

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1702 of 2026

Reserved on: 09.10.2026

Decided on: 12.10.2026

Uploaded on: 12.10.2026

Lokesh Kumar Bherwa

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr Justice Chirag Bhanu Singh, Judge.

Whether approved for reporting?¹

For the Petitioner : Mr. Viplav Sharma, Senior Advocate, with Mr. Anshuman Thakur, Advocate.

For the Respondent : Mr. Lokender Kuthelria, Additional Advocate General, assisted by ASI Chander Kant, I.O., PS Bhoranj, District Hamirpur, H.P.

Chirag Bhanu Singh, Judge

The present bail petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, seeking post-arrest bail in case FIR No. 36 of 2026, dated 04.03.2026, registered at Police Station Bhoranj, District Hamirpur, H.P., under Sections 21 and 29 of the

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

Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “Act”).

2. The facts which emerge from the status report filed by the State are that on 04.03.2026, Head Constable (HC) Lalit Kumar was on patrolling along with a police team. At about 2:40 AM, while the police patrol was near Badahed Road, just after having crossing the bridge, they noticed a person standing with a backpack, holding a yellow polythene bag. Upon stopping the vehicle near him, the suspect became nervous and threw something from the pockets of his trousers. On inquiry, the person disclosed his identity as Lokesh Kumar Bairwa, son of Shri Heera Lal Bairwa, resident of Bhandari, Tehsil Sikrai, District Dausa, Rajasthan.

3. Since it was dead of night, no independent witnesses could be procured and, as such, Constable Pradeep Kumar and Constable Lekh Raj were associated as independent witnesses.

4. The Investigating Officer (IO) retrieved the packet discarded by the accused. Inside the transparent polythene

packet, another polythene packet containing same brown substance was found. On the basis of experience and the disclosure made by the accused, the substance was identified as heroin (chitta). Upon weighment, the recovered contraband was found to be 9 grams.

5. After following all the codal formalities, the recovered contraband was taken into possession. The petitioner was arrested at the spot and is presently in judicial custody.

6. The status report filed by the prosecution also shows that two cases under the NDPS Act already stand registered against the petitioner/accused. One is FIR No. 28 of 2025, dated 30.04.2025, registered under Sections 21 and 29 of the NDPS Act at Police Station Dhanuto, District Mandi, H.P., in which 20 grams of heroin (chitta) is alleged to have been recovered from the petitioner/accused. The other is FIR No. 277 of 2025, dated 07.11.2025, registered under Sections 21 and 29 of the NDPS Act at Police Station Sadar, District Mandi, H.P., in which 6 grams of heroin (chitta) is alleged to have been recovered from him. Both cases are stated to be pending

adjudication. The charge-sheet in the present case also stands filed on 20.07.2026.

7. I have heard the learned counsel for the parties and gone through the records meticulously.

8. It was urged with vehemence by the learned counsel for the petitioner that “intermediate” quantity of contraband had been recovered from the petitioner, and as such, the rigors of Section 37 would not apply with the same force. No doubt, two other cases stand registered against the petitioner under the Act, but both are for "intermediate" quantity. The petitioner being an addict he had kept the same for self consumption. Seeing to the quantity of contraband recovered, the petitioner was thus entitled to the discretion of bail.

9. *Per contra*, Mr. Lokender Kuthelria, learned Additional Advocate General, for the State has vociferously urged that keeping in view the past antecedents of the petitioner, it seems that his *modus operandi* is to carry small quantity of contraband. There are chances that the petitioner

may again indulge in same and similar activities in the future too. The discretion of bail, thus, cannot be exercised in his favour.

10. The perusal of the status report does show that the quantity of contraband recovered in the present case is indeed “intermediate”, being 9 grams of heroin (chitta) and as such, the rigors of Section 37 will not *stricto sensu* apply in the facts and circumstances of the present case with the same vigour.

11. The registration of the earlier case registered against the petitioner under the Act apparently are only in respect to "intermediate" quantity. Per the learned counsel for the petitioner, it was only kept by him for self consumption. He is hooked to the drugs and is not a peddler.

12. It further transpires from record that the charge-sheet has already been filed on 20.07.2026. The culmination of the trial is likely to take sufficient time. Pre-trial incarceration is otherwise generally loathed by the Courts, as has been held by the Hon’ble Supreme Court in catena of decisions including *Union of India vs. K.N. Nazeem* 2021 (3) SCC

713 & Javed Gulam Nabi Shaikh vs. State of Maharashtra & Another (Criminal Appeal No.2787 of 2024 decided on 03.07.2024).

13. “Bail, not jail” is the golden thread which has been running right through the various judgments rendered by the Hon'ble Supreme Court starting from *Gurbaksh Singh Sibbia & Others v. State of Punjab*, (AIR 1980 SC 1632), which has consistently been followed till the decision rendered in *P. Chidambaram v. Directorate of Enforcement*, (AIR 2019 SC 4198). The object of granting bail was further elucidated in *Sanjay Chandra & Others v. Central Bureau of Investigation*, (AIR 2012 SC 830). The Hon'ble Supreme Court has further reiterated that grant of bail was a general rule, as was categorically held in *Dataram Singh v. State of Uttar Pradesh*, [(2018) 3 SCC 22 : AIR 2018 SC 980].

14. Though a repeat offender, under normal circumstances this Court would not have exercised discretion in his favour but seeing to the peculiar circumstances, discussed above and keeping in view the fact that the quantity of contraband recovered from the accused in the present case

is "intermediate" and the trial is likely to take time. Since the earlier cases pertain to "intermediate" quantity and apparently the petitioner was himself addicted to the drugs, it would be in the interest of justice and fairplay that the discretion of bail is exercised in his favour, but subject to strict terms. He may be given a chance to reform himself. The quantity of drugs recovered from him on all the three occasions rule out his being a peddler.

15. As a sequel, while allowing the present petition, it is directed that in case the petitioner is henceforth found to be indulging in any similar activity and an FIR is registered against him under the provisions of the Act, not only the present bail granted shall stand, forfeited but the State would be at liberty to take steps for seeking preventive detention of the petitioner or sent him rehabilitation, if so required.

16. For all the reasons discussed hereinabove, the bail petition is thus allowed. As a sequel, the petitioner is ordered to be released on bail subject to his furnishing bail bonds to the tune of Rs.50,000/- with two local sureties of the like

amount, to the satisfaction of the learned trial Court subject to the following conditions:-

- i) That the petitioner shall not tamper with the prosecution evidence nor intimidate, threaten or coerce the witnesses conversant with the facts of the case;
- ii) That the petitioner shall put in appearance before the Investigating Officer or the Court as and when directed;
- iii) That the petitioner shall not leave the territory of India without the express permission of the Court, he shall surrender passport, if any, before the investigating agency;
- iv) If the bail petitioner is found to be indulging in similar cases in the future and an FIR is registered against him under the NDPS Act, his bail shall be liable to be cancelled forthwith and the State shall also be at liberty to take steps for seeking preventive detention of the petitioner or send him for rehabilitation, if so required.
- v) The petitioner shall not leave the jurisdiction of the State of Himachal Pradesh without the express permission of the Court and shall keep the Investigating Officer (I.O.), Police Station Bhoranj, District Hamirpur, H.P., informed about his whereabouts on a monthly basis."

17. 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 for the purposes of the disposal of the present petition.

18. The petition stands accordingly disposed of. A copy of this order be sent to the Superintendent, District Jail Hamirpur, H.P. and the learned Trial Court by **FASTER**.

19. Petition stands disposed off in the aforesaid terms, so also the pending miscellaneous applications, if any.

(Chirag Bhanu Singh)
Judge

12th October, 2026
(Shamsh Tabrez)

SHAMSH
TABREZ

Digitally signed
by SHAMSH
TABREZ
Date:
2026.10.12
14:27:00 +0530