



2026:HHC:8836

2026:HHC:8836

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP (M) No. : 2901 of 2025

Reserved on : 19.03.2026

Decided on : 25.03.2026

Kulwant Singh ...Applicant

Versus

State of Himachal Pradesh ...Respondent

Coram

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

Whether approved for reporting?¹

For the applicant : Mr. Maan Singh, Advocate.

For the respondent : Mr. H.S. Rawat, Additional Advocate General, with Mr. Rohit Sharma, Deputy Advocate General.

Virender Singh, Judge

Applicant-Kulwant Singh, has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), with a prayer to release him on bail, during the pendency of the trial, arising out of **FIR No.104 of 2020, dated 07.11.2020**, registered under **Sections 15 and 25 of the Narcotic Drugs & Psychotropic Substances Act**

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



(hereinafter referred to as the 'NDPS Act'), with **Police Station Banjar, District Kullu, H.P.**

2. According to the applicant, he is innocent and has falsely been implicated, in the present case. The applicant has been arrested, in this case, on 26.03.2025 and from that date, he is behind the bars.

3. As per the applicant, main accused Kulvinder Singh has been released on bail.

4. It is the further case of the applicant, he has no concern with the crime, in question and his custodial interrogation is no longer required by the police.

5. The applicant has also tried his luck, by moving similar application, before the learned Special Judge, Kullu, District Kullu, H.P. However, the said application has been dismissed, vide order, dated 29.05.2025.

6. Apart from this, Mr. Maan Singh, 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 application.

8. When put to notice, the police has filed the status report, disclosing therein, that on 07.11.2020, the I.O., along with other police officials, was on patrolling duty and was present at Chyunthapul.

8.1. At about 04.45, a.m., they noticed a car, being driven by its driver, coming from Banjar side. The said car, when reached near the place, where picketing had been done, driver of the said car, on seeing the police, became perplex and tried to flee away from the spot, after reversing the car. In that process, the car struck against the hillside. His activities raised suspicion in the mind of the I.O., and when the I.O., along with other police officials, reached near the Car, the driver and his companion, fled away.

8.2. The driver of the car was nabbed by the I.O, with the help of other police officials, however, the person, who was sitting in the front seat of the car, fled away from the spot. Registration of the said car was CH01AR-9249. Efforts to nab the person were made, but, he could not be



nabbed. No independent witness was present there, nor, any vehicle came there.

8.3. Thereafter, constable Vijay Kumar No. 372 and HHC Shyam Dass No.312, were associated as independent witnesses. Thereafter, the antecedents of the driver were inquired. He disclosed his name as Kulwinder Singh son of Shri Harmesh Singh, resident of Ahmadgarh, Mandi Ludhiana (Punjab). Antecedents of the person, who had fled away from the spot, were also inquired from him. He disclosed his name as Kulwant Singh, resident of Ludhiana (applicant).

8.4. On checking the car, ten sacks containing poppy straw were found. On weighment, the total poppy straw (*Afeemdoda*) was found to be 90.529 kilograms.

9. Consequently, the said contraband was taken into possession and rukka was sent to the Police Station for registration of the FIR. Accused was arrested.

10. During investigation, accused Kulwinder Singh has disclosed that a sum of Rs.10,000/- was to be paid to him by applicant Kulwant Singh to purchase poppy straw. Thereafter, they reached at Gushaini, where, one person



came and handed over the contraband to him, which was loaded by the said person, as well as, Kulwant Singh. Kulwant Singh has disclosed the name of the said person as 'Mama'. Thereafter, Kulwant Singh has disclosed his phone number as 62300-43135. The amount was also paid by Kulwant Singh to the said person.

11. Thereafter, the police had obtained the CDRs of mobile phone of all the three persons. Efforts to nab Kulwant Singh (applicant) were made, but, he was not found. The charge-sheet against accused Kulwinder Singh was submitted, in which, accused Kulwinder Singh was convicted.

12. Thereafter, proceedings under Section 82 Cr.PC were initiated and he was declared as Proclaimed Offender. However, on 26.03.2025, the applicant was arrested. Thereafter, he was produced before the Court and remanded to police custody.

13. Thereafter, charge-sheet against the applicant has been filed before the Court of learned Special Judge, Kullu. There are total 15 witnesses, out of which, two have



been examined and the case was listed on 26/27.02.2026, for evidence.

14. It has also been mentioned, in the status report that except the present case, no other case is found to have been registered against the applicant.

15. Learned counsel for the applicant has placed on record, copy of judgment dated 22.02.2021, passed by the Court of learned Special Judge-II, Kullu, by virtue of which the co-accused of the application namely Kulvinder singh has been convicted for allegedly possessing 500 grams of poppy straw, in the present case.

16. The applicant has been named, in the present case, on the basis of the alleged disclosure statement, made by the co-accused, in which, he has disclosed the name of the person, who had fled away from the spot, as Kulwant Singh (applicant). The said statement was made by accused Kulvinder Singh, when, he was in police custody. The custody and arrest are two different terms.

17. Hon'ble Apex Court in ***Vikram Singh and ors versus State of Punjab; AIR 2010 Supreme Court 1007*** titled as have distinguish between the word 'arrest' and



the word 'custody' as used in Section 27 of the Evidence Act. Relevant Paras-12 & 16 of the judgment, are reproduced, as under:-

"12. Mr. Sharan has, however, referred us to Section 46(1) of the Code of Criminal Procedure to argue that till the appellants had been arrested in accordance with the aforesaid provision they could not be said to be in police custody. We see that Section 46 deals with 'Arrest how made'. We are of the opinion that word "arrest" used in Section 46 relates to a formal arrest whereas Section 27 of the Evidence Act talks about custody of a person accused of an offence. In the present case the appellants were undoubtedly put under formal, arrest on the 15th February 2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused is an offence at the time of their apprehension on the 14th February 2005. Moreover, in the light of the judgment in the Constitution Bench and the observation that the words in Section 27 "accused of any offence" are descriptive of a person making the statement, the submission that this Section would be operable only after formal arrest under Section 46(1) of the Code, cannot be accepted. This argument does not merit any further discussion.

xxx

xxx

xxx

16. It is also significant that Jasvir Singh also disclosed that he had kept concealed the dead body in the fields of village Daulatpur and that it had been removed from Darshan Kaur's house in the Chevrolet car belonging to him and the three appellants had further revealed that the dead body had been disposed of in the fields of village Daulatpur and the dead body was recovered and taken into possession by Memo



Ex.PGGG signed by Manohar Lal as also Sub-Inspector Jeevan Kumar. We are unable to accept Mr. Sharan's bare submission that the evidence of Manohar Lal and Sub-Inspector Jeevan Kumar should not be believed as they were interested in the successful outcome of the prosecution, as no other material adverse circumstance has been brought to our notice."

18. Full Bench of Hon'ble Lahore High Court in

Hakam Khuda Yar versus Emperor; AIR 1940 Lahore

129, have also defined the word 'custody' and held that the

police custody does not necessarily means custody after

formal arrest. Relevant portion of the judgment, is

reproduced, as under:-

"..... As regards the first point, the term "custody" is not defined either in the Criminal Procedure Code or in the Evidence Act. There is, of course, no doubt that an accused person will be in the "custody" of the police after his arrest; but the question is whether he can be considered to be in "custody" at any time earlier, when he has not been formally arrested, but is merely detained by the police for the purpose of the investigation. Section 27 is anomalous in so far as it applies only to information leading to a discovery when received from an accused person in the custody of the police, but not if he is not in the custody of the police. If the information is relevant when it comes from a person in the custody of the police, there seems no good reason why it should not be so when it comes from an accused person, who is not in the custody of the police and therefore not under the influence of the police. The real intention of the Section very probably is to make information from an accused person which leads to



discovery relevant even when the person is in police custody. But the language of, the Section makes such information relevant only when it comes from an accused person in the custody of the police.

The language used in the Section thus leads to the curious result probably never intended--that when such information is given by an accused person, who is not in the "custody" of the police it will not be covered by the Section. However, apart from the above anomaly, the intention of the Section seems, I think, clear enough and that is to make information leading to a discovery relevant, even when it comes from an accused person who is in the custody of the police and thus subject to police influence. Ordinarily information coming from an accused person, who is liable to be influenced by the police will be open to suspicion. But if the information leads to the discovery of a relevant fact, that discovery is considered to be a guarantee of the truth of the information as has been pointed out already and hence such information is made relevant by Section 27. Now there can be little doubt, that even before his formal arrest, an accused person, who is detained by the police owing to suspicion against him, is liable to be influenced by the police. This Court has therefore put a wide interpretation on the word "custody" as used in Section 27. In AIR 1933 Lah 609, it was held by a Division Bench of this Court consisting of Sir Shadi Lal and Coldstream J. that 'police custody' does not necessarily mean custody after formal arrest and that it also includes 'some form of police surveillance and restriction on the movements of the person concerned by the police.

19. In view of the decision of the Hon'ble Supreme Court in **Dipakbhai Jagdishchandra Patel v. State of**



Gujarat, (2019) 16 SCC 547, the statement made by co-accused during the investigation is hit by Section 162 of Cr.P.C. and cannot be used as a piece of evidence. Relevant paragraph 44 of the judgment is reproduced as under:

44. Such a person, viz., the person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned, and the statement is taken by the police officer. A confession that is made to a police officer would be inadmissible, having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act, would also be inadmissible. A confession, unless it fulfils the test laid down in Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66: AIR 1939 PC 47] and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains an admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC.”

20. Similar view has again been taken by the Hon'ble Supreme Court in '**Tofan Singh versus State of Tamil Nadu**', (2021) 4 Supreme Court Cases 1. Relevant paragraph 158.1 of the judgment is reproduced as under:

“158.1 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.”

21. So far as the relevancy of the CDRs of the mobile phone of Kulvinder Singh and Kulwant Singh, are concerned, the relevancy of the same is to be considered during the trial.

22. Hon'ble Supreme Court in **State by (NCB) Bengaluru versus Pallulabid Ahmad Arimutta & Anr., 2022 (2) SCALE 14**, has held that evidentiary value of the CDRs is to be determined, during trial. Relevant portion of the judgment is reproduced as under:

*“10. It has been held in clear terms in **Tofan Singh Vs. State of Tamil Nadu**, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined*



to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (CrL) No@ Diary No. 22702/2020, SLP (CrL) No. 1454/2021, SLP (CrL) No. 1465/2021, SLP (CrL) No. 1773-74/2021 and SLP (CrL) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.”

(self emphasis supplied)

23. The CDRs can only provide information like Caller ID duration and Cell Tower Details, however, they do not capture the substance of the conversation itself. These are the call record details, which are the metadata (data about data) about the call and the same is totally different from call recording, which offers direct evidence of the communication, including specific words spoken and context of the conversation, which can be crucial, for deciding the matter.

24. Although, co-accused Kulvinder Singh, has been convicted, by the learned trial Court, for the allegedly possessing 500 grams of poppy straw, however, in the considered opinion of this Court the applicant can also not be prosecuted for the offence, involving commercial



quantity of contraband. Even during the pendency of the trial against accused Kulvinder Singh, he was released on bail, as the same has been admitted in the status report.

25. Considering all these facts, this Court is of the view that the bail application is liable to be allowed and is accordingly allowed. Consequently, the applicant is ordered to be released on bail, during the pendency of the trial, arising out of **FIR No.104 of 2020, dated 07.11.2020**, registered under **Sections 15 and 25 of the NDPS Act**, with **Police Station Banjar, District Kullu, H.P.**, on his furnishing personal bond, in the sum of Rs.50,000/-, with one surety, in the like amount, to the satisfaction of learned trial Court.

26. This order of release, however, shall be subject to the following conditions :-

- a) Applicant shall 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) Applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;*
- c) Applicant shall not make any inducement, threat or promises to any person acquainted with the*



facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer; and

d) Applicant shall not leave the territory of India without the prior permission of the Court.”

27. 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.

28. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions is found to be violated by the applicant.

29. The Registry is directed to forward a soft copy of the bail order to the Superintendent of Jail, Sub Jail, Hamirpur, through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

30. In case, the applicant is not released within a period of seven days from the date of grant of bail, the Superintendent of Jail, Sub Jail, Hamirpur, is directed to inform this fact to the Secretary, DLSA, Hamirpur. The Superintendent of Jail, Sub Jail, Hamirpur, is further directed that if the applicant fails to furnish the bail bonds,



2026:HHC:8836

15

2026:HHC:8836

as per the order passed by this Court, within a period of one month from today, then, the said fact be submitted to this Court.

(Virender Singh)
Judge

March 25, 2026_(ps)