

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 549 of 2015.

Reserved on: 08.09.2026.

Decided on: 28.09.2026.

Uploaded on: 28.09.2026.

State of Himachal Pradesh

...Appellant.

Versus

Guman Singh and Another

...Respondents.

Coram

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

Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting? ¹ Yes

For the Appellant.

Mr. Raj Negi, Deputy Advocate General.

For the Respondent:

Mr. Shivom Vashisht, Advocate.

Vivek Singh Thakur, Judge

Present appeal has been preferred by the State against the judgment of acquittal dated 17.03.2015, passed by Special Judge-I, Sirmaur, District at Nahan, H.P., in Sessions Trial No. 49-ST/7 of 2013, titled *State of Himachal Pradesh vs. Guman Singh and Another*, in Case FIR No. 79/2013, dated 06.06.2013, registered at Police Station Nahan, District Sirmaur, H.P., under Section 20 of the Narcotic Drugs and

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

Psychotropic Substances Act, 1985 (in short 'NDPS Act'), whereby respondents have been acquitted of charge, framed against them.

2. Prosecution case is that on 06.06.2013, PW-10 HC Rupender, Investigating Officer in Special Investigation Unit (SIU), Nahan along with companion police officials, including PW-4 Constable Kailash Panwar, PW-5 Constable Amit Kumar, PW-6 HC Hari Chand, Constable Mukesh (not examined), and Constable Vikramjeet (not examined), had left Police Station Nahan for detection of commission of crime related to NDPS Act and Forest Act, after recording their departure in Police Station Nahan vide GD Entry No. 36(A) (Ext. PW2/A), dated 06.06.2013 at 3:30 P.M. The police party proceeded for patrolling in personal vehicle and motorcycle. They went up to Mahipur, where they reached at 4:45 P.M., wherefrom they started back to Nahan and at about 7:30 P.M., when they reached near Satna Khala, they noticed two persons coming from Jamta side on foot, who, on seeing the police party, tried to escape, which raised suspicion and, therefore, they were chased and over-powered by the police officials. Both of them were having bags in their hands. On search of bag carried by respondent No. 2 Sundar Singh, animal skin was found, whereas from the bag being carried by respondent No. 1 Guman Singh, apart from animal skin, a silver-coloured bag containing black coloured substance was also found, which, on the basis of experience,

smelling, and testing, was identified as Charas, regarding which identification memo (Ext. PW4/D) was prepared. On weighing, recovered Charas was found to be 1 kilogram.

3. Thereafter, Investigating Officer, PW-10 HC Rupender, kept the Charas in the same bag and put it into a cloth parcel, which was sealed by him with 6 seals of impression 'P'. Sample of seal was taken on separate piece of cloth (Ext. PW4/B). Animal skin was also kept in a separate cloth parcel and was sealed with 6 seal of impressions 'P'. NCB forms were filled by the Investigating Officer on the spot by taking sample of seal impression 'P' on NCB form. Seal after its use was handed over to HC Hari Chand (PW-6), vide memo (Ext. PW4/C). Photographs (Ext. PW-4/E-1 to Ext. PW-4/E-12) were also clicked on the spot.

4. Parcel containing Charas and animal skin was also taken into possession vide seizure memo (Ex. PW-4/A), which was signed by witnesses and accused persons. As independent witnesses were not available, seizure memo was witnessed by witnesses HC Hari Chand (PW-6) and Constable Kailash Panwar (PW-4). Thereafter, ruqua (Ex. PW-4/F) was prepared at 9:10 P.M. and was sent to Police Station Nahan through Constable Kailash Panwar (PW-4), who reached in the Police Station at 9:45 P.M., and FIR (Ex. PW-4/G) was registered by PW-8 SI Praveen Kumar after making endorsement on the ruqua. Case file was

handed over to Constable Kailash Panwar (PW-4), who brought it back to the spot and handed over the same to PW-10 HC Rupender.

5. On finding *prima facie* sufficient material regarding commission of offence by the respondents under NDPS Act, respondent No. 1 Guman Singh was arrested at 11:10 PM on 06.06.2013, and information of his arrest was transmitted to his wife Promila on mobile number supplied by Guman Singh. Information memo of arrest is Ext. PW-10/C. Similarly, respondent No. 2 Sundar Singh was arrested at 11:15 PM, and information of his arrest was transmitted to his son Anil on mobile number. Information memo of his arrest is Ext. PW-10/B.

6. Police party left the spot at 11:20 P.M. and reached Police Station at 11:45 P.M. Resealing was completed by PW-8 SI Praveen Kumar by putting seal impressions 'R' on the parcel.

7. After resealing the case property with seal 'R', he prepared resealing memo (Ext. PW8/B) and handed over the case property alongwith NCB form after filling up relevant columns therein, to MHC PW-3 Sandeep Negi.

8. Case property was sent to SFSL, vide RC No. 119/13, dated 10.06.2013 (Ext. PW3/B) through PW-1, Constable Subhash Chand on 10.06.2013, who deposited the same in SFSL and handed over the receipt to PW-3 HC Sandeep Negi, with endorsement of receipt on the

Road Certificate itself. Chemical Analyst report Ex. PX was received from the SFSL. Special Report (Ext. PW7/A) was prepared by PW-8 SI Parveen Kumar, which was delivered to Additional S.P. through Constable Amit Kumar and PW-9 Inspector Laiq Ram, SHO, verified the investigation, prepared the challan, and put it in the Trial Court.

9. Trial Court, finding *prima facie* case against the respondents has framed charge under Section 20 of NDPS Act on 11.03.2014, to which respondents pleaded not guilty and claimed trial.

10. Prosecution has examined 10 witnesses to substantiate the prosecution story, whereas after recording statements of respondents under Section 313 Cr.P.C., they have examined DW-1 Kirpa Ram in defence.

11. Trial Court, after evaluating the evidence on record, acquitted the respondents, and hence, State is in appeal against acquittal.

12. It is settled principle of criminal jurisprudence that more stringent is the punishment, higher the degree of assurance of commission of offence is required to be established on record.

13. In present case, neither independent witness has been associated nor has been examined by the prosecution. An explanation has been rendered by the police that place was isolated and no

independent witness was present, and therefore, police officials, HC Hari Chand (PW-6), and Constable Kailash Panwar (PW-4), were associated in search and seizure process. It is case of month of June. The time of recovery of contraband, and intercepting the accused, is stated to be 7:30 P.M. It has come in the evidence of all police official witnesses, claiming to be present on the spot, that at that time it was not so dark and, therefore, it was not dark of midnight. From the statements of the police official witnesses PW-4, Constable Kailash Panwar, PW-5 Constable Amit Kumar, PW-6 HC Hari Chand and PW-10 Investigating Officer HC Rupender, it is evident that no effort whatsoever was made for joining independent witnesses, rather on suspicion, respondents were apprehended, and their bags were checked immediately.

14. With respect to this fact, it has been claimed on behalf of prosecution that it was a chance recovery, and as bags were checked immediately, there was neither sufficient time available nor occasion to join independent witnesses. However, it has come on record in evidence of police official witnesses that immediately after apprehending the respondents, their bags were checked. It is a case where after recording G.D. Entry recorded in the Police Station, police party had left for patrolling to detect the cases related to NDPS Act. In these circumstances, when suspicion had arisen to the police party well in

advance, the proper course available with the Investigating Officer was to associate independent witnesses, or at least make an attempt to join independent witnesses in the search and seizure process, but it was not done so.

15. It is settled law that conviction can be made on the basis of statements of official witnesses only if their testimony is trustworthy, reliable, and convincing. In case version of official spot witnesses inspires confidence, only then there shall be a requirement of discussing the deposition of other witnesses, who were associated for completing the process of investigation.

16. PW-2 HHC Madan Sharma has proved on record G.D. Entry No. 36 (Ex. PW-2/A), as a true and correct copy of G.D. Entry made in the Police Station, and he also produced the original record, which was seen and returned. PW-3 HC Sandeep Negi is MHC with whom Additional SHO Parveen Kumar, PW-8, had deposited the contraband parcel sealed with six seals of 'P' and four seals of 'R', claiming that 1 kilogram Charas was there. Sample seal and NCB forms were also deposited with him, who in turn sent the case property to SFSL through PW-1 Constable Subhash Chand, on 10.06.2013. PW-7 HC Ramesh Kumar, Reader to Additional SP, has proved copy of special report dated 07.06.2013, Ex. PW-7/A, brought by Constable Amit Kumar, PW-5, which

was perused by Additional SP Bhagat Singh, who made endorsement on it in red circle, and entered in the concerned register. PW-9 Inspector Laiq Ram brought the SFSL report Ext. PX, verified the investigation, prepared the challan, and put it in the Court.

17. In ruqua Ext. PW-4/F, it has been stated that Charas in the shape of sticks was recovered from the bag being carried by Guman Singh. In FIR Ex. PW-4/G, seizure memo Ex. PW-4/A, identification form of contraband Ex. PW-4/D, Special Report Ext. PW7/A, it has been categorically stated that recovered Charas was in the shape of sticks.

18. Perusal of SFSL report Ext. PX, it is apparent, as recorded in column No. 10, on opening the sealed cloth parcel, exhibit stated as charas, in the form of sticks, one *Chapatti* and poly-wrapped fused sticks mass was found in grey coloured cloth bag. On weighing, it was found to be 999.653 grams.

19. Not only in the documents, but also in the statements of PW-4 Constable Kailash Panwar, PW-5 Constable Amit Kumar and PW-10 HC Rupender, it has been stated in examination-in-chief that Charas in the shape of sticks was found.

20. Learned counsel for the respondents has also pointed out that seal after use was handed over to PW-6 HC Hari Chand, but he did not produce the seal in the Court at the time of deposition, and tried to

give clarification that it was lost. It has been submitted that as seal was not produced, possibility of tampering of the contraband cannot be ruled out, and therefore, non-production of the seal, coupled with the different nature of shape of contraband found in the parcel in the State FSL, it becomes relevant, and on this count also, non-production of seal is fatal for the prosecution.

21. Non-production of seal 'P' may or may not be relevant as the parcel sent to the State FSL, all seals including resealing seals were found intact and no tampering was noticed or pointed out at the time of production of parcel of contraband in the Court at the time of deposition. However, there is sufficient discrepancy with respect to nature and shape of the contraband alleged to be recovered from the respondents, and the contraband allegedly analyzed by the FSL, subject matter of report Ext. PX, is entirely different from the contraband alleged to have been recovered from the respondents. There is missing connecting link to correlate the result of FSL Ext. PX with the Charas allegedly recovered from the respondents and, therefore, SFSL report (Ext. PX) cannot be relied upon with respect to Charas so recovered from the respondents to connect that missing link. For different shape of the contraband noticed by the State FSL other than the shape of contraband alleged to be recovered, there is no evidence to prove on record that contraband

recovered, sealed and resealed by the prosecution witnesses was one and the same, which was examined by the State FSL.

22. Further, all official witnesses have stated that they had gone to Mahipur on receiving secret information regarding smuggling of timber, received by PW-6 HC Hari Chand, and they did not check any vehicle at Mahipur or on the way because they were having specific information with respect to smuggling of timber and had reached Mahipur to trace/detect the said commission of offence. This plea also appears to be an afterthought to justify the story of going to Mahipur and apprehending the respondents while returning. It has been stated by official witnesses that they concealed themselves behind bushes at Mahipur and waited for the vehicle transporting illicit timber, and when for two hours no vehicle came, then they started back and on the way apprehended the respondents.

23. It is apt to notice that in departure G.D. Entry, there is nothing stated with regard to so-called information received by HC Hari Chand (PW-6), and HC Hari Chand (PW-6) has also not deposed and disclosed in his examination-in-chief about receiving of such information.

24. PW-4, in his examination-in-chief, has categorically stated that they were having secret information regarding transportation of illicit timber, whereas PW-5 C. Amit Kumar is silent in this regard in his examination-in-chief. PW-6 HC Hari Chand has also deposed in the same

fashion. PW-10 HC Rupender is silent in this regard, but he has stated that they were on patrolling duty at the relevant point of time. In cross-examination, he stated that HC Hari Chand (PW-6) was having information of smuggling of timber, but such information was not recorded. In the light of nature of evidence on record that story of receiving secret information regarding transportation of illicit timber is unbelievable.

25. Trial Court has acquitted the respondents on the ground that there is non-compliance of Section 50 of the NDPS Act, but in view of exposition of law clarified and propounded by the Apex Court in **Ranjan Kumar Chadha versus State of Himachal Pradesh**, reported in **2023 SCC Online SC 1262 (AIR 2023 Supreme Court 5164)**, Section 50 of the NDPS Act is not attracted in present case, as nothing was recovered during personal search, and therefore, findings returned by the Trial Court in this regard, are not sustainable.

26. As per prosecution case, PW-1 Constable Subhash Chand was handed over contraband on 10.06.2013, it was deposited in SFSL on 12.06.2013, and explanation given by PW-1 Constable Subhash Chand is that there were certain objections raised by SFSL and, therefore, he returned back for removal of objections and then deposited the contraband in State FSL. But PW-3 MHC Sandeep Negi has categorically

stated that PW-1 Constable Subhash Chand had never returned back for removal of objections, and he had deposited the case property in State FSL on 10.06.2013. The endorsement regarding receipt of case property, recorded by the official of the State FSL on Road Certificate No. 119/2013 (Ext. PW3/B), indicates that case property was deposited in FSL on 12.06.2013. Though, there is nothing on record that case property was ever tampered, and PW-1 Constable Subhash Chand has also stated that during his custody, there was no tampering in the contraband parcel, however, there are material discrepancies in the statements of PW-1 Constable Subhash Chand and PW-3 HC Sandeep Negi (MHC) with regard to possession and depositing the parcel in FSL, and therefore, it also creates doubt about the veracity of prosecution case.

27. It is also noticeable that at the time of search and seizure of the contraband, preparation of seizure memo (Ex. PW-4/A) after sealing the parcel containing recovered contraband, filling NCB form, handing over of the seal to PW-6 HC Hari Chand after use, taking of sample of seal 'P' Ex. PW-4/B, memo of handing over of seal Ext. PW-4/C, identification memo of contraband Ex. PW-4/D, Investigating Officer was not having FIR number. However, at the time of resealing, and taking of sample of resealing 'R' (Ext. PW8/A), FIR number was available.

28. Perusal of the documents depicts that though in seizure memo Ex. PW-4/A, memo of handing over of seal Ex. PW-4/C, identification memo Ex. PW-4/D, FIR number has been written with red pen, whereas rest of document is in blue ink, but in sample seal Ex. PW-4/B, FIR number has been written in one go with blue pen. In case these documents were prepared together, then it was not possible for the Investigating Officer to write FIR number in one go with same ink, particularly when the documents prepared at the same time, does not have FIR number, but FIR number was filled in later on with red ink.

29. At the time of resealing, FIR number was available, and therefore at the time of preparation of sample seal of resealing stamp 'R', FIR number was available, but in this sample of seal taken on cloth, it is apparent with naked eye that column of space for filling FIR number was kept blank, which was, though, filled with blue ink, but later on, and space between FIR number 79 and 13 is so much, that it clearly indicates FIR number was filled in later on. This discrepancy, in given facts and circumstances, is of significance, drawing an inference that true picture is being hidden from the Court.

30. At this point, it is also relevant to refer that as per Investigating Officer, all police officials were in uniform, and no independent witness was available on the spot, and photographs were

taken and have been placed on record as Ext. PW-4/E-1 to Ext. PW-4/E-12. Perusal of photograph Ex. PW-4/E-8 depicts that there are three persons on the spot in civil dress, but not in police uniform. Prosecution story is that there were only two accused persons on the spot, no other independent witness was available, and all police officials were in police dress, then from where third person in civil dress appeared in photograph Ex. PW-4/E-8. In the photograph, recovered Charas is in the shape of sticks, which also does not match with the description of recovered contraband noticed and recorded by the State FSL.

31. The respondents have also advantage of being acquitted by Trial Court, fortifying presumption of innocence in their favour.

32. Learned Deputy Advocate General has also not been able to point out any cogent, reliable, convincing evidence ignored by the Trial Court, so as to warrant interference of this Court in judgment of acquittal passed by the Trial Court.

33. Prosecution has failed to prove its case by leading cogent, reliable, trustworthy and convincing evidence. Therefore, appeal is liable to be dismissed.

34. Respondents have examined DW-1 Kirpa Ram, however, on account of discrepancies, contradictions and lapses on the part of

investigating agency, there is no necessity to discuss the evidence of said witness.

35. In view of the aforesaid discussion, we are of the considered opinion that there is no merit in the appeal and accordingly, appeal is dismissed.

36. Before parting, in view of the provisions of Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023 (437-A of the Code of Criminal Procedure), the respondents are directed to furnish bail bonds in the sum of ₹25,000/- each with one surety each 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 respondents on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court.

37. Contraband be kept intact during the limitation period for filing appeal/petition or receiving the notice/summons from the Apex Court.

38. Bail bonds furnished in this appeal, at the time of admission of appeal, stand discharged. However, bail bonds to be furnished under Section 481 of BNSS remain in force, as already directed.

39. Record of Trial Court be sent back forthwith.

Pending miscellaneous application(s), if any, are also disposed in the same terms.

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

**(Bhupesh Sharma),
Judge.**

28th September, 2026
(Susheel)