

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P. No. 2536 of 2025 in
Cr.Appeal No.299 of 2025
Reserved on : 14.08.2026
Date of decision: 08.09.2026
Date of upload : 08.09.2026

Gummat Ram

....Applicant

Versus

State of Himachal Pradesh

....Respondent

Coram

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

Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting? ¹ Yes

For the Applicant.

Mr. Lovneesh Singh Thakur, Advocate.

For the Respondent:

Mr. Gautam Sood, Deputy Advocate General.

Vivek Singh Thakur, Judge

Applicant-appellant has filed this application for suspension of sentence awarded to him, in sequel to his conviction under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act'), vide judgment dated 06.04.2022 passed in NDPS Trial

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

No. 19 of 2016, titled State of Himachal Pradesh vs. Gummat Ram, in case FIR No. 07/2016 dated 28.01.2016, registered at Police Station Aut, District Mandi, Himachal Pradesh. The applicant-appellant has been awarded sentence vide order dated 06.04.2022, to undergo rigorous imprisonment for 10 years and to pay a fine of ₹1,00,000/- and, in default of payment of fine, to undergo simple imprisonment for one year.

2. Learned counsel for the applicant-appellant, referring to the statements of PW-1 Tej Ram, PW-2 SI Hari Singh, PW-3 Constable Jaswant Kumar and PW-6 SI Subhash Chand, has stated that there are material discrepancies and contradictions in the statements of these official witnesses, regarding distance of the spot of alleged recovery of contraband to Aut tunnel, Dam bridge, Markandeya Temple, Larji Bazaar and Larji Dam, and also visibility on account of darkness as well as availability of sufficient light on account of lamps/lights of project site, and also with regard to evidence related to filling up of NCB-I form, personal search of accused conducted by the Investigating Officer, colour of Backpack and impression of seals 'A' and 'B' put on the case property at the time of seizure.

3. Learned counsel for the applicant-appellant has also referred other statements to demonstrate contradictions, so as to make

out a case for enlarging applicant-appellant on bail by suspending sentence of imprisonment.

4. Alternatively, learned counsel for the applicant-appellant has submitted that applicant-appellant is a first-time offender. Appeal is pending since 2025 and applicant-appellant is serving sentence and presently lodged in District Jail, Mandi and has undergone about 4 years imprisonment and, therefore, keeping in view the provisions of Section 479 of the BNSS, like others, applicant-appellant is also entitled for suspension of sentence, as under Section 20(b)(ii)(B) of the NDPS Act, maximum sentence prescribed is 10 years, and one-third of 10 years becomes to be 3 years 4 months, whereas, as per custody certificate placed on record, in the month of July 2025, applicant-appellant had served sentence for a period of 3 years 1 month and 14 days, and, thus, as of now, applicant-appellant has served sentence for about 4 years 2 months. In case applicant-appellant would have been released on parole for maximum permissible tenure of 42 days as permissible during one year, sentence served, as on date, by applicant-appellant becomes more than 3 years 6 months, which is more than one-third of total prescribed sentence under Section 20(b)(ii)(B) of the NDPS Act.

5. Though, we are not inclined to accept the plea of the applicant-appellant about fair chance of acquittal on the basis of

contradictions, discrepancies etc. referred by the learned counsel for the applicant-appellant in the statements of witnesses at this stage, as we are of the opinion that, for that purpose, entire evidence of the case has to be discussed, which shall be amounting to hearing the appeal preferred by the applicant-appellant, whereas large number of other old appeals of convicts are pending adjudication. However, we find force in his alternative plea for suspension of sentence on completion of one-third imprisonment of total prescribed specified maximum sentence of 10 years in case in hand.

6. At this stage, we are disagree with plea taken by the counsel for the applicant-appellant regarding points raised about discrepancies and contradictions as well as other contradictory evidence referred by the learned counsel for the applicant-appellant, however, keeping in view the provisions of Section 479 of the BNSS (earlier Section 436A of Cr.P.C.), applicant-appellant may be entitled for suspension of sentence, because as held by the Apex Court, provisions of Section 436A (now Section 479 of BNSS) can be invoked for considering the case of suspension of sentence of convict. Section 479 BNSS, reads as under:-

“479. Maximum period for which undertrial prisoner can be detained.- (1) Where a person has, during the period of investigation,

inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:

Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

(2) Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.

(3) The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail.”

7. In present case, as per Custody Certificate and time elapsed thereafter, it is apparent that applicant-appellant has served sentence more than one-third of maximum prescribed sentence for commission of offence under Section 20(b)(ii)(B) of NDPS Act.

8. Appeal preferred by applicant-appellant is pending since 2025 and despite listing for final hearing, it could not be heard for one or other reason, including paucity of time etc. There is no delay on behalf of the applicant-appellant in prolonging adjudication of the appeal preferred by him.

9. Accordingly, substantive sentence awarded to the applicant-appellant Gummat Ram is ordered to be suspended during pendency of the appeal, subject to furnishing personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of Trial Court, with undertaking therein to appear before this Court as and when directed and in the event of dismissal of the appeal, to surrender before the Court, to serve the remaining sentence.

10. During suspension of sentence, applicant-appellant Gummat Ram shall not involve in commission of illegal and/or unlawful act, much less in commission of similar offence, and such involvement shall result cancellation of suspension of sentence.

11. Bail bonds so furnished shall be transmitted by the Trial Court to the Registry of this Court for placing the same on record.
12. Any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the same has been given only for the purpose of deciding present application.
13. Parties are permitted to produce a copy of this order downloaded from the web-page of the High Court of Himachal Pradesh, before the Trial Court, and the Trial Court shall not insist for production of certified copy of order, rather Trial Court shall verify passing of this order from the Web-page of the High Court.

Application is allowed and disposed of in aforesaid terms.

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

**(Ranjan Sharma),
Judge.**

8th September, 2026
(Susheel)