

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.74 of 2014

Reserved on: 22.08.2026

Date of decision: 01.10.2026

Uploaded on: 01.10.2026

State of Himachal Pradesh.

...Appellant.

Versus

Naresh Kumar.

...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 appellant : Mr. Pawan Kumar Nadda, Additional Advocate General.

For the respondent : Mr. Ankit Chandel, Advocate, vice Mr. Anshul Attri, Advocate.

Vivek Singh Thakur, Judge

State of Himachal Pradesh has preferred this appeal against the judgment dated 30.09.2013, passed by the learned Special Judge-II, Una, Himachal Pradesh, in **Sessions Case No. 15/2012**, titled **State of Himachal Pradesh vs. Naresh Kumar**, arising out of FIR No. 232/2011, dated 22.09.2011, registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act,

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

1985 (hereinafter referred to as the '**NDPS Act**') at Police Station Sadar, Una, whereby the respondent has been acquitted of the charge framed under Section 15 of the NDPS Act.

2. Prosecution case is that Police Party consisting of HC Sanjay Kumar (PW-10), HC Naresh Kumar (PW-11), Constable Ranjeet Singh (PW-3) and Constable Ram Gopal (PW-2) was on patrolling duty on 22.09.2011 in a private vehicle bearing registration No.HP-72-4356 in connection with the detection of Excise and NDPS cases on Una-Dhamandri road near link road Badsala. At about 9:45 PM, PW-10 HC Sanjay Kumar received secret information regarding the indulgence of respondent-Naresh Kumar alias Pummy and co-accused-Ashwani Kumar in illegal business of selling poppy straw in the area and, as per information, both of them were present at village Badsala near Dathwara Chowk, and there was possibility of recovery of huge quantity of contraband, if they were raided immediately.

3. As per the prosecution case, the information was well-founded and trustworthy and, therefore, rukka (Ex. PW-2/A) was prepared and sent to Police Station, Una, through PW-2 Constable Ram Gopal for registration of FIR, on the basis of which FIR (Ex. PW-2/B) was registered under Section 15 of the NDPS Act.

4. It is the further case of the prosecution that, in the meantime, PW-19 ASI Chaman Singh, along with PW-12 Constable Mohit Kumar, arrived on the spot on a motorcycle, and PW-10 HC Sanjay Kumar disclosed the entire facts to him. Thereafter, the investigation of the case was conducted by PW-19 ASI Chaman Singh, who prepared the reasons of belief report under Section 42(1)(a) of the NDPS Act (Ex. PW-3/A) and sent it through Constable Ranjeet Singh (PW-3) to the Superintendent of Police, Una.

5. The Police officials proceeded to the spot, and at around 10:35 PM, they noticed two shadows in the bushes and ultimately two persons were found sitting on white coloured sacks.

6. It is further case of the prosecution that one person, on seeing the Police Party, fled from the spot, whereas the other person was apprehended by PW-19 ASI Chaman Singh with the assistance of other Police officials. The apprehended person, on inquiry, disclosed his name as Ashwani Kumar, and he also disclosed the name of the other person, who fled from the spot as Naresh Kumar, son of Jagdish Ram (the present respondent).

7. According to the prosecution, the place was isolated and no local person was available, therefore, by associating Police officials in the search and seizure process, all four sacks were

opened. In all four sacks, there were other plastic sacks inside. On smelling and tasting, and on the basis of experience, the Investigating Officer opined the contents to be poppy straw.

8. On weighing, the total weight of the four sacks was found to be (25 kg + 23 kg + 23 kg + 24 kg) 95 kilograms.

9. As per the prosecution case, the contraband contained in all the sacks was mixed separately with hand by the Investigating Officer and after making the same homogeneous, one sample from each sack weighing 1 kg each was separated. Photographs of the proceedings were also taken. The samples were packed in cloth parcels separately and sealed with three seals of impression 'T', and the four sacks were also sealed with the same seal by affixing three seals on each sack. The sacks were marked as P-1 to P-4 (Ex. P-1 to Ex. P-4).

10. The samples were marked as P-1/A to P-1/D (Ex. P-5 to Ex. P-8). The Investigating Officer filled in column Nos. 1 to 8 of the NCB forms and took the facsimile of the seal (Ex. PW-10/B) separately on a piece of cloth. After use, the seal was handed over to witness HC Naresh Kumar (PW-11). The contraband was taken into possession vide memo Ex. PW-10/C. The Investigating Officer

prepared the site plan (Ex. PW-19/A) and recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure.

11. Accused-Ashwani Kumar, after interrogation, was informed about the grounds of his arrest vide memo Ex. PW-19/B, and information of his arrest was given to his brother. Personal search of accused Ashwani Kumar was conducted vide memo Ex. PW-19/C.

12. As per the prosecution case, a Government vehicle was arranged from Police Lines, Una, and the Investigating Officer, along with the Police Party, accused and case property, came to Police Station, Una, and reached there at about 3:00 AM on 23.09.2011. The case property, samples, NCB forms, sample seal, and accused were produced before PW-13 SHO Harjeet Singh, who resealed the samples and sacks with seal impression 'N'. The impression of the seal was also affixed on the NCB forms, and a sample of the seal was taken on a piece of cloth (Ex. PW-13/A). PW-13 SHO also issued a certificate (Ex. PW-13/B) under Section 55 of the NDPS Act.

13. Accused Ashwani Kumar was produced before the Chief Judicial Magistrate, Una, wherefrom he was remanded to police custody up to 27.09.2011. On 24.09.2011, special report (Ex. PW-6/A) was submitted to the Superintendent of Police, Una. On

29.09.2011, Investigating Officer moved an application (Ex. PW-15/A) to the Superintendent of Police, Una, for obtaining the call details of accused Ashwani Kumar with respect to mobile No. 94186-38650, and obtained a copy of the details (Ex. PW-7/A).

14. During the investigation, it was allegedly found that accused Ashwani Kumar had talked with accused Naresh Kumar on mobile No. 98828-31001 on 21.09.2011 and 22.09.2011.

15. The samples were sent to the State Forensic Science Laboratory (SFSL), Junga, and on receipt of the chemical analysis reports (Ex. PW-14/B and Ex. PW-14/C), the file was handed over to the SHO.

16. Challan was presented in the Court against accused Ashwani Kumar on 10.01.2012.

17. In the meantime, accused Naresh Kumar had been arrested by the Punjab Police at Ludhiana, in a case FIR No.145/2012, dated 16.09.2012, registered under Sections 15, 18, 25, and 29 of the NDPS Act. Thereupon, production warrant for accused Naresh Kumar was obtained, and he was produced before the Court of Judicial Magistrate First Class-I, Una, on 30.10.2012 and his custody was transferred.

18. Accused Naresh Kumar was subjected to police remand, during which he allegedly confessed to having supplied poppy straw measuring 1 quintal of the value of Rs. 1,20,000/- to accused Ashwani Kumar, and he had fled away from the spot. During the investigation, accused Naresh Kumar was allegedly identified by PW-19 ASI Chaman Singh, PW-10 HC Sanjay Kumar, PW-11 HC Naresh Kumar, and PW-12 Constable Mohit Kumar. On completion of the investigation against Naresh Kumar, a separate challan was prepared and presented in the Court of the learned Special Judge, Una, on 19.11.2012.

19. Thereafter, trial was conducted by Special Judge-II, Una, where charges were framed against the respondent under Section 15 of the NDPS Act.

20. The respondent, having pleaded not guilty, claimed trial.

21. In order to substantiate its case, the prosecution examined 20 witnesses. After recording the statement of the respondent under Section 313 Cr.P.C., no evidence was led by the accused in defence.

22. After evaluating and assessing the evidence on record, Special Judge-II, Una, acquitted the respondent-Naresh Kumar. Hence present appeal.

23. The spot witnesses examined by the prosecution are PW-2 Constable Ram Gopal, PW-3 Constable Ranjeet Singh, PW-10 HC Sanjay Kumar, PW-11 HC Naresh Kumar, PW-12 Constable Mohit Kumar, and PW-19 ASI Chaman Singh. The remaining witnesses were examined to prove the link evidence to substantiate the case of the prosecution.

24. For the discussion hereinafter, we are of the considered opinion that there are major contradictions, inconsistencies and lapses in the statements of the spot witnesses as well as in the conduct of the investigation. Therefore, it would be futile exercise to discuss other evidence on record led to prove the link evidence.

25. It is the prosecution case that information was received by the Investigating Officer that Ashwani Kumar and Naresh Kumar, both were involved in the business of selling chura post/poppy straw. As provided under the NDPS Act, immediately after receiving the said information, Investigating Officer, HC Sanjay Kumar, had to ensure compliance with Section 42(2) of NDPS Act by sending grounds of belief to higher authorities regarding possibility of

disappearance of evidence and fleeing of the accused persons from the spot in case of delay, and accordingly he had to proceed further only after sending the information to his superior. But he had not done so. Instead, PW-10 HC Sanjay Kumar, before raiding the spot and without any recovery of contraband, had sent rukka (Ex. PW-2/A) to the SHO, Police Station, Una, for registration of FIR under Section 15 of the NDPS Act. Till that stage, there was no recovery from the respondent or anybody else, and FIR was registered on the basis of information only. Further, when PW-19 ASI Chaman Singh reached the spot, by that time rukka (Ex. PW-2/A) had already been sent by PW-10 HC Sanjay Kumar.

26. Now at this stage, after arrival of PW-19 ASI Chaman Lal, according to the prosecution, the information and grounds of belief were communicated to the Superintendent of Police, Una, vide grounds of belief report (Ex. PW-3/A). The prosecution and Investigating Officer proceeded further in reverse order. First of all, the grounds of belief were required to be submitted under Section 42 of the NDPS Act, and thereafter raid was to be conducted, and after recovery of contraband, rukka was to be sent for registration of the FIR. But here, everything has been done in reverse order, contrary to the provisions of the NDPS Act.

27. It is also not clear on record as to what happened to Ashwani Kumar's trial. It appears from the record that both Ashwani Kumar and Naresh Kumar were subjected to trial in furtherance to the reports/challan presented on the basis of investigation carried out by the Police in one and the same case FIR No.232/2011, dated 22.09.2011, registered in Police Station, Una for commission of one and the same offence, but prior to recovery of contraband and detection of commission of offence. When case FIR was the same, challan was presented against Ashwani Kumar, there was no occasion for filing a fresh challan independent of challan of Ashwani Kumar's case in the Court. Instead, Police had to submit supplementary challan so as to ensure that the same set of witnesses, to be examined to prove the prosecution case, should have been examined in one and the same trial. There is one FIR related to one incident, but there are two challans, and fate of Ashwani Kumar has not been placed on record, and thus, it appears that State has created a mess. No where in the evidence or otherwise it has come on record that by the time Naresh Kumar was apprehended, trial against Ashwani had commenced or completed.

28. It would be relevant to notice that according to PW-2 Constable Ram Gopal, ASI Chaman Singh (PW-19) had not reached

the spot when PW-2 left the spot for the Police Station along with the rukka, meaning thereby that the rukka was sent before proceeding to the spot. PW-2 has also stated that he did not know about the remaining proceedings undertaken by the Investigating Officer, but made the contradictory statement that he remained on the spot up to 2:30 AM. Whereas it is the case of the prosecution, as also stated by PW-2 in his examination-in-chief, that he had taken rukka (Ex. PW-2/A) to the Police Station. Rukka was prepared by HC Sanjay Kumar (PW-10) at 10:00 PM. In case PW-2 had taken the rukka to the Police Station at 10:00 PM, then the claim of PW-2 that he remained on the spot throughout the night is contradictory, unbelievable, and contrary to the record.

29. FIR was registered at 11:40 PM, and thereafter PW-2 Constable Ram Gopal came back to the spot to hand over the case file to ASI Chaman Singh (PW-19), and according to the prosecution case, the Police Party left the spot at 2:30 AM and reached the Police Station at 3:00 AM on 23.09.2011. PW-2 Constable Ram Gopal, on one side, is stating that he was not on the spot as he had taken rukka to the Police Station; on the other hand, he is stating that he remained on the spot up to 2:30 AM.

30. PW-3 Constable Ranjeet Singh had taken the report (Ex. PW-3/A) to the Superintendent of Police, Una, at 11:00 PM at her residence. Thereafter, PW-3 Constable Ranjeet Singh returned to the spot with copy of report (Ex. PW-3/A) and handed over it to Investigating Officer (PW-19 ASI Chaman Singh). According to PW-3 Constable Ranjeet Singh, he had also taken the case property to FSL on 26.09.2011 and had submitted receipt thereof to MHC. PW-3 Constable Ranjeet Singh had taken the information to SP, Una, on Government motorcycle. According to PW-3 Constable Ranjeet Singh, after sending the rukka from the spot, ASI Chaman Singh (PW-19) had reached there immediately.

31. PW-3 Constable Ranjeet Singh reached back on the spot at around 12:30 AM. According to PW-3 Constable Ranjeet Singh, PW-2 Constable Ram Gopal had come on the spot back before the return of PW-3.

32. According to PW-10 HC Sanjay Kumar, the Police Party reached on the spot at about 10:35 PM, and they noticed the shadow of two persons in the bushes, and thereafter they found two persons sitting on the white colour sacks, and one of them, i.e. the respondent, on seeing the Police Party fled away, whereas the other, Ashwani Kumar, was apprehended by the Police Party. PW-10 HC

Sanjay Kumar identified Naresh Kumar in the Court as the person who fled from the spot. In cross-examination, he admitted that he had identified Naresh Kumar and it was stated by him in his statement recorded under Section 161 Cr.P.C., but it was not so written. PW-10 was confronted and admitted that neither the name of Naresh Kumar nor the fact of his identification was recorded in his statement recorded under Section 161 Cr.P.C. PW-10 further stated that accused Naresh Kumar was not known to him earlier, and he knew him only from the date of the alleged occurrence, and for the second time he saw him on 31.10.2012 in police custody.

33. Similar statement has been made by PW-11 HC Naresh Kumar and PW-12 Constable Mohit Kumar. It is beyond imagination that in the moonlight these witnesses identified Naresh Kumar despite that they were not knowing him previously, and it is their own statement that they noticed shadow of two persons, one of them fled away, but despite that, in the Court they identified Naresh Kumar as a person who fled from the spot. It has also come in the statement of PW-19 ASI Chaman Singh that HC Sanjay Kumar (PW-10) and HC Naresh Kumar (PW-11) had chased the person, who had fled from the spot, but due to darkness and bushes he could not be nabbed. But it is not so stated by PW-10 HC Sanjay Kumar and PW-

11 HC Naresh Kumar in their statements. One side Police Party is claiming that there was darkness and on the other hand, they are claiming that they identified Naresh Kumar on the spot in the darkness of night.

34. An unsuccessful effort has been made by the prosecution to connect Ashwani Kumar with Naresh Kumar by stating that on 21st and 22nd September, 2011, they had talked with each other. However, call details and the ownership, possession of mobiles have also not been proved on record in accordance with law.

35. PW-10 HC Sanjay Kumar, PW-11 HC Naresh Kumar, PW-19 ASI Chaman Singh have also admitted that in case of *State versus Ashwani Kumar*, they had not stated that they had identified accused Naresh Kumar, while he was running away from the spot, and it has also not been recorded in their statements, and it has also not been stated by PW-19 ASI Chaman Singh in Ashwani Kumar's case that PW-10 HC Sanjay Kumar and PW-11 HC Naresh Kumar had tried to chase accused Naresh Kumar and this fact has also not been written in the Zimni.

36. The prosecution has tried to link Naresh Kumar with the commission of offence, on the basis of disclosure statement of Ashwani Kumar, but the said disclosure statement has also not been

proved on record, and otherwise also, Naresh Kumar cannot be convicted solely on the basis of disclosure made by co-accused Ashwani Kumar. (see ***Toofan Singh Vs. State of Tamil Nadu (2021) 4 SCC 1***).

37. For the reasons best known to the prosecution, instead of filing supplementary challan in Ashwani Kumar's case, separate challan has been presented against Naresh Kumar, whereas challan against Ashwani Kumar was presented in January 2012, and challan against Naresh Kumar has been presented in November 2012. Nothing has been brought on record regarding fate of Ashwani Kumar's case, and also, reason for which two separate trials were conducted against Ashwani Kumar and Naresh Kumar in a case registered in one FIR on the basis of common facts, circumstances, and witnesses.

38. Prosecution has also failed to link Naresh Kumar with the contraband produced before the Magistrate who had prepared certified inventory thereof.

39. Perusal of statements of official witnesses, discussed *supra*, creates doubt about the veracity of the prosecution case. It appears from the material on record that the veracity of prosecution witnesses is doubtful and thus, is not reliable, and therefore,

prosecution has failed to prove case against the respondent beyond reasonable doubt by leading cogent, reliable, and convincing evidence. Thus, no ground is made out for interference in the judgment passed by the Trial Court acquitting the respondent.

40. Respondent has advantage of being acquitted by the Trial Court, fortifying presumption of innocence in his favour, and State has failed to point out any material evidence so as to warranting interference by exercising appellate jurisdiction with the acquittal of the respondent. Accordingly, the appeal is dismissed.

41. Before parting, in view of the provisions of Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023 (Section 437-A of the Code of Criminal Procedure), respondent is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of learned Registrar (Judicial) within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

42. Bail bonds furnishing in this appeal at the time of admission of appeal stand discharged. However, bail bonds to be

furnished under Section 481 of BNSS shall remain in force as directed.

43. Pending miscellaneous application(s), if any, stand(s) disposed of in aforesaid terms.

44. Record be sent back to the Trial Court.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge

1st October, 2026
(Pardeep)