

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

Cr.MP(M) No.3006 of 2025

Reserved on:- 31.12.2025

Date of Decision: 05.01.2026

Gaurav Sharma

...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. Bhupinder Singh Ahuja,
Advocate.

For the respondent : Mr. Mohinder Zharaick,
Additional Advocate General,
with Ms. Ranjna Patial and Ms.
Avni Kochhar Mehta, Deputy
Advocates General, assisted by
ASI Rakesh Kumar, Police
Station Sadar Una, District
Una, H.P.

Virender Singh, Judge

By way of the present application, filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), applicant-Gaurav Sharma has sought his release, on bail, during the pendency of the trial, arising out of **FIR No.213 of 2024**, dated **14.07.2024**, registered under **Sections 15 and 29-61-85 of the Narcotic Drugs & Psychotropic Substances Act**

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

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

2. According to the applicant, he is innocent person and has falsely been implicated, in this case.

3. As per the case of the applicant, rigors of Section 37 of NDPS Act, are not applicable, in this case, as nothing has been recovered from him and he has been implicated in this case, on the basis of the confessional statement of the other accused.

4. Investigation, in the present case, is stated to have been completed and police has filed the charge sheet, in this case.

5. It is the further case of the applicant that the story of the police is not confidence inspiring and the statement of the main accused cannot be used in evidence, unless, the same was made in the Court.

6. According to the applicant, there is no legally admissible evidence connecting him, with the crime in question.

7. On the basis of the above facts, the applicant has further pleaded that he has filed the Cr.MP(M) No.7 of 2025, which was dismissed as withdrawn on 07.01.2025. He has

also filed bail application No.383 of 2024, before learned Special Judge-II, Una, District Una, H.P., which was dismissed on 30.11.2024. Thereafter, he has moved another application No.44 of 2025, before the learned Special Judge-II, Una, District Una, H.P., which was also dismissed on 20.02.2025. Thereafter, the applicant has filed the bail application bearing Cr.MP(M) No.1066 of 2025, before this Court, which was again dismissed on 31.07.2025.

8. Apart from this, Mr. Bhupinder Singh Ahuja, 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.

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

10. When, put to notice, the police has filed the status report, disclosing therein, that on 14.07.2024, ASI Vinod Kumar along with other police officials, was on patrolling duty, as well as, to detect the crime relating to excise and narcotics and he was having his personal laptop with printer.

10.1. While on duty, when he was present near Jannat Hotel at Majara, then at about 8:50 PM, he received a secret information that a truck bearing No.HP72C-4761, loaded with narcotic substance being driven by Rahul Sharma is moving towards Nangal from Santoshgarh side. Said Rahul Sharma, is stated to had worn orange coloured T-shirt and green coloured striped lower. The said information was found to be authentic and reliable. As such, compliance of Section 42(2) of NDPS Act, was done and the report was submitted to Superintendent of Police, Una. Thereafter, Ward Panch Kuldeep Singh was telephonically requested to be present on the spot, who reached, at the spot within 20 minutes. He was apprised about the secret information and thereafter, picketing was done. At about 9:15 PM, from Nangal side, as per the secret information, truck No.HP72C-4761, being driven by its driver was found coming from Santoshgarh side. The driver was given signal to stop the same, consequently, he stopped the vehicle on the left side of the road. The truck driver was directed to switch off the engine.

10.2. As per information, the driver was found to be wearing orange coloured T-shirt and green coloured striped

lower. In the presence of the witnesses, his name and address was inquired, then, the truck driver disclosed his name as Rahul Sharma, son of Raman Kumar, R/o village Baas P/o Bhabour Sahib, Tehsil Nangal, District Rupnagar, Punjab. The truck driver was directed to submit the papers to the IO, which, he had produced. As per the documents i.e. Registration Certificate, the said truck was registered in the name of one Darshan Singh, son of Rattan Chand R/o village Dehla, Tehsil and District Una, H.P. The truck driver was apprised about the fact that the police is having the information that narcotic substance has been loaded in the truck, as such, his truck is to be searched.

10.3. On hearing this, the truck driver Rahul Sharma got perplexed and tried to avoid the search of the truck, as such, the suspicion became more probable. The bolt and seals were broken and the rear door of the truck was opened. Inside the truck, near the medicine box, 5 white coloured, sacks were found and on checking, the same were found containing brown coloured substance, which, on checking and on the basis of experience was found to be poppy husk. On weighment, the total poppy husk was

found to be 1 Quintal, 46 Kg.890 grams. All the 5 sacks were sealed with seal AM.

10.4. Other codal formalities were completed and rukka was submitted to Police Station, upon which, FIR in question was registered.

10.5. Initially the investigation was conducted by ASI Vinod Kumar, IO, Police Post Santoshgarh, who has prepared the spot map. Statements of the witnesses were recorded, under Section 180 of BNSS. Thereafter accused Rahul Sharma was inquired and he was arrested at 4:00 PM, on that day. The information regarding his arrest was given to his wife Meena Sharma.

10.6. On 15.07.2024, Special Investigating Team was constituted, under the leadership of Probational Dy.SP. During police remand, accused Rahul Sharma, disclosed that the poppy husk was brought from the Dhaba of Vishnu Vaishnav S/o Bhagwan Dass R/o village and P/o Negria, Police Station, Mangalwad, Tehsil Dungla, District Chitaurgarh, Rajasthan. Rahul Sharma has identified the said place, from where, he had purchased the poppy husk and spot map of the same was prepared. However, accused

Vishnu Vaishnav was not found, as he came to know about the information qua the movement of police party.

10.7. During investigation, accused Rahul Sharma disclosed that he had purchased 60 Kg poppy husk for himself whereas, he has purchased 90 Kg poppy husk for Gaurav Sharma (applicant) and the payment of the same was also made by applicant-Gaurav to Vishnu Vaishnav. As per CDRs, Vishnu Vaishnav, applicant-Gaurav Sharma and Rahul Sharma talk to each other, on their mobile phones, through Whatsapp call, as well as, by way of ordinary calls.

10.8. On 23.07.2024 applicant-Gaurav Sharma was detained and inquired in Police Post Santoshgarh. As per the police, it was found that Gaurav Sharma (applicant) had transported 90 Kg. of Poppy husk through accused Rahul Sharma and it was agreed to pay a sum of Rs.800/- per Kg., as transportation charges to Rahul Sharma.

10.9. During investigation, applicant-Gaurav Sharma also disclosed that he had already paid a sum of Rs.1,00,000/- to Vishnu Vaishnav, through Google Pay and Rs.1,00,000/- through Punjab National Bank, as the amount of poppy husk. As such, according to the police, involvement of applicant-Gaurav Sharma was found in the

sales/purchase of poppy husk, as such, he was arrested, under Section 29 of the NDPS Act.

10.10. On 23.07.2024, bank details of the accused persons were obtained by sending e-mail, under Section 94 of BNSS. On 27.07.2024, from YES Bank and Punjab National Bank, the record was received regarding the account of Gaurav Sharma (applicant) through e-mail. After analyzing the same, it was found that applicant-Gaurav Sharma had transferred a sum of Rs.27,00,000/- within a period of nine months to Vishnu Vaishnav, through UPI transactions. Regarding this, applicant-Gaurav Sharma could not disclose the specific reasons. The details of the payments, were obtained, which are mentioned in the status report and have been reproduced, as under:-

Sr. No.	Date	Amount transferred (Rs).	Payment to
1	06.05.2024	Rs.1,00,000/-	VAISHNAVVISHNU085-1@OKHDFCBANK/ UPI
2	24.04.2024	Rs. 90,000/-	-do--
3	19.04.2024	Rs. 1,00,000/-	-do--
4	17.04.2024	Rs. 1,00,000/-	-do--
5	15.04.2024	Rs. 1,00,000/-	-do--
6	10.03.2024	Rs. 1,00,000/-	-do--
7	08.03.2024	Rs. 50,000/-	-do--
8	17.02.2024	Rs. 99,000/-	-do--

9	04.02.2024	Rs. 15,000/-	-do--
10.	30.01.2024	Rs. 1,00,000/-	-do--
11.	19.01.2024	Rs. 70,000/-	-do--
12.	17.01.2024	Rs. 90,000/-	-do--
13.	17.12.2023	Rs. 1,00,000/-	-do--
14	16.12.2023	Rs. 98,000/-	-do--
15.	15.12.2023	Rs. 98,000/-	-do--
16.	14.12.2023	Rs. 1,00,000/-	-do--
17.	13.12.2023	Rs. 70,000/-	-do--
18.	05.12.2023	Rs. 50,000/-	-do--
19.	1.12.2023	Rs. 90,000/-	-do--
20	28.11.2023	Rs. 90,000/-	-do--
21	27.11.2023	Rs. 90,000/-	-do--
22	25.11.2023	Rs. 90,000/-	-do--
23	19.11.2023	Rs. 70,000/-	-do--
24	17.11.2023	Rs. 50,000/-	-do--
25	15.11.2023	Rs. 70,000/-	-do--
26	14.11.2023	Rs. 80,000/-	-do--
27	27.11.2023	Rs. 80,000/-	-do--
28	5.11.2023	Rs. 50,000/-	-do--
29	28.10.2023	Rs. 30,000/-	-do--
30	9.10.2023	Rs. 90,000/-	-do--
31	28.09.2023	Rs. 20,000/-	-do--
32	21.09.2023	Rs. 50,000/-	-do--
33	14.09.2023	Rs. 40,000/-	-do--
34	05.09.2023	Rs. 6,000/-	-do--
35	18.08.2023	Rs. 30,000/-	-do--
36	13.08.2023	Rs. 25,000/-	-do--
37	06.08.2023	Rs. 80,000/-	-do--
38	06.08.2023 to 06.05.2024 Total	Rs. 26,61,000/-	

10.11. On 30.07.2024, positive report has been received from SFSL Junga. When, the applicant-Gaurav Sharma was arrested and his mobile phone was also taken into possession. The data was found to be deleted from this mobile phone, as such, the same was sent to RFSL for retrieving the data, as well as, to obtain the IPDR.

10.12. During investigation, Whatsapp photographs of the mobile phone of Rahul Sharma, bearing Mobile No.623073642, were obtained. The CDRs and customer application form of the mobile phone number of Gaurav Sharma (applicant) bearing Mobile No.8285329569 were obtained. On analyzing the same, it was found that accused Rahul Sharma and applicant-Gaurav Sharma were talking to each other, through Whatsapp calls. On the day, i.e. on 14.07.2024, when accused Rahul Sharma was nabbed with poppy husk, then, in the intervening night of 13/14.07.2024, they had made calls with each other. Mobile phone of Gaurav Sharma (applicant) was saved, under the name Gora B.

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

12. As stated above, the bail application of the applicant has already been dismissed on merit, by this Court on 31.07.2025, however, the present application has been filed on the basis of alleged changed circumstances.

13. It is not in dispute that the contraband, so recovered, in the present case, falls within the definition of 'commercial quantity'.

14. Once, it has been held that the commercial quantity of contraband is involved, then, before releasing the applicant in such case, it is incumbent upon this Court to record findings with respect to the existence of twin conditions, as enumerated, under Section 37 (1)(2) of the NDPS Act.

15. The Hon'ble Supreme Court in a case titled as, **'Narcotics Control Bureau versus Kashif', Citation No. 2024 INSC 1045**, in **Criminal Appeal No. 5544 of 2024** has elaborately discussed the provisions of Section 37 of NDPS Act and has held that before releasing the applicant, on bail, involving the commercial quantity, it is incumbent upon the Court to record the findings, which should be prima-facie findings about the twin conditions, as enumerated under Section 37(1)(b) of the NDPS Act, that the

accused has not committed the offence and while, on bail, he will not commit any offence. Without the satisfaction of these twin conditions, as per Section 37(1)(b), of the NDPS Act, the accused involved in the commercial quantity, cannot be released on bail. 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)

16. In view of law laid down by Hon'ble Apex Court, in **Kashif's** case *supra*, now this Court would proceed to decide, whether, the twin conditions, as enumerated by the Act, are existing in favour of the applicant. It is no longer *res-integra* that the Court before releasing the applicant, on

bail, involving commercial quantity must record the findings about the existence of those conditions, which should be more than are prima-facie findings.

17. As per the stand taken by the police in the status report, the involvement of the applicant has been found in the present case, on three counts, firstly that his co-accused-Rahul Sharma, during investigation has disclosed to the police that he had purchased 60 Kg poppy husk for himself and 90 Kg poppy husk for applicant-Gaurav Sharma. In addition to this, he has also disclosed that the value of 90 Kg poppy husk was paid by the applicant-Gaurav Sharma to accused Vishnu Vaishnav. When the said disclosure statement was made, the same cannot be taken into consideration, as held by the Hon'ble Supreme Court in **'Tofan Singh versus State of Tamil Nadu'** reported in (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."

18. As such, the alleged confessional statement made by the accused-Rahul Sharma, is liable to be discarded, at this stage.

19. The involvement of the applicant has also been pleaded to be found on the ground that the accused-Vishnu Vaishnav, Gaurav Sharma and Rahul Sharma, were found to be in contact with each other, through their mobile phones, by Whatsapp and ordinary calls. At the stage of deciding the bail application, much reliance can be placed of the above facts as Hon'ble Supreme Court in a case titled as ***State by (NCB) Bengaluru versus Pallulabid Ahmad Arimutta and Anr.***, reported in 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 Nadu⁶, 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 6 (2021) 4 SCC 1 Page 9 of 12 2022 Live Law (SC) 63 Petition for Special Leave to Appeal (Criminal) No. 1569 OF 2021 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)

20. Admittedly, there are telephonic calls between the accused persons in the present case and recording of the same has not been made by the police.

21. 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

22. The involvement has allegedly been found on the ground that on 23.07.2024 applicant-Gaurav Sharma was

detained and inquired, then, it was found that the Gaurav Sharma (applicant) purchased 90 Kg. poppy husk from Vishnu Vaishnav for a sum of Rs.2,00,000/- and the same was transported, through accused Rahul Sharma, to whom, he had allegedly agreed to pay transportation charges @ Rs.800/- per Kg. The amount of Rs.1,00,000/- was allegedly paid through Google pay and Rs.1,00,000/- through Punjab National Bank. His involvement has also been stated to be found on the basis of the bank statements, according to which, during the period of nine months, applicant-Gaurav Sharma has transferred Rs.27,00,000/- within a period of nine months to Vishnu Vaishnav, through UPI transactions and the applicant could not put forward any explanation, qua the said transactions.

23. In view of transactions, as discussed above, this Court is of the view that the findings cannot be recorded, at this stage that the accused is not guilty of the such offence and while on bail, he may not commit any offence. In the absence of such findings, no relief of bail can be granted to the applicant. Hence, the present application is dismissed.

24. 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.

(Virender Singh)
Judge

January 05, 2026
(subhash)