



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

**Cr.MP(M) No.2631 of 2025
Reserved on: 25.11.2025
Date of Decision: 28.11.2025**

Naresh Kumar ...Applicant

Versus

State of H.P.Respondent

Coram:

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹

For the applicant : Mr. Vinod Sharma, Advocate.

For the respondent : Mr. Varun Chandel, Mr. H.S. Rawat, Mr. Mohinder Zharaick, Additional A.Gs., with Ms. Ranjna Patial, Deputy A.G.

Virender Singh, Judge

Applicant-Naresh Kumar has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), for releasing him on bail, during the pendency of the trial, arising out of **FIR No. 279 of 2024, dated 29.09.2024**, registered under **Sections 15 and 29-61-85 of the Narcotic Drugs & Psychotropic Substances**

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



Act (hereinafter referred to as the 'NDPS Act'), with

Police Station, Nalagarh, District Solan, H.P.

2. According to the applicant, he is innocent person and has falsely been implicated, in this case, whereas, he has no concern with the crime in question.

3. The applicant has further pleaded that except the present case, no other case has been registered against him and he is no longer required by the police, for the investigation, of the case.

4. The applicant had earlier tried his luck by moving Cr. MP(M) No. 69 of 2025, before this Court, which was withdrawn on 24.02.2025. Thereafter, he has again filed Cr. MP(M) No. 1474 of 2025 before this Court, which was again dismissed as withdrawn on 04.07.2025. The applicant has again moved Cr. MP(M) No. 2527 of 2025, which was dismissed as withdrawn on 17.10.2025. Thereafter, he has tired his luck before the learned Special Judge-III Solan, District Solan, H.P. However, the said application was dismissed, vide order dated 30.10.2025.



5. It has been argued by learned Counsel appearing for the applicant that his co-accused Dharam Pal, has been released on bail by this Court in Cr.MP(M) No. 2456 of 2025. As such, on the ground of parity, relief of bail has also been sought.

6. Apart from this, Mr. Vinod Sharma, Advocate, appearing for 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. On the basis of the above facts, a prayer has been made to allow the bail application.

8. When, put to notice, the police has filed the status report, disclosing therein, that on 29.09.2024, ASI Ranjeet Singh, along with the other police officials, in private Vehicle No.HP20E-7521 and HP12J-6915, was on patrolling duty and duty to detect the crime relating to excise and narcotics, in the territorial jurisdiction of Police Station, Nalagarh. When they were present near playground in village Tirla, then, at about 1:00 PM, he received a secret information, about the indulgence of



Naresh Kumar, resident of Mahua, Tehsil Nalagarh, District Solan, H.P. (applicant), in an illegal business of selling poppy husk. As per the information, Naresh Kumar (applicant) is selling poppy husk to customers at his residence and has concealed the poppy husk in his residential house, as well as, in his Cowshed.

8.1. As per the information, in case, said Naresh Kumar (applicant) is nabbed and his house and cowshed are searched, then, large quantity of poppy husk could be recovered. According to the IO, if, he would have obtained the search warrants, then, delay could have occurred and in that eventuality, there were chances of removal of contraband from there.

8.2. As the information was found authentic and reliable, a report under Section 42(2) of NDPS Act, was prepared and submitted to SDPO Nalagarh. Thereafter, they proceeded towards the spot and when, they reached outside village Mahua, Sanjay Kumar son of Kamal Nayan met him, who was apprised about the factual position and was associated in the raiding party, as independent witness. Thereafter, the I.O. along with



Sanjay Kumar, reached the residential house of Naresh Kumar (applicant), where a person was found present, to whom IO gave his identification, as well as, identification of the raiding party.

8.3. On inquiry, the said person disclosed his name as Naresh Kumar son of Amar Chand (applicant). Thereafter, his house was searched. During search, 60.983 kg poppy husk was recovered.

8.4. After completing other formalities, rukka was prepared and submitted to Police Station, upon which, FIR, was registered and said Naresh Kumar (applicant) was arrested. Thereafter, the case property was produced before the Court for conducting the inventory proceedings, under Section 52A of ND&PS Act. Subsequently, sample was sent to SFSL, Junga.

8.5. The accused Naresh Kumar (applicant) was produced before the Court, from where, he was remanded to police custody. During the police custody, he has disclosed that one Dharam Pal, son of Prem Lal, resident of village Chori, Post Office Saur, Tehsil Ramshehar, District Solan, is his partner in the crime in



question, as, they used to purchase contraband from the adjoining State and thereafter, sell the same.

8.6. Thereafter, the CDRs of mobile phone of applicant Naresh Kumar, bearing No.98165-09228 and 70188-81990 were obtained. The perusal of the same shows that accused Naresh Kumar (applicant) used to have long conversation with Dharam Pal.

8.7. On 06.10.2024, ASI Narayan Dev, searched for accused Dharam Pal. He was found in his village and thereafter, his residential house was searched. During search of his residential house, poppy husk, weighing 436 grams, was recovered, upon which, FIR No.48 of 2024, was registered, with Police Station, Ramshehar.

8.8. On the basis of the investigation, spot visit, statements of the witnesses, revelation made by accused Naresh Kumar (applicant) and as per the recovery of poppy husk, from accused Dharam Pal, he was arrested on 06.10.2024 under Sections 15, 29 of ND&PS Act. Thereafter, he was remanded to police custody, but, even during police custody, he has not disclosed about the source.



8.9. After complying with the provisions of Section 52(A) of the ND&PS Act, the sample was sent to SFSL, Junga, from where, positive report has been received.

8.10. It is the further case of the police that one case was found to be registered against the applicant:-

(i) FIR No. 144 of 2010, dated 14.10.2010, registered under Sections 147, 149, 323 IPC, with Police Station Nalagarh, in which he has been acquitted by learned ACJM Nalagarh, on 31.05.2018.

9. On the basis of the above facts, a prayer has been made to dismiss the bail application.

10. First of all, coming to the plea of learned Counsel appearing for the applicant, to release the applicant on bail on the ground of parity, as his co-accused Dharam Pal, has been released on bail vide order dated 17.11.2025, is concerned, the principle of parity would not apply in the present case, as the involvement of accused Dharam Pal has been allegedly found on the basis of alleged revelation made by the applicant during the custody. As such, he has been released on bail on the ground that whatsoever



deposed/revealed by accused during the custody is inadmissible in evidence, whereas, in the present case, recovery has been effected from the possession of the accused and the said contraband, as per the stand taken by the police, is 60.983 kg poppy husk, which falls within the definition of 'commercial quantity'.

11. Once, the contraband has been recovered from the possession of the accused, then, before releasing such accused, from whose possession commercial quantity of contraband has allegedly been recovered, it is incumbent upon this Court to record findings, with regard to fulfillment of twin conditions, as enumerated, under Section 37(1)(b)(ii) 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.

12. In a recent decision, in case, titled as ***Narcotics Control Bureau versus Mohit Aggarwal***, reported in ***AIR 2022 SC 3444***, the Hon'ble Supreme Court has reiterated the earlier view regarding compliance of the conditions, as enumerated in Section



37 of the NDPS Act. The relevant paras 10 to 15 of the judgment are reproduced, as under:

“10. The provisions of Section 37 of the NDPS Act read as follows:

*“[37. **Offences to be cognizable and non-bailable.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

11. It is evident from a plain reading of the non obstante clause inserted in sub-section (1) and the conditions imposed in subsection (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be



factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

12. The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In “Collector of Customs, New Delhi v. Ahmadaliev Nodira”, (2004) 3 SCC 549, a decision rendered by a Three Judges Bench of this Court, it has been held thus:

“7. 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 as the present accused respondent is concerned, are: 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 on 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.”

[emphasis added]

13. The expression “reasonable ground” came up for discussion in “State of Kerala and others Vs. Rajesh and others” (2020) 12 SCC 122 and this Court has observed as below:

“20. 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.** In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

[emphasis added]

14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. *Dove-tailed* with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.



15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

13. 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**, wherein, it has been held that in case of commercial quantity of the contraband, the accused shall generally be not released on bail, until or unless, the conditions, as per Section 37 of the NDPS Act, are held to be existed in favour of the applicant. 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 th13. 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**, wherein, it has been held that in case of commercial quantity of the contraband, 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)

14. Even otherwise, compliance of Section 37 of the NDPS Act is now held to be mandatory, as per Kashif's case (supra). As such, no benefit could be derived by the applicant, from the above fact.



15. In view of the above discussion, at this stage, it cannot be said that the applicant has not committed the offence, nor it can be said that in case, he is ordered to be released on bail, he will not commit any offence.

16. In the absence of the twin conditions, as enumerated, under Section 37(1)(b)(ii) of the NDPS Act, this Court cannot accept the arguments of learned counsel, appearing for the applicant, who has sought the release of the applicant, on bail, during the pendency of the trial.

17. In view of the discussions, made hereinabove, this Court is of the view that the applicant is not able to make out a case for his release on bail.

18. Consequently, the present bail application is dismissed.

19. Any of the observations, made hereinabove, 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.

November 28, 2025
(Pramod)

(Virender Singh)
Judge