

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 4 of 2014.

Reserved on: 18.07.2026.

Decided on: 01.10.2026.

Uploaded on: 01.10.2026.

State of Himachal Pradesh

...Appellant.

Versus

Surender Kumar and Others

...Respondents.

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. Raj Negi, Deputy Advocate General.

For the Respondents:

Mr. M.A. Safee, Advocate, for respondent No. 1.

Mr. Anubhav Chopra, Advocate, for respondent No. 2.

Mr. Jia Lal, Advocate, for respondent No. 3.

Vivek Singh Thakur, Judge

Present appeal has been preferred by the State against the judgment of acquittal dated 14.08.2013, passed by Special Judge, Kullu, in Sessions Trial No. 21/2013-15/2013 and 53 of 2013, titled *State vs. Surender Kumar & Others*, in Case FIR No. 17 of 2011, dated

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

13.02.2011, registered at Police Station Banjar, District Kullu, H.P., under Sections 20 and 29 of the NDPS Act, whereby respondents have been acquitted of charges, framed against them.

2. Prosecution case is that on 13.02.2011, PW-10 ASI Ram Lal, along with PW-3 HHC Hem Raj, HC Shesh Raj (not examined) and Constable Narender Kumar (not examined), left the Police Station at about 5:30 P.M., along with investigating kit, for patrolling and detection of crime in town Banjar, New Bus Stand etc. In this regard, GD Entry No. 27(A), dated 13.02.2011 (Ext. PW-11/A), was recorded in the Police Station by PW-1 (later PW-12) SI Surender Pathak.

3. At about 6:00 P.M., police party noticed respondent No. 1 Surender Kumar and respondent No. 2 Amit Rathi coming out of the bus stand, who, on seeing the police party, turned back and tried to flee, which created suspicion of possession of some illegal article with them. Therefore, police party apprehended them at a distance of 20 meters.

4. Investigating Officer ASI Ram Lal (PW-10) associated PW-3 HHC Hem Raj and PW-2 Raj Kumar, an independent person, as witnesses, and in their presence, identification and whereabouts of Surender Kumar and Amit Rathi were ascertained, who disclosed their names as Surender Kumar and Amit Rathi with their addresses, but they

could not give a satisfactory explanation for their attempt to flee from the spot.

5. Because of suspicion, Investigating Officer, ASI Ram Lal (PW-10) apprised respondents No. 1 and 2 about their legal right to be searched either before a Magistrate or a Gazetted Officer, as required under Section 50 of the NDPS Act, vide memos Ext. PW-2/B and Ext. PW-2/C. Respondents No. 1 and 2 consented for their search before Magistrate, whereupon, Investigating Officer took both of them to residence of Naib Tehsildar, Banjar and disclosed the entire facts to Naib Tehsildar, Bishan Dass (PW-4). At that time, it was raining and PW-4 Bishan Dass, Naib Tehsildar, asked the police party to take respondents to Police Station by saying that he would be coming to the Police Station.

6. Investigating Officer brought both the accused persons to Police Station. Naib Tehsildar, Bishan Dass (PW-4) also came there, and in his presence, Investigating Officer gave his personal search in presence of PW-2 Raj Kumar and PW-3 HHC Hem Raj, and in this regard memos, Ext. PW-2/D and Ext. PW-2/E were prepared. Nothing illegal was found in possession of Investigating Officer.

7. Thereafter, in presence of witnesses, PW-2 Raj Kumar, PW-3 HHC Hem Raj and Executive Magistrate PW-4 Bishan Dass, search of the person of Amit Rathi was conducted, and on removing the knee cap

worn by Amit Rathi, black-coloured substance was found hidden under the knee cap. On weighing, it was found to be 500 grams. On the basis of experience, it was identified as Charas. It was again repacked in the same manner and kept in a cloth parcel, sealed with six seals of 'T'. Similarly, personal search of Surender Kumar was also conducted, and on removing the knee caps worn by Surender Kumar on both legs, 500 grams of Charas was recovered in presence of witnesses and Executive Magistrate and the same was also put in a cloth parcel and sealed with six seals of 'T'. In this regard, memo Ext. PW-2/F was prepared.

8. After sealing the contraband in cloth parcels, NCB Forms, Ext. PW-1/D and Ext. PW-1/E, were filled in triplicate from column Nos. 1 to 8 by the Investigating Officer.

9. After completion of search and seizure process, regarding Charas recovered from both respondents Nos. 1 and 2, PW-10 ASI Ram Lal prepared ruqua (Ext. PW-1/C) and handed over the same to PW-3 HHC Hem Raj for the registration of FIR. PW-1 SI/SHO Surender Pathak registered the FIR (Ext. PW-1/A) and made endorsements on the ruqua (Ext. PW-1/C) in this regard and handed over the case file to HHC Hem Raj (PW-3).

10. On finding sufficient material regarding commission of offence by respondents Surender Kumar and Amit Rathi, they were

arrested at 9:00 P.M., and arrest information memos Ext. PW-2/H and Ext. PW-2/J were prepared by making endorsements therein regarding information of arrest given to Sumit, who was brother of Amit Rathi and friend of Surender Kumar.

11. PW-10 ASI Ram Lal produced two parcels, Ext. P1 and Ext. P2, before PW-1 SI/SHO Surender Pathak, who in turn resealed the parcels and filled two sets of NCB forms regarding resealing, and had also drawn sample seal of 'N', and, thereafter, deposited the case property with MHC PW-5 Ramesh Chand.

12. PW-5 HC Ramesh Chand, after receiving the case property from PW-1 SI/SHO Surender Pathak at about 10:30 P.M., made entry in Malkhana Register at serial No. 35, extract whereof is Ext. PW-5/A.

13. On 14.02.2011, after filling column No. 12 of both NCB forms, PW-5, HC Ramesh Chand sent the case property through PW-11 Constable Rohit Sharma to State FSL Junga vide RC No. 18/11, Ext. PW-5/B. PW-12 Constable Rohit Sharma, after depositing the case property in State FSL Junga, handed over the receipt on the Road Certificate to PW-5 HC Ramesh Chand.

14. It is further case of the prosecution that during police custody, respondents made disclosure statements, Ext. PW-3/A and Ext. PW-3/B, on 15.02.2011 in the presence of PW-3 HHC Hem Raj and PW-

4 Bishan Dass, disclosing that they had procured Charas from respondent No. 3 Jai Singh and further that they could identify the house of Jai Singh, where they had stayed on 12.02.2011 and were given Charas by Jai Singh on 13.02.2011.

15. In furtherance to the aforesaid disclosure statements, Amit Rathi and Surender Kumar led police party to the house of Jai Singh and identified Jai Singh in presence of Atma Ram, Ward Member and PW-7 Prem Singh, Vice President of Gram Panchayat Nohanda. In this regard, memo Ext. PW-10/J was prepared.

16. Call detail record of respondent Nos. 1 and 2 from PW-13 Madan Lal Sharma, Nodal officer of Mobile Service Provider, was obtained. On finding sufficient material against Jai Singh (respondent No. 3), he was arrested on 08.03.2011. at 6:30 P.M. near Court Compound, Kullu and information of his arrest was given to his brother Prem Singh, who was accompanying him. In this regard, memo Ext. PW-10/K was prepared. After arrest, personal search of Jai Singh was conducted and nothing incriminating was found on his body. In this regard, memo Ext. PW-10/L was prepared.

17. On receiving chemical examiner's report, Ext. PW-1/G and on completion of the investigation, PW-1 SI/SHO Surender Pathak prepared the challan and presented in Court.

18. On finding *prima facie* material, charges under Sections 20 and 29 of NDPS Act were framed against respondents.
19. On pleading not guilty, respondents were subjected to trial.
20. To prove its case, prosecution has examined 13 witnesses, whereas after recording statements under Section 313 Cr.P.C., respondents did not opt to lead any evidence in defence.
21. On conclusion of trial, respondents have been acquitted by the Trial Court, vide impugned judgment, dated 14.08.2013.
22. In present case, four police officials were on patrolling duty, who allegedly noticed respondent Nos. 1 and 2 at the bus stand and apprehended them. One of them is Investigating Officer. Out of the rest three, one HHC Hem Raj was cited as a witness in the list of witnesses and was examined as PW-3, whereas remaining two police officials, namely HC Shesh Raj and Constable Narender Kumar, were neither cited as witnesses in the list of witnesses, nor examined in the Court.
23. The only independent witness associated from the bus stand till the recovery of contraband is PW-2 Raj Kumar. He is also a witness in giving notices under Section 50 of the NDPS Act and proceedings conducted thereafter till recovery of contraband and seizure thereof. PW-3 HHC Hem Raj is an official witness who has also witnessed the entire proceedings till last, including registration of the FIR.

PW-4 Bishan Dass is Naib Tehsildar, in whose presence Charas was recovered on personal search of respondents No. 1 and 2 and as per prosecution case, he and PW-3 HHC Hem Raj have also witnessed the disclosure statements Ext. PW-3/A and Ext. PW-3/B.

24. PW-7 Prem Singh and PW-8 Khem Singh have been examined to link Jai Singh with commission of offence as a supplier of the Charas on the basis of identification of house and Jai Singh by respondent Nos.1 and 2.

25. PW-9 Harbans Kumar is Reader to Additional SP, who has proved receipt of Special Report, Ext. PW-9/A, sent by Investigating Officer to Dy.S.P Ram Lal Bansal on 14.02.2011, which was handed over to this witness by DSP after making an endorsement thereon within red circle. This witness made an entry in the register at serial No. 11, extract whereof is Ext. PW-9/B.

26. PW-13 Madan Lal Sharma is Nodal Officer of Reliance Communications, who has been examined to prove the supply of call details of mobile phone No. 96256-25210.

27. After hearing learned Deputy Advocate General and counsel for the respondents and after going through the record, we have noticed following contradictions and discrepancies, leading to forming of an opinion that there is no merit in the appeal.

28. As per the ruqua and as also stated by PW-10 ASI Ram Lal, respondent Nos. 1 and 2 were noticed and apprehended by the police party at 6:00 P.M. and they were given options by apprising their right under Section 50 of the NDPS Act for their personal search to be conducted as per their desire, either before a Magistrate or Gazetted Officer, and on expressing their consent for their search before the Magistrate, they were taken to the residence of Naib Tehsildar, PW-4 Bishan Dass, at about 7:00 p.m., who asked the Investigating Officer to take respondents Nos. 1 and 2 to Police Station, as at that time it was raining, and thereafter, Naib Tehsildar came to Police Station at about 7:15 p.m.

29. PW-2 Raj Kumar was accompanying the police party during this time. As per prosecution's case, search was conducted in Police Station and the rukka was also prepared in Police Station.

30. Perusal of consent memo Ext. PW-2/B and 2/C reveals that in the consent, it has been recorded that respondents No. 1 and 2 had consented for their search in the presence of Magistrate by saying that "*Main apne sharir ki jama talashi magistrate ke samaksh aapki maujudgi mein karwana chahta hoon.*" As per prosecution case, this option was given at the bus stand in presence of PW-2 Raj Kumar and PW-3 HHC Hem Raj, and thereafter, they went to the house of PW-4 Bishan Dass,

however, PW-4 Bishan Dass has also been cited as a witness to this memo. Not only this, another endorsement has also been made by PW-4 Bishan Dass on these memos, stating therein that on 13.02.2011 at 7:00 p.m., in his presence, 500 grams of Charas each was recovered from respondent Nos. 1 and 2 on search of their body. At the time of giving option under Section 50 of the NDPS Act, Naib Tehsildar PW-4 Bishan Dass was not on the spot, nor Charas had been recovered, but signature of PW-4 as a witness and a separate endorsement under his separate signatures regarding recovery of Charas at the time of preparing this memo shatters the prosecution's case completely, creating doubt regarding veracity of the rest of the story.

31. It is also to be noticed that on the consent memos Ext. PW-2/B and Ext. PW-2/C, at the top, Investigating Officer had mentioned Case FIR No. ____/11, dated 13.02.2011, 'under Section 20 of the NDPS Act'. It is relevant to notice that at the time of obtaining consent, nothing was known to Investigating Officer regarding any contraband being possessed by respondent Nos. 1 and 2, for invoking provisions of Section 20 of the NDPS Act. At that time, Investigating Officer was having doubt about possession of narcotic drugs, but what was it, was not known to him, and therefore it was not clear to him whether it was Charas, Chitta, Heroin, Cocaine, Opium, or any other substance, which are not covered

under Section 20 of the NDPS Act. Therefore, for mentioning 'under Section 20 of the NDPS Act' in the beginning before the search and recovery, it appears that this document has been prepared later on, or something is there which is being hidden from the Court.

32. There may be a defence or explanation that the aforesaid line was written on the memo later on after recovery of the charas, but such explanation or defence shall also be a white lie, as in such eventuality, case FIR number and other details would have been written in one go simultaneously with one pen, but in this case, FIR number was kept blank, which was filled in later on with different ink, which clearly establishes that the mention of 'Section 20 of the NDPS Act' at the top of the memo was made at the time of preparation of memo. Before search and recovery of any contraband or Charas, for which punishment has been provided under Section 20 of the NDPS Act., there was no possibility or occasion for the Investigating Officer to mention the said Section at the top of these memos.

33. From the aforesaid discrepancies and evidence on record, the memo prepared under Section 50 of the NDPS Act appears to be a manipulated document and creating a possibility that either Charas was recovered prior to giving option to consent for personal search, or the contraband has been recovered, not in the manner, as stated in the

prosecution case, and these documents have been prepared to complete the formalities to frame the respondents.

34. To implicate respondent No. 3 Jai Singh, prosecution has relied upon disclosure statements Ext. PW-3/A and Ext. PW-3/B made by respondents No. 1 and 2 respectively. PW-3 HHC Hem Raj and PW-4 Bishan Dass, Naib Tehsildar, have been cited as witnesses, in whose presence alleged disclosure statements were made by respondents No. 1 and 2. Without going into the nature of disclosure statements and discussing the admissibility thereof, the making of disclosure statements has become doubtful for the reason that these statements have been purported to have been made on 15.02.2011 in presence of PW-4 Bishan Dass, Naib Tehsildar, who had allegedly witnessed the personal search of these respondents on 13.02.2011 in Police Station, Banjar. This witness in the Court, has categorically stated that after 13.02.2011, respondents No. 1 and 2 were never produced before him, and no such disclosure statement was ever made by respondents No. 1 and 2 before him in his office, whereas case of the prosecution is that respondents No. 1 and 2 had made the disclosure statements in the office of PW-4 Bishan Dass.

35. PW-4 Bishan Dass is not related to respondents No. 1 and 2 in any manner. He is a Magistrate opted by the prosecution for witnessing

personal search of respondents No. 1 and 2. Though, PW-3 HHC Hem Raj has deposed that these disclosure statements were made by respondents No. 1 and 2 in his presence as well as in presence of PW-4 Bishan Dass in the office of Tehsildar, however, for contrary statement of PW-4 Bishan Dass, these disclosure statements are under cloud and cannot be relied upon for substantiating the plea of the prosecution.

36. As per prosecution's story, house of Jai Singh was identified by respondent Nos. 1 and 2 in the presence of PW-7 Prem Singh and Atma Ram. In this regard, memo Ext. PW-10/J was prepared. PW-8 Khem Singh has been examined to prove that respondent No. 1 and respondent No. 2 had asked him about path leading to respondent No. 3 Jai Singh. Atma Ram has not been examined, whereas PW-7 Prem Singh and PW-8 Khem Singh did not support the prosecution's case in the Court and were declared hostile on the request of Public Prosecutor for resiling from their earlier statements recorded by the police, but in their cross-examination, nothing material could be elucidated in favour of prosecution, so as to rely upon the memo Ext. PW-10/J and prosecution story regarding inquiry of path by respondent No. 1 and respondent No. 2.

37. PW-7 Prem Singh has stated that he is brother of respondent No. 3 Jai Singh. He was called to the Police Station Banjar at 12:00 noon. He remained in the police station for 30-40 minutes, and on

inquiring about reason to summon him to the police station, it was disclosed to him that respondent No. 3 Jai Singh was involved in the delivery of some illegal contraband, and he had disclosed that house of Jai Singh was under construction and he was not residing in village Tinder, but was residing in village Chipni and he had never visited village Tinder after Dussehra 2010, whereas case of prosecution is that Jai Singh had supplied Charas to respondents No. 1 and 2 from his house in village Tinder.

38. Another evidence to relate respondent No. 3 Jai Singh with respondents No. 1 and 2 is call detail records. PW-13 Madan Lal Sharma, Assistant Nodal Officer, Reliance Communication, has deposed that he had handed over call details of mobile phone No. 96256-25210 to the police. No certificate, as required under law, has been produced on record to prove the call detail record and the call detail has also never been exhibited in evidence. There is nothing on record to connect this phone number with respondents No. 1 and 2 or respondent No. 3. It has been admitted by PW-13 Madan Lal Sharma that Investigating Officer had not taken into possession any record regarding application, photographs and identity card of the person, in whose name SIM card bearing number 96256-25210 was issued. This fact has also been admitted by PW-12 SI/SHO Surender Pathak by stating that he had not

taken into possession records of the mobile company pertaining to the application and supporting documents to identify the customer of SIM being relied upon by the prosecution against the respondents.

39. According to PW-10 ASI Ram Lal, ruqua was prepared in the Police Station at 8:00 P.M., however, on the ruqua in red circle 'B', he has mentioned the place of preparation of the rukka as New Bus Stand, Banjar, at a distance of 1 km on North of Police Station. PW-3 HHC Hem Raj has also stated that the ruqua was prepared in the Police Station. However, PW-1 SI/SHO Surender Pathak, who registered the FIR, in his cross-examination has stated that ruqua was received from New Bus Stand, Banjar, through PW-3 HHC Hem Raj, who remained in the Police Station for about half an hour, and, thereafter he went to the spot and so long Hem Raj remained in Police Station, no one came to the Police Station from the members of raiding party. Further, that on that day, he remained in Police station, and except resealing, no other proceedings were conducted in the Police station before 7:00 P.M. To the contrary, it is prosecution case that personal search of respondents No. 1 and 2 was conducted in Police Station, that too in presence of Magistrate PW-4 Bishan Dass (Naib Tehsildar).

40. Ruqua was written at 8:00 P.M., and according to PW-3 HHC Hem Raj and as also apparent from the statement of PW-10 ASI

Ram Lal, Naib Tehsildar PW-4 Bishan Dass had reached Police station at 7:30 P.M. PW-3 HHC Hem Raj has stated that proceedings were not conducted in presence or under supervision of SHO Surender Pathak. However, PW-4 Bishan Dass, in his cross-examination, has stated that he reached Police Station at 7:15 P.M. and SHO was also present in his room and all proceedings were conducted in his presence, however, he had not appended his signature on any of the documents. PW-10 ASI Ram Lal has stated that SI/SHO Surender Pathak was not present in the Police Station on the relevant day, and when they reached Police Station, SHO had gone to his residence and, thereafter, when he was called on the telephone by PW-10 ASI Ram Lal, then he came to his room in the Police Station.

41. It is also stated by PW-4 Bishan Dass that he had put his signatures on documents as desired by the police, but he has categorically stated that though Ext. PW-3/A and Ext. PW-3/B bear his signatures, but accused persons were not produced before him on 15.02.2011, nor they had made any disclosure statements (Ext. PW-3/A and Ext. PW-3/B). He has also denied that on 15.02.2011 at 9:30 A.M.. in his presence and other witnesses, respondents No. 1 and 2, had disclosed about telephonic conversation with Jai Singh from Delhi on 11.02.2011 regarding supply of Charas to them at village Tinder.

42. In NCB form, time of seizure of contraband has been mentioned as 8:00 P.M. with further information that parcels were sealed with six seals of seal 'T'. Sample seal 'T' has also been facsimiled on the NCB form as well as on sample seal. However, PW-1 SI/SHO Surender Pathak in his deposition in examination-in-chief has categorically stated that PW-10 ASI Ram Lal had produced parcels Ext. P1 and Ex. P2 before him, duly sealed with seal letter 'H' and he had also produced two sets of NCB Forms with sample of seal 'H'. In memo Ext. PW2/F, NCB Forms (Ext. PW-1/D & Ext. PW-1/E) as well as in State FSL report (Ext. PW-1/G), it has been mentioned that parcels were sealed with six seals of seal 'T'. This deposition of PW-1 regarding seal 'H' on the parcel as well as on NCB Form has not been clarified, nor any attempt has been made to clarify this fact or rectify it, if it had been a mistake. It is a fact that PW-1 Surender Pathak was also summoned for re-examination as PW-12 and at that time also no endeavour was made to clarify his deposition regarding seal 'H', which indicates that mention of seal 'H' in his deposition was not a mistake, but was a fact noticed by this witness.

43. PW-2 Raj Kumar in his examination-in-chief has stated that on 13.02.2011, he was present at taxi stand Banjar, he was never associated by the Police in investigation of any case, nor Charas was recovered in his presence, and no document was prepared in his

presence, nor he had signed any document. He was declared hostile on request of learned Public Prosecutor for resiling from his earlier statement recorded by the police. Though, in his first portion of cross-examination, he has denied everything, however, in later part, he has admitted the prosecution's case, but he has stated that he had not gone to the residence of Naib Tehsildar, and he has also denied that entire proceedings were conducted in his presence in the residence of Naib Tehsildar and he has also denied that PW-3 HHC Hem Raj and PW-4 Bishan Dass were also present at the time of proceedings. He has denied making of endorsement by Naib Tehsildar on Ext. PW2/B and Ext. PW2/C. He has denied that he had gone through the contents of documents before putting his signatures. He has also stated that in his presence, knee caps were taken in the Police Station, however, he could not say whether accused persons (respondents No. 1 and 2) had earlier worn these knee caps or not. In his cross-examination, conducted on behalf of defence, he has stated that police officials were well known to him and he was called by the Police in the Police Station on telephone by telling that Charas had been recovered and police had directed that he had to sign as a witness on certain documents. He was re-examined by learned Public Prosecutor and he has stated that he had not disclosed

the fact of calling him in Police Station and asking him to put his signatures on the documents.

44. The statement of PW-2 Raj Kumar is self contradictory, as at one place he is denying everything and in another place he is admitting it and thereafter, again denying the same.

45. In the light of material contradictions and discrepancies in the statements of witnesses, admissions of PW-2, in his cross-examination by learned Public Prosecutor, are of no use to prosecution, as in the same statement, he has denied the prosecution's case in toto.

46. Respondents are also having advantage of being acquitted by the Trial Court, fortifying the presumption of innocence in their favor.

47. Learned Deputy Advocate General has failed to point out any cogent, reliable, and convincing evidence on record to substantiate the prosecution case.

48. It is cardinal principle that benefit of slightest doubt has to be extended to the accused and in present case, prosecution's case is full of glaring contradictions and discrepancies and, thus, version of prosecution does not appears to be reliable.

49. 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.

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

Bail bonds stand discharged and record of Trial Court be sent back forthwith.

(Vivek Singh Thakur),
Judge.

(Ranjan Sharma),
Judge.

1st October, 2026
(Susheel)