

(2026) 03 SHI CK 0657

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 137, 182, 222 Of 2026

Sachin Agnihotri And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 06-03-2026

Acts Referred:

Constitution Of India, 1950 — Article 14, 20(3), 21
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 22, 29, 38, 42, 53, 67
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 482
Evidence Act, 1872 — Section 25
Code Of Criminal Procedure, 1973 — Section 436, 436A

Citation : (2026) 03 SHI CK 0657

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Sunil Mohan Goel, Kavinder K. Singla, Nitin Bhasin, Tarun Sharma, Rajan Kahol, Vishal Panwar, Anish Banshtu, Vipan Kumar

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Sequel to orders dated 30.01.2026, 10.02.2026 and 19.02.2026, whereby this Court enlarged the bail- petitioners on interim bail in case FIR No.301 dated 05.12.2025 under Sections 22 and 29 of ND & PS Act, registered at PS Baddi, District Solan, HP, respondent/State has filed status report and SI Vipan Kumar has come present with record. Record perused and returned.

2. Close scrutiny of status report/ record reveals that on 05.12.2025, police, after having received secret information to the effect that person namely Prajwal Sharma, R/o Village Malookmajra, Morphin Road, near Bharat Petrol Pump, Baddi, indulge in illegal trade of narcotics, constituted a raiding party and allegedly recovered 360 bottles of Syrup namely Zing Cirex-T containing Triprolidine Hydrochloride and Codeine Phosphate Syrup in the presence of

independent witnesses. Out of aforesaid 360 bottles, 14 bottles were having label of CSD Life sciences, whereas the remaining bottles were without any label. Since no plausible explanation ever came to be rendered on record qua possession of aforesaid bottles of cough syrup containing narcotic substance i.e. codeine phosphate, police, after having completed necessary codal formalities, lodged FIR detailed hereinabove against Prajwal Sharma, who allegedly during investigation disclosed that accommodation in which he along with Pardeep resides, is in the name of CSD Life Sciences. He also disclosed to the Police that bottles recovered from him were stacked by the co-accused Pardeep on the askance of owner of CSD Life Sciences namely Vishal. On the basis of aforesaid statement given by the Prajwal Sharma, Police arrested Pardeep, whereas owners of CSD Life Sciences namely Vishal and Sachin along with Production Manager Alok Dhar Dwivedi, approached the Court of learned Sessions Judge, Solan, by way of bail petition filed under Section 482 Bharatiya Nagrik Suraksha Sanhita for grant of anticipatory bail. However, same were dismissed. In the afore background, above named persons have approached this Court in the instant proceedings for grant of interim bail.

3. Vide orders dated 30.01.2026, 10.02.2026 and 19.02.2026, this Court, enlarged the bail-petitioners on interim bail subject to condition that they shall join investigation. Since bail-petitioners have already joined the investigation and nothing remains to be recovered from them, prayer has been made on their behalf for confirmation of interim bail granted vide orders dated 30.01.2026, 10.02.2026 and 19.02.2026.

4. Mr. Rajan Kahol, learned Additional Advocate General, on instructions of Investigating officer, states that though nothing remains to be recovered from the bail- petitioners, but they have not disclosed information with regard to production of 360 bottles, which were otherwise found to be manufactured in excess as per record and were recovered from the room of co-accused Prajwal Sharma. Mr. Kahol states that as per record of CSD Life Sciences, 360 bottles were not manufactured there, rather all the drugs manufactured in CSD Life Sciences were sent to Kanpur. He states that Investigation Agency has yet to find out from where 360 bottles in excess to particular batch were prepared and why they were lying in the room hired by the CSD Life Sciences. He states that though 360 bottles containing narcotic substance were not recovered from the conscious possession of the bail-petitioners, but they, being owner as well as Production Manager, are liable to the prosecuted under Section 38 of ND & PS Act. He states that as per forensic report, all the bottles recovered from the room of employee of CSD Life Sciences contained prohibited drug name Codeine Phosphate. He states that otherwise also, during risk based inspection conducted by three Drug Inspectors, certain irregularities were found, as a result thereof, factory of CSD Life Sciences stands closed. He states since bail-petitioners have indulged in heinous crime having an adverse impact on the society, they do not deserve any leniency, as such, their prayer for confirmation of bail may be rejected.

5. Having heard learned counsel for the parties and perused material available on record, this Court finds that 360 bottles of Syrup namely Zing Cirex-T containing Triprolidine Hydrochloride and Codeine Phosphate were never recovered from the factory premises of CSD Life Sciences, rather same were recovered from the room of an employee namely Prajwal Sharma, who alleged that these bottles were stored by him as well as co-accused Pradeep on the askance of the partner of the company namely Vishal. It is also not in dispute that during investigation, police found that entire bulk of drug manufactured in the premises of the CSD Life Sciences was sent to Kanpur as per invoice and there is no record, if any, of 360 bottles recovered from the room of co-accused Prajwal Sharma.

6. In nutshell, case of the prosecution is that since there is no record of 360 bottles recovered from the room of co-accused Prajwal Sharma, coupled with the fact that Prajwal Sharma and Pardeep are the employees of CSD Life Sciences, bail-petitioners, being owner and Production Manager, have to answer the question that as to why and in what circumstances 360 bottles of Syrup containing Codeine Phosphate were manufactured in the premises of CSD Life Sciences and thereafter how the same were removed from factory premises to the room of co-accused Prajwal Sharma and Pardeep. True it is that room, from which co-accused Prajwal Sharma was apprehended, was taken on lease in the name of CSD Life Sciences, but such fact, if any, may not be sufficient to conclude the complicity, if any, of the owner as well as the Production Manager. Interestingly, in the case at hand, 14 bottles out of 360 bottles were having label of CSD Life Sciences, whereas remaining 346 bottles were without any label. "Whether such bottles were manufactured in the premises of CSD Life Sciences is a question to be decided by the learned trial Court in totality of evidence collected on record by the prosecution?"

7. Leaving everything aside, once it is not in dispute that contraband involved in the case was not recovered from the conscious possession of the bail-petitioners, rather same was recovered from the possession of co-accused Prajwal Sharma and Pardeep, no case much less case under Section 22 of ND & PS act is made out against the bail-petitioners, who otherwise have been roped in on the basis of confessional statement made by the co-accused Prajwal Sharma.

8. Hon'ble Apex Court in case Tofan Singh v. State of Tamil Nadu (2021) 4 SCC 1, has categorically held that statement, if any, made under Section 67 of the ND & PS Act, is inadmissible and same cannot be used as confessional statement in the trial of an offence under ND & PS Act. Relevant para of the aforesaid judgment reads as under:

"155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under section 42 or section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156. The judgment in Kanhaiyalal (supra) then goes on to follow Raj Kumar Karwal (supra) in paragraphs 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

157. On the other hand, for the reasons given by us in this judgment, the judgments of Noor Aga (supra) and Nirmal are correct in law.

158. We answer the reference by stating:

(i) 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.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

9. The Hon’ble Apex Court in case titled State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta and Anr, Special Leave to Appeal (Crl) No. 242 of 2022 (arising out of diary No. 22702 of 2020) decided on 10.1.2022, again reiterated that confessional statement recorded under Section 67 of the ND & PS Act, will remain inadmissible in the trial of an offence under the Act. Hon’ble Apex Court in this case upheld the order/judgment passed by the High Court of Karnataka granting bail to the accused arrested by the petitioner NCB on the basis of confessional/voluntary statement of the co-accused under Section 67 of the ND & PS Act. Apart from above, Hon’ble Apex Court in the aforesaid judgment has held that CDR of some of the accused or the allegations of tempering of evidence on the part of the respondents is an aspect that will be examined at the stage of the trial.

10. True, it is that keeping in view the commercial quantity of contraband recovered in the case at hand, rigours of Section 37 of ND & PS Act are attracted but that does not mean that this court is estopped from enlarging the bail petitioners on bail in the case at hand. Bare perusal of Section 37 of ND & PS Act clearly reveals that there is no complete bar for the court to grant bail in the cases involving commercial quantity, but court while doing so, at the first instance is required to provide adequate opportunity of being heard to the public prosecutor and thereafter, if it has reason to presume and believe that the person, seeking bail, has been falsely implicated and there is no likelihood of his indulging in such activities again, it can proceed to grant bail in cases involving commercial quantity of contraband. Though, aforesaid aspect of the matter is required to be considered and decided by learned trial court, in the totality of evidence collected on record by investigating agency, but keeping in view of the fact that contraband was not recovered from the conscious possession of the bail-

petitioners and they have been arraigned as accused on the statement of co-accused, this court sees no reason to let the bail petitioners incarcerate in jail for an indefinite period during trial, especially when nothing remains to be recovered from the bail petitioner.

11. Since bail-petitioners have already joined the investigation and nothing remains to be recovered from the bail-petitioners, there appears to be no justification for custodial interrogation of the bail-petitioners, rather they can be bound down to make themselves available for investigation, as and when required by the Investigating Agency.

12. By now it is well settled that freedom of an individual is of utmost importance and cannot be curtailed for indefinite period. Till the time guilt of accused is not proved, in accordance with law, he is deemed to be innocent. In the case at hand, the guilt, if any, of the bail petitioners is yet to be proved, in accordance with law.

13. The Hon'ble Apex Court in Criminal Appeal No.227/2018, Dataram Singh vs. State of Uttar Pradesh & Anr decided on 6.2.2018 has categorically held that freedom of an individual is of utmost importance and same cannot be curtailed merely on the basis of suspicion. Hon'ble Apex Court has further held that till the time guilt of accused is not proved, in accordance with law, he is deemed to be innocent. The relevant paras No.2 to 5 of the judgment are reproduced as under:-

2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an

accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in *In Re-Inhuman Conditions in 1382 Prisons* .

14. Needless to say, object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

15. The Hon'ble Apex Court in *Sanjay Chandra versus Central Bureau of Investigation* (2012)¹ Supreme Court Cases 49; held as under:-

"The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India , it would be quite contrary to the concept of personal liberty enshrined in

the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson.”

16. The Hon’ble Apex Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee and Another* (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

17. Consequently, in view of the above, orders dated 30.01.2026, 10.02.2026 and 19.02.2026 passed by this Court, are made absolute, with following conditions:-

- a. they shall make themselves available for the purpose of interrogation, if so required and 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. they shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- c. they shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or the Police Officer; and
- d. they shall not leave the territory of India without the prior permission of the Court.

18. It is clarified that if the petitioners misuse their liberty or violate any of the

conditions imposed upon them, the Investigating Agency shall be free to move to this Court for cancellation of the bail.

19. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of these applications alone.

20. The bail petitions stand disposed of accordingly.

The petitioners are permitted to produce copy of order downloaded from the High Court website and the trial Court shall not insist for certified copy of the order, however, it may verify the order from the High Court website or otherwise.