

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr.MP No. 493 of 2026 in Cr. Appeal (C-DB) No. 20 of 2026****Reserved on: 21.8.2026****Decided on: 01.10.2026****Uploaded on: 01.10.2026****Som Dutt.****...Appellant/Applicant.****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 Yes******For the Applicant.******Mr. Ritesh Bhardwaj, Advocate.******For the Respondent:******Mr.Raj Negi, Deputy Advocate General.******Vivek Singh Thakur, Judge***

This application has been filed by the applicant for suspension of sentence awarded to him vide order dated 12.11.2025 in sequel to his conviction vide judgment dated 7.11.2025, passed by Special Judge-I, Sirmaur, District at Nahan, H.P. in Sessions Trial No. 18-ST/7 of 2024, titled as State of HP vs. Som Dutt, whereby the applicant has been sentenced to undergo rigorous imprisonment for 10 years and to pay a fine

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

of ₹1,000,000/- (Rupees One Lakh) and in default of payment of fine, to further undergo rigorous imprisonment for two years for commission of offence punishable under Section 21 (b) (ii) (C) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'NDPS Act') for having been found in possession of 1.396 Kilograms of Charas, an commercial quantity of the contraband.

2. As per the prosecution story, a secret information was received in Police Post, Yashwantnagar, through a reliable source informing that in a private bus which plies on the route from Jodna to Solan, a person was travelling along with Charas who will alight from the bus at Sanora. Information was definite and reliable, and thus believing the version to be true and correct, an information was forwarded to SDPO Rajgarh, and ASI Rajesh Kanwar (PW-11), along with HASI Jaipal (PW-10) and HHC Ram Dutt (PW-9), proceeded towards Sanoura alongwith I.O. kit and reached at Shayaghat, where they had waited for the private bus in reference.

3. With regard to the departure of Police Party, an entry was recorded in the Daily Diary Report (Ex. P1/PW2), stating therein that reason to believe under Section 42(2) of NDPS Act were written in the Police Post and information was transmitted to SDPO Rajgarh.

4. Further that at about 9:15 A.M. a private bus bearing registration No. HP-64C-8197, came from Pairvi Pul side was stopped and

driver and conductor of the bus, namely Kapil Dev and Ravinder were associated as witnesses and in their presence checking of the bus was conducted. A person sitting on seat No. 20 had kept a blue coloured bag near the window of the bus, and when this bag was checked, a transparent polythene bag was found therein, in which there was a yellow carry bag wrapped with a newspaper. On checking, it was found containing a black coloured stick shaped substance, which on smelling was found Charas. On inquiry, the person sitting on seat No. 20 disclosed his name as Som Dutt (appellant/applicant). The recovered charas alongwith the carry bag was weighed with the help of an electronic weighing scale and it was found to be 1.396 Kilograms. The recovered charas alongwith carry bag was put back in the same manner and bag was then put in a cloth parcel and the parcel was sealed with three impressions of seal 'X'.

5. Learned counsel for the applicant has submitted that as per prosecution story, after receiving secret information, Police Party went to the spot, i.e. Shayaghat and spotted the bus at 9:15 A.M. and during search of luggage of passengers, appellant Som Dutt was found alongwith a bag, wherefrom 1.396 Kilograms of Charas was recovered. He has submitted that contrary to the prosecution story, PW-7 Ravinder (conductor of the bus) and PW-10 HASI Jaipal Singh have stated that the bus alongwith passengers was stopped at the bus stand of Yashwantnagar and after completing formalities, the bus was allowed to left the place along with

passengers, who were expressing urgency to reach Solan whereas, as per prosecution case the Police Party alongwith witnesses was on the spot till evening and accused was arrested at Shayaghat at 4:15 P.M.

6. It has been submitted by learned counsel for the applicant that rukka was sent to Police Post through PW-9 HHC Ram Dutt, for sending the same through E-mail to Police Station, Rajgarh for registration of FIR, and though FIR number has been used by the Investigating Officer in the proceedings, however, according to PW-9 HHC Ram Dutt rukka was sent to Police Station, Rajgarh, however, there is no evidence on record that how and in what manner and at what time, after registration of FIR, information thereof was given to the Police Party or PW-8 ASI Rajesh Kumar.

7. It has been further submitted by learned counsel for the applicant that as per prosecution case on receiving prior information, in compliance of Section 42 of the NDPS Act, information was sent to SDPO Arun Modi, Dy. SP, Police Station, Rajgarh, who was Incharge of the Police Station concerned, but again there is discrepancy that Dy.SP Arun Modi has been claimed to be present on the spot, however, there is no evidence of his appearance on the spot, much less at the time when he came on the spot. Whereas it is case of prosecution that accused expressed his desire to be checked from the Gazetted Officer or Magistrate, whereupon Dy. SP

Arun Modi was informed in this regard telephonically, who came on the spot and personal search of applicant was conducted in his presence.

8. It has been submitted by learned counsel for the applicant that Dy.SP. Arun Modi was never examined in the Court, though his presence has been claimed on spot. Further there is no record available to establish that Dy. SP Arun Modi was available on the spot. It has been claimed that the appellant opted to be searched before a Gazetted Officer, whereupon Dy. SP Arun Modi was called to the spot and the search was conducted in his presence at 12:30 PM. However, Dy. SP Arun Modi was never examined in Court, and memo Ex. P12/PW7 (Jama Talashi) bears no reference to his name, signature, or endorsement, despite his alleged presence on the spot. Search and seizure has been alleged to have been witnessed by Kapil Kumar, HASI Jaipal Singh and Ravinder Kumar (conductor of the bus), but there is neither any signatures nor endorsement nor association of Dy. S.P. with the aforesaid process, despite the fact, as claimed, that Dy.SP Arun Modi was present on the spot.

9. It has been submitted by learned counsel for the applicant that according to PW-7 Ravinder Kumar, bus was sent by the Police after taking his signatures on certain papers. He has further stated that bus was allowed by the Police to go, immediately after arrival at the Police Station.

10. It has been further stated by learned counsel for the applicant that PW-11 SI Rajesh Kanwar has stated that no person having second

name as Kumar was with them, however, in the photograph, there is a Police Official having second name Kumar.

11. According to learned counsel for the applicant PW-8 Rajesh Kumar, has also not supported the case of prosecution by deposing that he was called by the Police at Yashwantnagar, when he alighted from the bus and a lady was sitting besides him and he was asked by the Police where he was going and after telling them, he left in another bus to Rajgarh and nothing has happened in his presence.

12. PW-9 HHC Ram Dutt has stated that at the time of checking of the bus, he was staying outside and nothing was recovered in his presence.

13. Learned counsel for the applicant has submitted that there is fair chance of acquittal, as there are discrepancies with regard to date of prior information as at one place, it has been stated that information was received on 1.12.2023, whereas on the other hand, it has been claimed that information was received on 10.12.2023.

14. As nothing was recovered from personal search of the applicant, there shall be no impact of absence or presence of Dy. SP on the spot, after exercising option by the appellant to get searched in presence of Gazetted Officer. But claim of prosecution regarding presence of Dy. SP on spot and absence of evidence on record in this regard would be relevant for the purpose of assessing veracity of case of prosecution.

15. As per the custody certificate, the applicant has already undergone incarceration of 2 years and 6 months.

16. PW-7 Ravinder Kumar has been cited as a witness in the arrest memo, however, the arrest is shown to have been effected at 4:15 P.M. at Chhaya Ghat, after long time when the bus had departed. Statements under Section 161 Cr.P.C. of PW-7 and PW-10 are claimed to have been typed on a laptop on the spot and printed at the Police Post through an official printer. The independent witness PW-8 Ravinder also did not support the recovery in his presence.

17. There is unexplained gap of over five hours between the alleged interception of bus 9:15 A.M., the dispatch of the ruka at 2:30 P.M. and arrest of applicant at 4:15 P.M., especially when the Police Post is situated at a distance of merely 15 minutes from the spot.

18. Learned counsel for the applicant has submitted that when the bus as well as the witnesses were allowed to go after short period of time, then there was no possibility of recording their statements in the bus, particularly when bus was handed over to the driver immediately after getting their signatures on certain documents.

19. Learned Deputy Advocate General has submitted that, during personal search of applicant/appellant, nothing incriminating was found and, in absence of recovery, any non-compliance of Section 50 of the NDPS Act is not fatal to the prosecution case, as held by the Apex Court in

Ranjan Kumar Chadha Vs. State of H.P. reported in ***AIR 2023 SC 5164***

and, therefore, any discrepancy or failure of the prosecution in complying with provisions of Section 50 of the NDPS Act, as well as absence of Dy.S.P. on the spot or his non-examination in the trial, is inconsequential, and, therefore, on this count, the applicant/appellant is not entitled for suspension of sentence.

20. It has been further submitted by learned Deputy Advocate General that submissions of learned counsel for the applicant, that PW-10 HASI Jaipal Singh had stated that bus along with passengers was stopped at the bus stand of Yashwantnagar, is not correct, as in examination-in-chief he has stated that the bus was stopped by the side of road, and in cross-examination he has nowhere stated that the bus was stopped by Police in Yashwantnagar bus stand.

21. It has been further contended by learned Deputy Advocate General that, though PW-7 Ravinder, conductor of the bus, in his examination-in-chief has stated that nothing was recovered from any passenger travelling in their bus, but before that he has categorically stated that policemen came to him and called them by telling that they wanted to check their bus. Though he has stated that the bus was not checked and only documents of the bus were taken, however, in cross-examination by learned Public Prosecutor, after getting him declared hostile, it has come

on record that there are certain admissions on his part which fortify the case of the prosecution.

22. It has been pointed out by learned Deputy Advocate General that it was said by PW-7 that his statement was not recorded by the police, however, he remained associated in the investigation of this case, and further that it is correct that he had told to the police that he was working as a conductor in bus HP-64C-8197. Though PW-7 did not support prosecution case on certain facts, however, he has admitted that on that day there were 15-20 passengers in the bus, and bus was 34-seater. He has admitted his signatures on cloth parcel Exhibit MO-1, consent memo Exhibit P-11/PW-7, memo of personal search of the accused Exhibit P-12/PW-7, and signature on document Exhibit P-13/PW-7 having pasted both tickets issued by PW-7 Ravinder. Taking of photographs by the police, and visibility of the applicant/appellant in photographs Mark A-3, A-4 and A-5, has been admitted on behalf of the appellant. Learned Deputy Advocate General has further submitted that PW-7 Ravinder recognized and identified himself as visible in photographs Mark A-3, A-4 and A-5, and further that he was not pressurized to sign the documents, with self-statement that since they were in hurry, therefore, he signed the documents in routine manner without going through the same.

23. Learned Deputy Advocate General has further submitted that PW-7 Ravinder, in cross-examination by defence counsel, has stated that it

was correct that passengers were pressurizing them to take them to their destination, and they (driver and conductor) had also talked with the owner of the bus, and the owner of the bus had directed to finish the matter as early as possible by making signatures etc. on the papers where the Police wanted to sign. Further that police took some photographs outside the Police Post and obtained signatures of witnesses on the some papers, and thereafter permitted them to proceed to their destination. Therefore, deposition of PW-7 Ravinder also substantiated the prosecution case.

24. Learned Deputy Advocate General has submitted that, though the appellant was apprehended in the morning, however, thereafter, search and seizure memo was prepared, rukka was prepared, case property was seized, and, therefore, as pleaded by the learned counsel for the applicant/appellant, there is no scope of releasing the applicant/appellant on this count by suspending his sentence.

25. It has been submitted by learned Deputy Advocate General that, in the photograph, the nameplate is converse to the actual photograph, and further, PW-11 is Investigating Officer Rajesh Kumar, and, therefore, presence of a police official with Kumar surname is not contrary to the claim of the prosecution, as from the record it is apparent that at some places his name has been mentioned as Rajesh Kanwar and at some places as Rajesh Kumar, and, therefore, the person in the photograph is the Investigating Officer himself with nameplate on his chest as Kumar.

Thus, it has been submitted that the submissions in this regard are misconceived, and denial of the official witnesses regarding presence of Kumar on the spot may be half-truth as they may be knowing him as Rajesh Kanwar instead of Rajesh Kumar.

26. It has been further submitted by learned Deputy Advocate General that, after apprehending the appellant on the spot, maximum investigation was carried on on the spot, and rukka was prepared at 2:15 PM, because during the interregnum period, search and seizure memo was prepared, contraband was detected, seized and sealed, and thereafter rukka was prepared, but before the rukka, at 12:30 PM, personal search of the appellant was also conducted. According to PW-10, PW-11 and PW-9, the Dy.S.P. had also come on the spot at 12:30 PM. In these circumstances, it has been submitted by learned Deputy Advocate General that non-examination of the Dy.S.P. as a witness is immaterial and it does not affect the merits of the case, as there are witnesses who have stated that the Dy.S.P. came on the spot at 12:30 PM and thereafter personal search of the accused was conducted. It has been submitted that, as there was no recovery of any contraband in personal search, it was not necessary to examine the Dy.S.P. in this regard, and thus non-examination of the Dy.S.P. or any discrepancy or irregularity in complying with Section 50 of the Act is not sufficient to construe that there is a fair chance of acquittal of the appellant.

27. It has been submitted that it has come on record that reasons to believe were prepared at 8:00 AM and were delivered at the residence of the Dy.S.P. at 9:15 AM. The appellant was apprehended thereafter. After recovery of the contraband from the appellant, he was asked to exercise option under Section 50 of the NDPS Act, and thereafter Dy.S.P. arrived on the spot at 12:30 PM. After such search, there was no role of the Dy.S.P., and as nothing was recovered in personal search, by non-examination of the Dy.S.P. or no endorsement made by him on the search memo, the appellant is not going to be benefited, as these are not sufficient discrepancies to reverse the judgment of conviction in favour of the appellant to acquit him.

28. Learned Deputy Advocate General has submitted that the appellant has been convicted and sentenced to undergo 10 years imprisonment, whereas for having been found in conscious possession of commercial quantity of contraband, the maximum prescribed sentence is 20 years, and, therefore, detention of 2 years and 6 months does not entitle the applicant/appellant to be enlarged by suspending his sentence.

29. It has been further submitted that, in the photographs, charas, accused, PW-7 Ravinder and police officials are clearly visible. PW-7 has admitted that the police had checked the bus and photographs were taken on the spot. Once he has admitted the taking of photographs and his presence in the photographs, wherein the appellant along with charas is

also visible, his statement contrary to the prosecution case is not reliable, however, his statement which is corroborating the prosecution case is definitely depicting that the applicant is not entitled for suspension of sentence.

30. It has also submitted by learned Deputy Advocate General that with regard to discrepancy in dates of receiving secret information, as at one place it has been written as 1.12.2023 and at another place 10.12.2023, the same is also not fatal as, from the entire evidence on record, it is apparent that secret information was received on 10.12.2023, and the mention of date as 1.12.2023 at another place is the result of a ministerial mistake where zero has not been typed out, and in the given entire facts and circumstances, the prosecution has been able to prove that secret information was received on 10.12.2023, on which date the bus was intercepted and bag of the appellant was searched by completing all codal formalities and necessary protocols.

31. In the aforesaid submissions, it has been submitted by the learned Deputy Advocate General that there is no discrepancy, contradiction or infirmity in the evidence on record so as to construe that there is a fair chance of acquittal of the applicant/appellant.

32. Therefore, without going into the merits of the submissions made by learned counsel for the applicant-appellant as well as learned Deputy Advocate General, but considering the material on record, facts,

circumstances and evidence referred by both sides, this Court is of the considered opinion that at this stage, no case for suspension of sentence is made out.

33. Observations made hereinabove shall not have any bearing on the final adjudication of the appeal, as these observations are *prima facie* and preliminary in nature, made strictly for the purpose of considering the suspension of sentence of the applicant.

The application is dismissed in the aforesaid terms.

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

**(Ranjan Sharma),
Judge.**

1st October, 2026
(Keshav)