

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.MP No. 1065/2025 in
Cr. A. No. 188/2024

Reserved on: 20.12.2025

Decided on: 31.12.2025

Satish Kumar

.....Appellant/Applicant

Versus

State of Himachal Pradesh

....Respondent/Non-applicant

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the Appellant/Applicant: Mr. Bhupinder Singh Ahuja, Advocate.

For the Respondent: Ms. Sharmila Patial, Addl. A.G.

Romesh Verma, Judge

This order shall dispose of the present application filed by the appellant\applicant for suspension of execution of the judgment of conviction and order of sentence dated 11.1.2024 and 18.1.2024 respectively as passed by the learned Special Judge, Hamirpur, H.P., whereby the applicant has been convicted and sentenced to undergo rigorous imprisonment for

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

10 years and also to pay a fine of Rs.1,00,000/- for commission of offences punishable under Sections 21 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for brevity, “the Act”).

2 In the application, it has been averred that the applicant has undergone three years and nine months of his sentence, which is more than 1/3rd of total sentence awarded to him. Further, it has been averred that the applicant is first time offender and no other criminal case is pending against him. Therefore, under such circumstances, sentence as passed by the learned Special Judge may be suspended during the pendency of the appeal.

3 On the other hand, present application has been strongly opposed by the respondent/State by filing a detailed reply, wherein it has been categorically stated that the learned Special Judge, after appreciating oral as well as documentary evidence, has rightly passed the judgment of conviction and sentence against him and no interference is required in the present proceedings and the present application is abuse of process of law and, thus, is liable to be rejected.

4 We have heard Mr. Bhupinder Singh Ahuja, Advocate, appearing for the applicant and Ms. Sharmila Patial, learned

Additional Advocate General, for the respondent/State and have also gone through the material available on record.

5 It is submitted by the learned counsel for the applicant that there is violation of Section 42 of the Act. According to him, since there is non-compliance of mandatory provisions of the Act, therefore, sentence as passed by the learned Special Judge deserves to be suspended during the pendency of the appeal. He has further submitted that there are material contradictions and inconsistencies in the statements of the prosecution witnesses, therefore, the story, as projected by the prosecution, is doubtful and the present application, under such circumstances, deserves to be allowed. Lastly, he has submitted that the prosecution has failed to lead evidence so as to come to the definite conclusion that what was the colour of the substance alleged to have been recovered from the applicant.

6 In support of above submissions, learned counsel for the applicant has taken us to the statement of PW4 HHC Rajesh Kumar, whereby PW4 has deposed that the accused persons, Satish Kumar (applicant herein), son of Brij Lal, resident of village Jhandi, Post Office Aghar, Tehsil and District Hamirpur and accused Shivam Patial alias Kaku, son of Pardeep Kumar, resident of VPO Mohin, Tehsil and District Hamirpur were standing outside the vehicle. As per this witness, he knew both

the aforesaid accused persons as they were involved in other cases also.

7 Learned counsel for the applicant has also taken us to the statement of PW10 HHC Lalit Kumar, whereby PW10 stated that aforesaid two persons were found standing outside the vehicle. The police party recognized both the persons since they had also been booked earlier for offences punishable under the provisions of the Act.

8 Statement of PW25 ASI Naresh Kumar was also relied upon by the learned counsel for the applicant in order to impress upon the Court that there is violation of Section 42 of the Act.

9 While dealing with this application, we are of the considered opinion that Section 42 of the Act, which is tried to be projected by the learned learned counsel for the applicant, is not applicable in the attending facts and circumstances of the case. The provisions of Section 42 of the Act does not appear to be applicable in the present case and this observation is being made for the determination of the present application seeking suspension of sentence.

10 As far as minor discrepancies, which have been tried to be highlighted by the learned counsel for the applicant, do not prima facie go to the root of the case and on pointed query, learned counsel for the applicant has failed to make out a prima

facie case that there are fair chances of acquittal of the applicant.

11 As regards colour of the contraband, while dealing with the instant application, such submission does not hold good for giving equitable relief of the applicant.

12 Learned counsel for the applicant has relied upon judgment of the Hon'ble Supreme Court in ***Boota Singh vs. State of Haryana, (2021) AIR (SC) 1913***, but after going through the same, we are of the considered opinion that the said judgment is not applicable to the present case since facts in the present case are different to the facts of ***Boota Singh's*** case (supra).

13 The Hon'ble Supreme Court in various cases has held that while dealing with cases of suspension of sentence, the Court must take into account the fact that once the learned trial court has taken into account all the factual matrix then until and unless there are fair chances of acquittal no relief can be granted to the applicant. Therefore, the applicant has failed to make out a case for suspension of sentence.

14 Considering the averments and submission made by learned counsel, the appellant has failed to furnish strong and compelling reasons for suspension of sentence, thus, we are of the considered opinion that the learned Special Judge has taken into account entire material placed on record and has discussed

each and every point, therefore, at this stage, no relief with respect to suspension of sentence can be granted in favour of the applicant.

15 In view of aforesaid discussions and for the reasons stated hereinabove, we find no merit in the instant application and the same is accordingly dismissed.

16 Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case and the same shall be adjudicated upon uninfluenced by any observation made here-in-above, which are only for the purpose of the instant application.

(Vivek Singh Thakur)
Judge

(Romesh Verma)
Judge

31.12.2025
(pankaj)