

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No: 154 of 2024

Reserved on : 06.05.2026

Decided on : 14.07.2026

Uploaded on : 14.07.2026

Sapna Appellant

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 appellant : Ms. Kanta Thakur, Advocate.

For the respondent : Mr. Gautam Sood, Deputy
Advocate General.

Vivek Singh Thakur, Judge

This appeal has been preferred by the
appellant/convict against judgment dated 07.08.2023,
passed by Special Judge-1, Kullu, District Kullu, H.P.,

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

in case (Regd. No.) No. **144(106)/2019**, titled as '**State of Himachal Pradesh Vs. Sapna**', arising from FIR No. 152 of 2019, dated 26.07.2019, registered in Police Station Bhuntar, District Kullu, H.P., under Section 20 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS**' Act), whereby appellant has been convicted under Section 20 of NDPS Act for having been found in possession of 5 Kgms of *Charas* and has been sentenced vide even dated order to undergo rigorous imprisonment for a term of 10 years with fine of Rs.1 lac and in default of payment of fine to further undergo simple imprisonment for a period of six months.

2. Prosecution case is that on 26.07.2019, ASI Bhup Singh (PW-9), Investigating Officer, Special Investigation Unit (SIU) Kullu alongwith Constable Netar Singh (PW-2) and HHC Sanjay Kumar (neither cited as a witness nor examined) in a private vehicle HP34D-2092, present at Seund on the road Bhuntar to Manikaran in Nakkabandi, were checking the vehicles

in routine since 6:00 AM. At about 7:05 AM, a HRTC Bus No. HP18B-6339 of Nahan Depot, enroute Haridwar to Manikaran, came from Bhuntar side going towards Manikaran. On signal of ASI Bhup Singh, the driver of the bus stopped the bus in front of a shop adjacent to Aman Fast Food.

3. As per prosecution story, ASI Bhup Singh and Constable Netar Singh entered in the bus from front door, whereas HHC Sanjay entered in the bus from rear door wherein only two female Nepali origin passengers were found sitting on seat Nos. 5 and 6. The passengers, on noticing the police, became perplexed, whereupon ASI Bhup Singh called driver and conductor near seat Nos. 5 and 6. On inquiry, driver disclosed his name as Tara Chand with his address, whereas conductor disclosed his name as Rajat Kumar with his address. In presence of driver and conductor of the bus and Constable Netar Singh, ASI Bhup Singh inquired the name and address of passengers sitting on seat No.6, who disclosed her

name as Sapna alongwith her address of Nepal and similarly passenger sitting on seat No. 5 disclosed her name as Rani with address of Nepal. It is further case of the prosecution that 4.850 Kgs of *Charas* was recovered from Rani, whereupon by completing proceedings in accordance with law, *Rukka* was sent to Police Station Bhuntar through PW2 Constable Netar Singh and contraband recovered from Rani was kept in his possession by ASI Bhup Singh (PW-9), and they alongwith Smt. Bimla Bhutti, District Panchayat Officer (PW-3), started waiting for return of PW2 Constable Netar Singh keeping Rani in custody of Lady Constable Lata.

4. It is further case of the prosecution that, under the instructions of PW9 ASI Bhup Singh, PW11 LHHC Reema Devi detained Sapna, the passenger seated on Seat No. 6. Upon the arrival of PW2 Netar Singh at about 2:20 PM., he was associated with the investigation. Thereafter, in presence of the witnesses, personal search of Sapna was also conducted after

obtaining her consent under Section 50 of NDPS Act, in response whereof Sapna had expressed her desire for giving personal search before a Gazetted Officer available nearby. The consent memo PW2/A was prepared by PW9 ASI Bhoop Singh and thereafter PW11 LHHC Reema Devi, in presence of PW3 Smt. Bimla Bhutti, District Panchayat Officer (Gazetted Officer), searched the person of Sapna and during that period, PW9 ASI Bhup Singh kept on waiting outside the bus. After some time, on completing search, PW11 LHHC Reema Devi informed PW9 ASI Bhup Singh about completion of search in presence of Smt. Bimla Bhutti with further information that Sapna had tied a black cloth as a belt around her waist, which was filled with some substance, which had been taken out and kept on the seat.

5. Thereafter, PW9 ASI Bhup Singh alongwith witnesses again entered in the bus and checked the belt shaped cloth and found therein 10 packets wrapped with Cello Tape. On removing Cello Tape and taking out

transparent packets, the substance was checked, which, on smelling and on the basis of experience, was identified as *Charas*. On weighing, it was found to be 5.025 Kgs. The contraband was taken in possession and sealed in parcel of cloth vide Memo Ext. PW1/A by sealing six times with seal impression 'C'. NCB Form Ext. P-15/PW8 was filled in triplicate and a sample seal Ext. P-2/PW8 was also taken on a piece of cloth and three sample seals were also taken on NCB Form and after use, seal was handed over to conductor PW1 Rajat Kumar vide a separate memo.

6. Hand bag of Sapna was also checked, wherefrom Ext.P-1/PW9 ticket No. MF0687676 of seat Nos. 5 and 6 from Haridwar to Bhuntar was recovered and another ticket issued by conductor from Bhuntar to Jai Nalla was also found therein. These tickets were taken in possession. Sample parcels as well as memo were signed by Sapna as well as witnesses.

7. For finding commission of offence under Section 20 of NDPS Act, a *Rukka* (Exhibit P-3/PW9) was

prepared and sent through PW2 Netar Singh for registration of FIR in Police Station Bhuntar. On the basis of which, FIR No. 152 of 2019, dated 26.07.2019 (Exhibit P-27/PW8), was registered at Police Station Bhuntar at 6:46 PM.

8. PW9 ASI Bhup Singh later on handed over investigation to Sunil Kumar (PW-12), In-charge SIU, Kullu, for further investigation, who after that handed over case property to HC Chander Shekhar (PW-8), who recorded entry alongwith documents in this regard in register No. 19, at serial No. 237. Separate Memo was prepared to this effect. Statement of witnesses were recorded and on finding sufficient grounds for arrest of Sapna, she was arrested at 7:50 PM at Seund and information in this regard was given to her relative Veer Pratap on his mobile phone. Sapna was produced in the Court on 27.07.2019 and thereafter, she remained in police as well as in judicial custody.

9. On 27.07.2019, Special Report (Ext.P-1/PW4) was produced before the Deputy

Superintendent of Police, Kullu, at about 3:25 PM. Proceedings under Section 52-A of the NDPS Act, were completed before PW-13, Arvind Kumar, Chief Judicial Magistrate.

10. HC Chander Shekhar is (PW-8), who has prepared the site plan. He has taken the case property from the Malkhana and carried the same to the Court of PW13 Arvind Kumar, Chief Judicial Magistrate, Lahaul and Spiti at Kullu, for carrying out the proceedings under Section 52-A of NDPS Act, for certifying the inventory and passing appropriate orders. After drawing two samples of 25 grams each separately and remaining bulk was sealed with three seals of "CJM, L & S". Sample Seal was taken on a piece of cloth by PW13 Arvind Kumar. Photographs Ext. P-3/PW-8 to Ext.P12/PW8, of proceedings were also taken. Thereafter order Ext. P13/PW8 was passed and certificate Ext. P14/PW8 was issued by PW13 Arvind Kumar.

11. On 28.07.2019, sample of contraband

alongwith documents through road certificate No. 209 of 2019 (Ext. P-17/PW8) was sent to SFSL Junga, through HHC Bahadur Singh (PW-6), who after depositing the case property at SFSL Junga, handed over the receipt to the HC Chander Shekhar (PW-8). SFSL Report (Ext.P-13/PW12) alongwith sample of contraband was brought back from SFSL Junga by HC Shyam Singh (PW-5).

12. After completion of investigation Inspector Vikas Kumar (PW-10), prepared the challan and presented the same in the Court.

13. Finding a *prima facie* case against appellant Sapna, the Trial Court framed charge under Section 20 of NDPS Act against her on 21.12.2019.

14. On pleading not guilty, appellant Sapna was subjected to trial.

15. To substantiate its case, prosecution has examined thirteen witnesses, whereas, after recording the statement under Section 313 of Cr.P.C., appellant Sapna has not led any evidence in defence.

16. On conclusion of trial, the Trial Court after appreciation of the evidence on record, convicted Sapna as referred (supra).

17. We have heard learned counsel for the appellant as well as learned Deputy Advocate General for the respondent-State and have also gone through the record of the case carefully.

18. Learned counsel for the appellant, pointing out various contradictions, discrepancies and other flaws in the evidence, has submitted that prosecution has failed to prove the case beyond reasonable doubts against appellant Sapna, however, ignoring the same, the Trial Court has committed an error in convicting the appellant, whereas learned Deputy Advocate General, for the findings, in impugned judgment returned by the Trial Court, has supported the conviction and sentence awarded to the appellant.

19. There is discrepancy with regard to the arrival of bus on the spot. According to PW-2 Constable Netar Singh, the police party was present at 6:00 AM, at

Seund and bus came at 7:05 AM. According to PW-1, Rajat Kumar also, who is conductor of the bus, the bus arrived on the spot at 7:15 AM. However, ASI Bhup Singh (PW-9), in his examination-in-chief has stated that bus arrived on the spot at 12:05 AM, which has not been disputed nor clarified at any stage.

20. According to learned Deputy Advocate General, this discrepancy has arisen on account of a typographical mistake, whereas according to learned counsel for the appellant there were ample opportunities to correct the same and despite that it was a glaring mistake, it was not corrected at the time of signing the statement and otherwise even thereafter, and now fact remains that there are two police official witnesses and they are stating time of considerable different arrival of the bus, as gap between timing is about seven hours.

21. As per prosecution case, on apprising her right under Section 50 of NDPS Act, appellant had expressed her desire to be searched before nearby Gazetted Officer, and thereupon Smt. Bimla Bhutti,

District Panchayat Officer (PW-3), was called on the spot and LHHC Rema Devi (PW-11), was called from the Police Station Bhuntar for conducting search. According to PW-11 Reema Devi, she alongwith LC Lata, HC Tarun Kumar reached on the spot in an official vehicle at Seund, at about 8:00 AM. As per her departure report, recorded in daily dairy (Exhibit P-18/PW8) on receiving information from ASI Bhup Singh in the Police Station, this witness left the Police Station at about 7:35 AM, meaning thereby at 7:35 AM or before that consent for search was obtained from Sapna. However, according to PW-3, Smt. Bimla Bhutti, District Panchayat Officer, she received information between 9:45 to 10:00 AM and she reached on the spot at 10:30 AM. According to PW11 LHHC Reema Devi, consent of personal search under Section 50 was obtained by the Investigating Officer after her arrival, vide consent memo Ext. PW2/A, whereupon ASI Bhup Singh telephonically requested Deputy Superintendent of Police to sent a lady Gazetted Officer on spot and in sequel thereto PW3

Smt. Bimla Bhutti, District Panchayat Officer reached on the spot at 10:30 AM and she was apprised about the situation and first of all she (Reema Devi) and ASI gave their personal search to accused Sapna and thereafter personal search of Sapna was conducted in presence of District Panchayat Officer, at that time other officials are outside the bus. It indicates that personal search of Sapna was conducted after 10:30 AM, immediately after arrival of Smt. Bimla Bhutti, District Panchayat Officer, on the spot.

22. According to PW-3, Smt. Bimla Bhutti also, after her arrival at 10:30 AM, personal search of Sapna was conducted by PW11 LHHC Reema Devi and contraband was recovered from the person of Sapna. In cross-examination, PW-3 has stated that she had gone to the spot in police vehicle with its driver and reached the spot at around 10:00 AM. During her return journey, she had used her own official vehicle. It remained unexplained that when she and persons came on spot in the police vehicle, and she returned in her

own vehicle which never arrived on spot. There is silence about arrival of her official vehicle on the spot as she had come on the spot in the police vehicle with its driver.

23. PW3 Bimla Bhutti has categorically stated that personal search of Sapna was conducted on her arrival on the spot. According to her, personal search of Sapna and another accused Rani was taken together and it took 5-10 minutes to conduct the search of the accused and it was finished at around 10:30 AM. She remained on the spot approximately for one and half hours at around 1:30-2:00 PM and her signatures were obtained by the police on all documents in one go and her statement was also recorded by PW-9 ASI Bhup Singh on the same day.

24. Prosecution case is that Rani was searched first and personal search of Sapna was conducted after 2:20 PM on return arrival of PW 2 Constable Netar Singh from the Police Station Kullu, after handing over *Rukka* in case of Rani.

25. According to PW-1 Rajat Kumar and PW-3

Smt. Bimla Bhutti came on the spot at 8:00 AM and search of appellant was conducted thereafter.

26. According to PW-9, ASI Bhup Singh, personal search of Rani was conducted at 11:00-11:30 AM and thereafter, personal search of accused Sapna was conducted at around 1:30 PM. It took approximately one hour to prepare and serve notice under Section 50 of NDPS Act and took about two hours to complete the other proceedings, meaning thereby PW-3 Smt. Bimla Bhutti should be on the spot till 4:00-5:00 PM, whereas according to PW3 Bimla Bhutti, she had left the spot at 1:30-2:00 PM and by that time all documents had signed by her and her statement had also been recorded. According to PW-2, Constable Netar Singh, PW3 Smt. Bimla Bhutti, District Panchayat Officer had reached on the spot at 10:30 AM and in examination-in -chief, he was silent about obtaining consent from Sapna as well as Rani, but he had stated that two ladies were found sitting on seat Nos. 5 and 6 and lady on seat No. 5 disclosed her name Rani and during checking 4.850 Kgs

of *Charas* was recovered from her and thereafter Investigating Officer prepared *Rukka* and handed over it to him and he went to the Police Station Bhuntar and handed over the *Rukka* to SHO Police Station, Bhuntar, and thereafter he came back on the spot at about 2:20 PM and consent of Sapna was taken under Section 50 of NDPS Act and at that time, Smt. Bimla Bhutti was already present on the spot and search of Rani had already been conducted in her presence.

27. According to PW-8 HC Chander Shekhar, *Rukka* was handed over by PW-2 Netar Singh to him, who was posted as MHC in Police Station Bhuntar and it was he (PW-8) who registered the FIR. According to Investigating Officer, PW9 Bhup Singh, *Rukka* was again sent through PW-2 Netar Singh to the Police Station for registration of FIR, but Netar Singh is completely silent in this regard about visiting Police Station in second case i.e. present case.

28. According to PW-2 Netar Singh as well as PW-9 Bhup Singh, seal used by the Investigating Officer,

after use, was handed over to PW-1 Rajat Kumar, who is completely silent in this regard.

29. In the recovery memo, recovered contraband has been stated to be brick shaped and photographs also depicts so, but according to PW-1 Rajat Kumar, shape of recovered *Charas* was flat.

30. According to PW-9, Bhup Singh, he prepared the spot map, whereas according to PW-12 Sunil Kumar, it was he, who prepared the spot map at the instance of ASI Bhup Singh.

31. PW12 has stated that he proceeded to spot at 5:20 PM whereas as per daily diary JD entry No. 34, Ext. P-19, he left the Police Station at 6:05 PM.

32. In NCB form, recovery of contraband from Sapna has been stated to be at about 3:45 PM, whereas according to PW3 Smt. Bimla Bhutti, both Sapna and Rani were searched at about 10:30-11:00 AM and according to PW2 Constable Netar Singh and PW11 LHHC Reema Devi, search of Sapna was conducted immediately after arrival of Smt. Bimla Bhutti i.e. about

11:00 AM, whereas entry in the NCB form is contrary to the same. It is also noticeable that contraband was not resealed by the SHO before depositing in the *Malkhana*.

34. Apart from aforesaid contradictions and discrepancies, which are creating doubt about the presence of official witnesses as well as Gazetted Officer at relevant point of time, as claimed in the prosecution case. There is another glaring discrepancy, which creates doubt about the claim of the prosecution with respect to compliance of Section 50 of NDPS Act in Consent Memo (Ext. P2/PW9) prepared under Section 50 of NDPS Act. It is apt to notice that it has been prepared, by filling the blanks in a printed proforma and below the information given to the appellant regarding her right to give personal search before Gazetted Officer or the Magistrate, her signatures have been obtained as a person to be searched and these signatures have been purported to have been witnessed by driver Tara Chand (expired), PW-1 Rajat Kumar, Conductor and PW-2 Constable Netar Singh. It is clearly

apparent that witness PW2 Netar Singh has been added later on and under his name arrow has been marked towards the signature of Sapna in which also there is cutting and this signature of Sapna is below printed words witness No.2. It is also noticeable that at one place signature of witness Tara Chand is in Hindi and on the same page his signature below the consent is in English and signatures of Netar Singh have been put below the words where signatures of person to be searched were to be obtained. The some words of consent are printed and some words are hand written and there is no signature of Sapna below the so called consent but in between Sapna has been written below the name of Netar Singh and consent states '*ma apni talashi najdiki rajpatrit adhikari ko dena 'chahata' hu*'. Sapna is female whereas consent appears to be obtained of some male. At the time of obtaining consent memo, FIR was not registered, but this memo also contains FIR number, which has been written in one go alongwith other entries on the consent memo.

34. Similarly, arrest memo is also not beyond doubt. At the time of arrest, Lata Devi and Reema Devi have been shown witnesses to the arrest, but their signatures are not there, only her names have been written with address. However, their signatures are there where information of arrest given to relative of Sapna has been recorded. But Lata Devi has not been cited a witness in challan.

35. At the time of production of case property and documents in the Police Station, Inspector Sunil Kumar prepared memo Ext. P22/PW9, but again despite mentioning name of Reema Devi and Lata, their signatures are missing on this memo also.

36. It is also relevant to point out that there were three official witnesses on the spot. According to prosecution story, out of them, two have been cited, one is Investigating Officer PW9 Bhup Singh and another PW2 Netar Singh has been cited as witness to the documents as well as person who took *Rukka* to the Police Station. Third official, HHC Sanjay Kumar,

though, mentioned as present on the spot, but his presence is not visible at any point of time, because according to Investigating Officer, he kept on waiting for arrival of Netar Singh for carrying out further investigation with respect to Sapna after sending PW-2 Netar Singh with *Rukka* in case of Rani for registration of FIR.

37. HHC Sanjay Kumar has neither been cited as a witness in the list of witnesses submitted with challan nor he has been examined in the Court. Out of three police officials, only two were cited as a witness, it again creates doubt about the story placed on record by the prosecution.

38. Independent witnesses Driver Tara Chand and Conductor Rajat Kumar were present on the spot. Lady Constables Reema Devi, Lata and Smt. Bimla Bhutti, District Panchayat Officer were also present on the spot. HHC Sanjay Kumar was also present on the spot. As per Daily Diary Report (Ext.P-18/PW8), apart from PW11 Reema Devi and Lata Devi, two other police officials i.e.

HC Tarun Kumar and Driver of official vehicle had also come on spot with Reema Devi and Lata Devi. But they also not been cited as witnesses. Here question arises that when other police officials were available on the spot, then why PW9 Bhup Singh was waiting for return of PW2 Netar Singh for investigation, search and seizure in so called second case. In fact, there was no occasion for PW-9 Bhup Singh to wait for Netar Singh return on the spot to carry on further proceedings in case of Sapna.

39. It appears to be a concocted story because according to Reema Devi PW-11 and PW-3 Smt. Bimla Bhutti, a search of Sapna had already been conducted alongwith search of Rani and Bimla Bhutti had left the place at 2:00 PM. after signing all the documents in one go.

40. Discrepancies with respect to timing, sometimes may not be fatal, but in the present case, there is considerable time gap regarding the events claimed to have happened during investigation, which

are irreconcilable.

41. The discrepancy referred supra in isolation, may have least bearing on prosecution case, if the deposition of prosecution witnesses including official witnesses would have been reliable and convincing. But for discrepancies and material contradictions in their statements, discrepancies noticeable in consent memo, production of case property, other documents like arrest memo as well as NCB form are sufficient to doubt the veracity of prosecution story.

42. On the basis of evidence placed on record, it can easily be construed that truth has not been brought on record and the reality is something else, otherwise than the story propounded by the Investigating Officer by preparing the documents somewhere else but not as claimed. It is settled law that even if there is slightest doubt about the veracity of the prosecution case, benefit has to be extended to the accused.

43. It is also settled that more stringent the

punishment, the greater is the responsibility of the prosecution to prove the case beyond reasonable doubt.

44. From aforesaid discrepancies, contradictions and lapses, we are of the considered opinion that prosecution has failed to prove the guilt of the appellant beyond reasonable doubt by leading cogent, reliable and convincing evidence, therefore, appellant is entitled for benefit of doubt.

45. Accordingly, impugned judgment and sentence order dated 07.08.2023, passed by Special Judge-1 Kullu, District Kullu, H.P. in case (Regd. No.) No. 144(106)/2019, titled as State of Himachal Pradesh Vs. Sapna arising from FIR No. 152 of 2019, dated 26.07.2019, are set aside. The appellant is acquitted of the charges and is directed to be released forthwith if not warranted to be detained in any other case

46. Release warrants be issued forthwith, if not required in any other case.

47. Case property will be confiscated to the State strictly in accordance with law after expiry of

period of limitation of filing further proceedings before competent Court of law.

48. The fine amount, if deposited, be refunded after the expiry of period of limitation for filing the appeal, in case no appeal is preferred and in case of appeal, the same be dealt with as per the orders of the Apex Court.

49. In view of the provisions of Section 437-A Code of Criminal Procedure, 1973, appellant Sapna is directed to furnish a personal bond in the sum of Rs. 50,000/- with one local surety in the like amount to the satisfaction of the Registrar (Judicial) of this Court, which shall be effective for a period of six months, with stipulation that in the event of Special Leave Petition being filed against this judgment or on grant of leave, the appellant, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

50. Record be sent back forthwith.

51. Pending miscellaneous application(s), if any,
also stand disposed of accordingly.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge

14th July,2026
(sushma)

PARDEE
P KUMAR

Digitally signed by PARDEEP KUMAR
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