

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. : 67 of 2026

Reserved on : 24.02.2026

Decided on : 26.02.2026

Vishnu Das Vaishnav

...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. Anshul Jairath, Advocate.

For the respondent : Mr. Tejasvi Sharma & Mr. H.S.
Rawat, Additional Advocates
General.

Virender Singh, Judge

Applicant-Vishnu Das Vaishnav, has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as the 'BNSS'), seeking the relief of 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 of the Narcotic Drugs and Psychotropic Substances Act,**

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

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

2. According to the applicant, he is an innocent person and has been named, in the said case, mainly, on the basis of false allegations, made by his co-accused Rahul Sharma and Gaurav Sharma.

4. The applicant has further pleaded that he has no connection whatsoever with the above two accused and his name has wrongly been added in this case with an ulterior motive to implicate him. The applicant is stated to have been named, as accused, in this case, without any substantive evidence.

5. It is the further case of the applicant that he is from respectable family and having deep roots in the society. The applicant is stated to be an agriculturist by profession and is also running a small Dhaba.

6. It is the further case of the applicant that earlier, apprehending his arrest, he has approached this Court, by filing Cr.MP(M) No.95 of 2025, which was dismissed as withdrawn on 10.01.2025. Thereafter, the applicant has again filed similar application, which was

dismissed on 08.07.2025. Thereafter, the petitioner was arrested on 26.09.2025.

7. Apart from this, Mr. Anshul Jairath, learned counsel 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.

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

9. When put to notice, the police has filed the status report, disclosing therein, that on 14th July, 2024, ASI Vinod Kumar, along with other police officials, was on patrolling duty and duty to put picketing, in order to detect crime relating to excise and narcotics.

9.1. When, the said police party, under the leadership of ASI Vinod Kumar, was present near Jannat Hotel, Una, then, a secret information has been received by the I.O., that a truck bearing No.HP72C-4761, in which, the contraband is loaded, being driven by its driver, is coming from Nangal to Santokhgarh side. The name of the driver was disclosed as Rahul Sharma, who, as per the

information, has worn orange colour T-shirt and green colour lower.

9.2. The said information was found to be authentic and reliable. As such, the compliance of Section 42(2) of NDPS Act was made by the I.O., and submitted to the superior officer.

9.3. Thereafter, the local Ward Member Kuldeep Singh, was telephonically apprised about the secret information and requested to come to the spot. After about, 20 minutes, the said Ward Member, Kuldeep Singh came there and he was associated in the picketing, after apprising him about the secret information, which the I.O. had received.

9.4. At about 9.15 p.m., from Nangal side a truck bearing registration No.HP72C-4761, as per the information, came there. The I.O. has given the signal to stop. Consequently, the driver stopped the truck on the left side of the road. The truck driver found to have worn orange T-shirt and green colour lower.

9.5. In the presence of the witnesses, name of the truck driver was enquired, upon which, he had disclosed

his name as Rahul Sharma, son of Shri Raman Kumar. On demand, the driver produced the registration certificate of the vehicle and his driving licence. As per the registration certificate, the said truck was found to be registered in the name of Darshan Singh son of Shri Rattan Chand.

9.6. The driver was also apprised about the secret information, which the I.O. had received, and as such, intention of the I.O., to search the same has been conveyed to him. On hearing this, the truck driver became perplexed and shown his reluctance to get the truck searched. Hence, the I.O. became certain. As such, in the presence of the witnesses the seal and bolt of the truck were opened.

9.7. On opening, five boxes of medicines, five white coloured sack were found in the truck. On opening, the five sack, brown colour substance was found, which, on the basis of the experience, was found to be poppy husk/poppy straw. On weighment, the poppy husk, was found to be 1 quintal, 46 kilograms and 890 grams.

9.8. Other codal formalities were completed and after registration of the FIR, accused was arrested.

Thereafter, on 15.7.2024, he was produced before the Court, where proceedings under Section 52 of the NDPS act, were got conducted. Thereafter, further investigation was handed over to SIT, which was constituted under the leadership of probationary Dy.SP.

9.9. During police remand, accused Rahul Sharma, disclosed that he had brought the poppy husk from the Dhaba of Vishnu Vaishnav son of Shri Bhagwan Dass, resident of Village and Post Office Negadiya, Tehsil Dungla, District Chittaudgarh, Rajasthan (applicant).

9.10. Consequently, Dhaba of applicant was got identified by accused Rahul Sharma. Spot map was prepared, however, accused Vishnu Vaishnav, was not found there as he was found to be absconded. During investigation, accused Rahul Sharma disclosed that he has brought 60 kilograms of poppy husk for himself and 90 kilograms for Gaurav Sharma, payment of which has been made by Gaurav Sharma to Vishnu Vaishnav.

9.11. As per the CDRs of Vishnu Vaishnav, Gaurav Sharma and Rahul Sharma, they were found to be in contact with each other, through Whatsapp and normal

calls. On 23.07.2024, accused Gaurav Sharma was associated in the investigation and was arrested on the ground that Gaurav Sharma has disclosed to the Police that in order to purchase poppy husk, he has transferred a sum of Rs.1,00,000/-, through Googlepay. Thereafter, on 23.07.2024, the bank statements of the accused persons were obtained from their banks.

9.12. On perusal, it was found that accused Gaurav Sharma, in the period of about nine months, had transferred a sum of Rs.27,00,000/- in the account of Vishnu Vaishnav (applicant), through UPI transaction.

9.13. It is the further case of the police that when applicant Vishnu Vaishnav, could not be nabbed, then the proceedings under Section 84 of BNSS were initiated against him and on 27.06.2025, the proceedings to declare him as proclaimed offender, were initiated. Thereafter, the applicant was arrested by Police of Police Station Sadar Gurugram, Haryana and was produced before the learned Sessions Judge, Una, from where, he was remanded to the police custody from 26.09.2025 to 30.09.2025. Thereafter, on 30.09.2025, he was remanded to the judicial custody.

9.14. It has also been mentioned, in the status report, that the investigation, in the present case, is complete and the final report has been filed in the Court of learned Sessions Judge, Una, on 16.12.2025, which was listed on 18.02.2026. It has also been apprehended that the applicant is a clever person and may flee from justice, in case, he is enlarged on bail.

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

11. In this case, learned counsel appearing for the applicant has sought the relief of bail on the ground that the involvement of the applicant has been found on the basis of the alleged disclosure statement made by accused Rahul Sharma and Gaurav Sharma. According to the learned counsel for the applicant, the said disclosure statement is not admissible in law.

12. Admittedly, the said disclosure statement cannot be taken into consideration, however, the involvement of the applicant is not only on the basis of the disclosure statement as the said fact can be said to be a clue to the police to investigate the matter further. It

cannot be expected from the police that they will possess divine sight. They have to proceed further in the investigation of the case, even on the alleged disclosure, made by the other accused, during investigation.

13. Similarly, the CDRs can also be ignored, at this stage, to connect the accused with the crime in question, but, when, the police found huge transactions of about Rs.27,00,000/- between the Gaurav Sharma with the applicant, then the said transactions cannot be ignored.

14. The applicant is resident of Rajasthan, whereas, accused Gaurav Sharma, is resident of Roopnagar (Punjab). Whatsoever defence, which has been highlighted by the learned counsel for the applicant qua his alleged business, would be proved or probabilized during the evidence.

15. In case, the police will not be able to find further involvement of the accused, on the basis of the huge transactions, between the applicant and accused Rahul Sharma, then certainly, the alleged disclosure would be nothing, but inadmissible evidence.

16. As such, the stand taken by the police, in the status report, that accused Gaurav Sharma, had transferred a sum of Rs.27,00,000/-, within a short period of nine months, to the account of applicant Vishnu Vaishnav, is a fact, which assumes significance, as according to accused Rahul Sharma, he has brought 90 kilograms poppy husk for accused Gaurav Sharma and payment of the same was made by accused Gaurav Sharma to applicant Vishnu Vaishnav.

17. The applicant, in the present case, has been arrested, under the provisions of NDPS Act. The legislature, in its wisdom, has enacted this statute to curb the menace of drug abuse with stringent punishment. Certain conditions are there, in the NDPS Act, in the shape of Section 37 of NDPS Act, which are, in addition to the conditions, as contained in Section 483 of the BNSS. Before releasing a person on bail, those conditions, as enumerated under Section 37 of the NDPS Act, are to be fulfilled, if the accused has been arrested for the offence, involving 'commercial quantity' of contraband. Contraband,

i.e., 1 quintal, 46 kilograms and 890 grams of poppy husk (Bhukki), falls within the definition of commercial quantity.

18. Once, it has been held that the contraband allegedly recovered, in the present case, falls in the category of 'commercial quantity', as per the Notification issued by the Central Government, then, the rigors of Section 37 of the NDPS Act come into play.

19. 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, in a case, where, the accused, involving the commercial quantity of contraband, seeks his release on bail. Relevant paragraphs 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 sub-section (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. Ahmadalieva 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.”

20. The Hon'ble Supreme Court in a case, ***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 ***Mohit Aggarwal***'s case (supra). 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)

21. In view of the above, there is nothing on record to give an occasion for this Court to hold that the twin conditions, as enumerated, in Section 37 of the NDPS Act, are in favour of the applicant, in the present case.

22. Considering all these facts, this Court is of the view that the applicant is not able to make out a case, on the basis of which, it can be said that the applicant is not guilty of such offence and in case, he is ordered to be released, on bail, he is not likely to commit any offence. As such, in the absence of the satisfaction of the twin conditions, the applicant is not held entitled to any relief, under Section 483 of the BNSS. Consequently, the bail application is dismissed.

23. 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

February 26, 2026 *(ps)*