.”

10. On the basis of above facts, a prayer has been made to allow the application for releasing the applicant on bail.

11. When, put to notice, police has filed the status report, disclosing therein, that on 01.08.2023, ASI Satinder Singh, IO, Police Station Damtal, has submitted a ruqqa to the Police Station, Damtal, through HC Vikas, for registration of FIR, mentioning therein that on 01.08.2023, IO, along with other police officials, was on patrolling duty and duty to detect crime relating to excise and narcotics.

12. It is the case of the police that at about 03:53 pm, police party had left Police Station and after visiting Thapkor-Lodwa side, at about 05:10 pm, IO was present at Excise Barrier, Chakki at Badrohea. In order to stop the illegal activity in the area, he has put the picketing at that place and started checking the vehicles coming from Pathankot, Punjab side. Then, he noticed Activa scooter, bearing registration No.HP-97-2254, colour white, being driven by its driver, coming from Pathankot side. Two persons were found on it.

13. Thereafter, IO, after stopping the driver, directed him to show the driving licence, upon which, driver Yashpal S/o Ram Chand had produced the driving licence and the person, who was the pillion rider, on enquiry, disclosed his name as Suresh Kumar S/o Jagat

Ram. When, the IO was enquiring from the said persons, meanwhile, a grey coloured Maruti 800 car, being driven by its driver, was seen coming, which was signaled to stop by HC Vikas. The driver has not stopped the vehicle and taken the same away from there, upon which, Ct. Rishabh, who was present there, stopped the said car. Thereafter, IO and other police officials also reached there. The registration number of the said car was found to be PB35-E-0318.

14. It is the further case of the police that meanwhile, the persons, who came there on Aactiva, namely Yashpal and Suresh Kumar, also reached there. On seeing the suspicious activities of the driver of the said car, it has been apprehended by the IO that some stolen articles may be there in the car or the car driver may be involved in any other illegal activity. As such, IO has associated said Yashpal and Suresh Kumar as independent witnesses and name of the driver of the said car was enquired. On enquiry, driver disclosed his name as Ashok Kumar (applicant).

15. Thereafter, IO directed Ashok Kumar (applicant) to show the registration certificate of the vehicle, upon which, Ashok Kumar (applicant) had opened the

dashboard of the vehicle and in this process, a black coloured polythene envelope had fallen down. Subsequently, applicant has shown RC to the IO and the same was found to be in the name of the applicant. On enquiry, he could not give any satisfactory answer to the IO, as to why, he had driven away the car and got perplexed.

16. Thereafter, the black coloured envelope, which had fallen down from the dashboard, was opened and on opening the same, another transparent white coloured envelope was found containing brown granule shaped and powder like substance. When, the same was checked on the drug detection kit, then, the same was found to be chitta/heroin, which, on weighment, was found to be 261 gms. The same was taken into possession. Other codal formalities were completed and accused/applicant was arrested.

17. Later on, during investigation, the involvement of co-accused Harkrishanjit Singh, s/o Balwinder Singh, r/o Amritsar, Punjab, was also found and he was also arrested.

18. As per status report, another case, bearing FIR No.21 of 2019 dated 17.04.2019, under Section 21 of the NDPS Act, has been found to have been registered against the applicant, with Police Station Damtal, District Kangra, H.P. The said case is still pending adjudication in the Court of learned Additional Sessions Judge-I, Dharamshala, District Kangra.

19. Apart from this, it has also been pleaded that chargesheet in the present case has been filed and out of 34 witnesses, 16 witnesses have been examined and 18 witnesses are yet to be examined.

20. On the basis of above facts, a prayer has been made that the bail application may be dismissed.

21. Admittedly, the contraband, which has allegedly been recovered, in the present case, falls within the definition of 'commercial quantity'. Once, this fact has been stated by the Police in the status report, then, admittedly, rigors of Section 37 of the NDPS Act are applicable in the present case.

22. When, rigors of Section 37 of the NDPS Act are applicable, in that eventuality, before releasing the applicant, on bail, it is incumbent upon this Court to give

findings, with regard to fulfillment of twin conditions, as enumerated, under Section 37(b) of the NDPS Act. These conditions are (i) that the applicant has not committed the offence, for which he has been arrested, and (ii) that while on bail, he will not commit any offence.

23. The provisions of Section 37 of the NDPS Act, have been discussed and explained by a three-Judge Bench of the Hon'ble Supreme Court, way back in the year 2004, in cases, titled as *Collector of Customs, New Delhi versus Ahmadaliev Nodira*, reported in (2004) 3 Supreme Court Cases 549, and *Narcotics Control Bureau versus Dilip Pralhad Namade*, reported in (2004) 3 Supreme Court Cases 619. The relevant paras 9 to 11 of the judgment in *Dilip Pralhad Namade's case (supra)*, are reproduced, as under:

"9. As observed by this Court in Union of India v. Thamisharasi & Ors. (JT 1995(4) SC 253) clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are (1) an opportunity to the public prosecutor to oppose the bail application and (2) satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

10. *The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the public prosecutor, the other twin conditions which really have relevance so far the present accused respondent is concerned, are (1) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based for reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence and he is not likely to commit any offence while on bail. This nature of embargo seems to have been envisaged keeping in view the deleterious nature of the offence, necessitates of public interest and the normal tendencies of the persons involved in such network to pursue their activities with greater vigour and make hay when, at large. In the case at hand the High Court seems to have completely overlooked the underlying object of Section 37 and transgressed the limitations statutorily imposed in allowing bail. It did not take note of the confessional statement recorded under Section 67 of the Act.*

11. *A bare reading of the impugned judgment shows that the scope and ambit of Section 37 of the NDPS Act was not kept in view by the High Court. Mere non-compliance of the order passed for supply of copies, if any, cannot as in the instant case entitle an accused to get bail notwithstanding prohibitions contained in Section 37."*

24. Moreover, the view of this Court is being guided by the decision of the Hon'ble Supreme Court in **Criminal Appeal No. 5544 of 2024**, titled as '**Narcotics Control Bureau versus Kashif**', Neutral Citation No. 2024 INSC 1045, has again reiterated the law, as enumerated by it, in **Narcotics Control Bureau versus Mohit Aggarwal**, reported in **AIR 2022 SC 3444**. The Hon'ble Supreme Court, in this case, has held that the provisions of Section 37 of NDPS Act are mandatory in nature. Relevant paragraphs 8 and 39 of the said judgment are reproduced, as under:

"8. There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act. Apart from the granting opportunity of hearing to the Public Prosecutor, the other two conditions i.e., (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.

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39. The upshot of the above discussion may be summarized as under:

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object

and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

(self-emphasis supplied)

25. So far as the evidence of three PWs, which has been relied upon in the bail application is concerned, the evidence, so recorded before the learned trial Court, is to be considered by it, at the time of final decision of the case and the said prerogative cannot be snatched away by discussing the evidentiary value of those statements.

26. In this case, the relief of bail has also been sought on the ground of undue delay of trial. From the pace of the trial, this Court is satisfied that there is no undue delay, as out of 34 witnesses, 16 witnesses have already been examined and the case is now fixed for PWs on 9.7.2026.

27. Considering all these facts, this Court is of the view that the applicant is not able to make out a case for bail, and the application is accordingly dismissed.

28. Any of the observations, made herein above, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

(Virender Singh)
Judge

July 6, 2025
(kalpana)