



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP No. 2782 of 2025
in
Cr. Appeal No. 352 of 2025
Reserved on: 17.7.2026
Date of decision: 11.8.2026
Uploaded on: 11.8.2026

Dinesh Kumar. **...Applicant/Appellant.**

Versus

State of H.P. **...Respondent.**

Corum
Hon’ble Mr. Justice Vivek Singh Thakur, Judge.
Hon’ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting?¹

For the Applicant. ***Mr.Vivek Chandel, Advocate.***

For the Respondent: ***Mr.J.S. Guleria, Deputy Advocate General.***

Vivek Singh Thakur, Judge

Applicant/applicant has filed this application for enlarging him on bail by suspending sentence, including fine amount awarded to him for his conviction vide judgment dated 30.10.2024, passed by Special Judge-

¹***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

II Kinnaur at Rampur Bushahr, District Shimla, H.P. in case CIS Regd. No. NDPS/26/2023, titled as State of H.P. Vs. Khem Raj and others, in case FIR No. 12/2023, registered in Police Station Brow, District Kullu, H.P. under Sections 20 and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act').

2. Learned counsel for the applicant, referring GD entry No. 008 dated 22.2.2023 recorded at 10:43 A.M. (Ex. P2/PW6) has submitted that contents of this GD entry clearly depicts that Police party was having prior information and, therefore, compliance of Section 42 of the NDPS Act was mandatory, but the prosecution/Investigating Officer has failed to comply with provisions of Section 42 of the NDPS Act, which is fatal for the prosecution case and thus on this count applicant/appellant is definitely going to be acquitted and, therefore, he at least, deserves for suspension of sentence at this stage.

3. It has been submitted that in GD entry report, the purpose for departure of the Police party to lay nakabandi as 'Khufia Suragh Barari of madak padarth'. Therefore, he has contended that there was a prior information about commission of offence related to narcotic drug and, therefore, non-compliance of provisions of Section 42 of the NDPS Act is fatal for prosecution.

4. It has been contended that in NCB Form (Ex. P4/PW8), column No. 7 is blank and it has been admitted by the Investigating Officer

PW13 Inspector Inder Singh that said column is blank and this fact has also been admitted by PW12 SI Pushp Dev, the then SHO Police Station Braw, who had filled column No. 9 to 10. It has been further stated that contraband was handed over by PW13 Inspector Inder Singh to PW14 ASI Ramesh Chand, who is second Investigating Officer, who, according to prosecution case, took the contraband alongwith other documents to the Police Station and produced the same before PW12 SI Pushp Dev, the then SHO for re-sealing. It has been submitted that no memo of re-sealing has been prepared or produced in the Court and, therefore, link witness regarding re-sealing and handing over the re-sealed contraband with MHC is missing and, therefore, break in link entitles suspension of sentence awarded to the applicant/appellant.

5. It has been further submitted that PW5 Smt. Utra Devi, an independent witness, who was Ward Panch in the concerned Panchayat, has not supported the prosecution case and was declared hostile and, therefore, the prosecution story has become doubtful and on this count also applicant/appellant is entitled for suspension of sentence.

6. Referring statements of PW6 Constable Baban Singh, it has been submitted that in case there was no prior information of transporting contraband in the vehicle, the Police party was expected to search entire vehicle as well as person of accused, but Police party did not do so and after recovery of alleged contraband from the vehicle, the said vehicle was

not checked thoroughly which is unexpected from the Police party and it also creates doubt about the prosecution story.

7. It has been further submitted that PW6 Constable Baban Singh has admitted in his cross-examination that six seals of impression 'M' were broken.

8. It has been submitted that as per prosecution case, case property was handed over to MHC after re-sealing, but there is no corresponding entry in the Malkhana register.

9. Plea of the applicant that 'khufia Suragh Barari' means prior information of the offence is misconceived. The word Suragh Barari or 'Sugaagh Baraari' is a Persian origin Urdu and Hindi phrase, which means investigation/research or the act of tracking and tracing. It stems from the root word Suraagh, which means clue, trace or footprint and is often used in a detective or police context. Therefore, Suragh Barari does not mean the prior information of commission of offence. It is general search or endeavour to obtain secret information apprehending possibility of commission of offence at some place or area. It is not specific information disclosing that person 'A' and 'B' or 'C' is committing the offence under NDPS Act by selling/supplying or transporting the contraband in a particular manner which may be through vehicle or otherwise and on receiving such specific information from informer or reliable source that 'A' or 'B' or 'C' or ABC were transporting contraband in vehicle XYZ and

are coming from station S1 to S2 at a probable time, it shall be a specific prior information in which case compliance of Section 42 of the NDPS Act shall be mandatory.

10. However, in present case, it is apparent that there was no specific prior information but the Police party was leaving the Police Station for inquiry, investigation, research, tracking or tracing regarding commission of offence related to narcotic drug, meaning thereby Police party was on patrolling for getting clue, trace or foot print of commission of offence related to NDPS Act.

11. Though PW-5 Smt. Utra Devi has been declared hostile, however in her examination-in-chief she has corroborated the presence of Police, accused as well as her presence on 22.2.2023 at 7:00 P.M. on the spot with further disclosure that she had arrived on the spot on receiving telephonic call made by Police with request to reach on the spot. She has admitted that her signatures were taken by the Police on papers. She has further stated that she cannot tell that from which vehicle charas was recovered. This witness has admitted her signatures on the documents and she has also corroborated presence of Police party, accused and vehicles on the spot at relevant date and time.

12. As per prosecution story PW13 Inspector Inder Singh handed over the case property to PW14 ASI Ramesh Chand, therefore, there was no dispatch of the contraband to the Police Station by PW13

Inspector Inder Singh, rather he had handed over the contraband to PW14 ASI Ramesh Chand, who went to Police Station alongwith case property and produced the parcel for re-sealing before PW12 SI Pushap Dev. In such eventuality, whether column No. 7 was required to be filled or not, is again a debatable issue.

13. PW3 Constable Devender handed over parcel to PW14, who inturn produced it before the SHO for re-sealing, therefore, PW13 First Investigating Officer did not dispatch the contraband to Police Station, thus there was no occasion for him to record date and time of sending contraband to the Police Station. In absence of any question put to this witness regarding blank column No. 7, the opportunity to explain the fact on record on query raised by the defence, has been denied.

14. Ex. P6/PW8 is GD entry, wherein it has been clearly stated that PW13 Inspector Inder Singh ANTF Kullu had handed over the parcel to Second Investigating Officer, but not to SHO and Second Investigating Officer had produced the same at 1:50 A.M after arrest of accused at 12.45 A.M. and alongwith documents, parcel was placed before PW12 SI Pushap Dev for re-sealing. GD entry Ex. P1/PW8 is with respect to compliance of all necessary formalities after receiving contraband alongwith documents by PW12 SI Pushap Dev from PW14 ASI Ramesh Chand. GD entry No. 12 (Ex. P8/PW8) is a link evidence with respect to contraband which was taken to CJM Rampur for conducting proceedings

with reference to Section 52A of the NDPS Act. Sending of contraband to State Forensic Laboratory has been depicted in GD entry No. 004 (Ex. P9/PW8) and registration of FIR Ex.P1/PW12 is also corroborating the prosecution case.

15. The fact that independent witness was declared hostile for not supporting the prosecution case, the entire prosecution case does not shatter as on the basis of reliable, cogent and convincing evidence of Police Officials only, a person can be convicted.

16. Deposit of case property after re-sealing in Malkhana has been duly reflected in the relevant GD entry.

17. No enmity of Police party with applicant has been established on record. Therefore, taking into consideration the entire material on record and judgment passed by the Trial Court, it appears that there is no fair chance of acquittal on the grounds raised by the counsel for the applicant/appellant.

18. Observation made in this application shall be confined for the purpose of adjudication of this application only and it shall not be precedent or findings to be relied upon in collateral proceedings. Each case for suspension of sentence has to be heard and decided on the basis of material before the Presiding Officer.

19. In view of aforesaid discussion, we are of the considered opinion that at this stage, applicant/appellant is not entitled for suspension of sentence and accordingly, the application is dismissed.

**(Vivek Singh Thakur),
Judge.**

**(Ranjan Sharma),
Judge.**

**11th August, 2026
(Keshav)**