

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P No. 5594 of 2025 in Cr. Appeal
No. 81 of 2024 &Cr.M.P. No. 5277 of
2025 in Cr. Appeal No.140 of 2024.

Reserved on : 18.12.2025.

Date of decision: 23.12.2025.

1. Cr.M.P. No. 5594 of 2025 in Cr. Appeal No.81 of 2024.

Megh Singh Applicant/Appellant.

Versus

State of Himachal Pradesh Respondent/Non-applicant.

2. Cr.M.P. No. 5277 of 2025 in Cr. Appeal No.140 of 2024.

Om Prakash Applicant/Appellant.

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 Applicant(s)/ : Mr. Ajay Kochhar, Senior
Appellant(s) Advocate with Mr. Bharaiv Gupta,
Advocate, for the applicant in
Cr.M.P. No. 5594 of 2025 in Cr.
Appeal No. 81 of 2024.

Ms. Meghna Singh and Mr. Surila
Sangam, Advocates, for the

**applicant in Cr.M.P. No.5277 of
2025 in Cr.Appeal No. 140 of 2024.**

**For the Respondent/ : Mr.J.S.Guleria, Deputy Advocate
Non-applicant General.**

Romesh Verma, Judge

This order shall dispose off two applications, one filed by applicant-Megh Singh, being Cr.M.P. No.5594 of 2025 and another filed by applicant-Om Prakash, being Cr.M.P.No.5277 of 2025, under Section 430 of Bharatiya Nagarik Suraksha Sanhita, 2023, for the suspension of sentence dated 16/17.01.2024 passed by the learned Special Judge-II, Kinnaur at Rampur Bushahr, H.P.

2. Since, both these applications arise out of the same FIR and common trial, therefore, the same were taken up together for consideration and are being disposed off by this common order.

3. The applicants have approached this Court for the suspension of sentence by stating that the case as made out against them is false and they have been falsely implicated in a planted case.

4. It is the case of the applicants that in the present case, they have no role to play and the judgment of conviction and order of sentence passed by the Court below are bad in the eyes of law.

5. It has been stated that the applicants are in custody since 17th January, 2024 and they have already undergone about 1 year and 10 months' imprisonment. It is also stated that the applicants have got prima facie and arguable case in their favour and there are fair chances of their acquittal in the present appeals.

6. The applications have been strongly resisted by the State.

7. It is submitted by Shri J.S.Guleria, learned Deputy Advocate General, for the respondent-State that since the applicants have been ordered to be sentenced for heinous offence, therefore, no leniency should be shown towards them and the present applications deserve to be dismissed.

8. We have heard Shri Ajay Kochhar, learned Senior Advocate assisted by Shri Bharat Gupta, Advocate and Ms. Meghna Singh and Mr. Surila Sangam, Advocates, for the respective applicants and Shri J.S. Guleria, learned Deputy Advocate General, for the State.

9. It is contended by the learned counsel(s) for the applicants that the learned Special Judge (II), Kinnaur at Rampur Bushahr, while convicting the present applicants has wrongly held them to be in criminal conspiracy between the accused persons. As per the version of the learned counsel(s), the accused Ses Ram has

divulged the role of the present applicants and on the basis of his confessional statement, the present applicants have been roped in a false case.

10. Learned counsel(s) for the applicants have taken us to the statement of PW8 Devender Verma, who has been examined by the prosecution in order to connect the present applicants to the commission of the offence.

11. PW8 Devender Verma, who was working as Nodal Officer, Bharti Airtel, Kasumpti, Shimla, has stated in his deposition that in the year, 2020, he was posted as Nodal Officer in Airtel Communication. On 26.07.2020, on the request of the police, he handed over CAF, CDR of Mobile Numbers 98161-04323 and 86268-31768 which are Ext.P1/PW8 (9 leaves). He stated that he issued CAF and CDR of Mobile Number 94182-43492 which are Ext. P2/PW8 (6 leaves).

12. In the cross-examination, PW8 stated that he has not seen the certificate under Section 65-B today in the Court. He further stated that he did not remember whether he had issued the same or not. As per this witness, Sim number 85805-57601 does not pertain to Airtel Company. Police had not sought CDR of any other SIM numbers appearing in the CDR supplied. He stated that Ruma Devi

was the subscriber of Mobile Number 86268-31766. Sim Number 94182-43492 had been issued in the name of Meera Devi.

13. Learned counsel(s) for the applicants have vehemently argued that in absence of certificate under Section 65-B, the very case of the prosecution becomes doubtful. As per them, the phone details of the accused Ses Ram have not been taken into account so as to connect the role of the applicants with the said accused because it is on the basis of the confessional statement of accused Ses Ram that the present applicants have been made accused.

14. It will be apt to observe that the Hon'ble Apex Court in case titled as ***State (By NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and another (2022) 12 SCC 633***, on the point of confessional statement, has held as follows:

“11. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial

quantities of psychotropic substances, as contemplated under the NDPS Act.

12. It has been held in clear terms in *Tofan Singh Vs. State of Tamil Nadu* (2021) 4 SCC 1, 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 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.....”

15. Once, the certificate under Section 65-B was not seen/issued by PW8, the Nodal Officer from Bharti Airtel, Kasumpti, Shimla, it creates doubt in the story of the prosecution while adjudicating the applications for suspension of sentence.

16. There is also force in plea that there is nothing on record to connect Ses Ram with Mobile No. 85805-57601 because no evidence in this regard has been placed on record.

17. In ***Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others*** (2020) 7 SCC 1, the Hon’ble Apex Court held as under:

“61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in [Anvar P.V.](#) vs. P.K. Basheer (2014) 10 SCC 473 and incorrectly “clarified” in [Shafhi Mohammed](#) vs. State of H.P. (2018) 2 SCC 801. Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in *Taylor v. Taylor* (1875) LR 1 Ch.D 426, which has been followed in a number of the judgments of this Court, can also be applied. [Section 65B\(4\)](#) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65-B (4) otiose.”

18. At this stage, this Court is only dealing with the applications for the suspension of sentence and the merits of the entire case in depth and detail shall be considered at the time of hearing of the main appeals.

19. Therefore, faced with the situation, without commenting upon the merits of the entire evidence, we are of the opinion that for determination of the present applications, the applicants have made out a *prima facie* case for suspension of substantive sentence imposed upon them and for their enlargement on bail as the final hearing in the appeals may take some time.

20. In view of above, the present applications are allowed and the substantive sentence imposed upon the applicants/appellants by the Court below is suspended subject to their

furnishing personal bond in the sum of Rs.1,00,000/- each with one surety each in the like amount to the satisfaction of the Court below within a period of four weeks from today undertaking therein to appear before the Court as and when directed to do so and also to surrender before the Court in case of dismissal of their appeals. Bail bonds so furnished by the applicants shall be transmitted by the Court below to this Court for placing the same on record.

21. 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 determination of the instant applications.

22. Parties are permitted to produce a copy of this order downloaded from the web-page of the High Court of Himachal Pradesh before the Court below and the Court below shall not insist for production of a certified copy of order, rather, the Court below shall verify passing of this order from the web-page of the High Court.

(Vivek Singh Thakur)
Judge

(Romesh Verma)
Judge

23 December, 2025.
(krt)

**KHEM
RAJ
THAKUR**

Digitally signed by KHEM RAJ THAKUR
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