

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr.MP No. 2220 of 2026 in Cr. Appeal No.
429 of 2023**

Decided on: 30.9.2026

Durga Prasad.

...Appellant/Applicant.

Versus

State of H.P.

...Respondent.

Corum

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

Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting?¹

For the Applicant.

Mr. Gurmeet Bhardwaj, Advocate.

For the Respondent:

***Ms.Sharmila Patiyal, Additional Advocate
General.***

Vivek Singh Thakur, Judge

This application has been filed by the applicant/appellant for suspension of sentence awarded to applicant/appellant, who has been convicted for having been found in conscious possession of 3.277 Kilograms of charas. Earlier application bearing Cr.MP No. 2328 of 2025 was dismissed on merits on 9.9.2025, against which applicant had approached the Apex Court by filing SLP (Cr.) No. 16566 of 2025, titled as

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

Durga Prasad Vs. State of H.P., which was dismissed as withdrawn. At the time of disposing the SLP, the Apex Court had observed as under:-

“4. We record that in terms of our earlier order calling upon the State to obtain instructions about the mental health condition of the petitioner's son, the State has filed an affidavit. The affidavit contains the report of Dr. Kushel Verma, Medical Officer (Psychiatry), HHMH & R. Shimla, reading as follows:-

“...he was diagnosed with Schizoaffective Disorder, for which appropriate treatment was initiated. Over the course of hospitalization, the patient has shown significant improvement in the symptoms with treatment. He is now considered fit for discharge from our facility and can be managed on OPD basis, however, it is advised that he continues to receive regular psychiatric follow-up to ensure ongoing stability and recovery of his mental illness.”

5. Since it is submitted before this Court that the petitioner's wife has passed away and there is none to look after the care for the needs of petitioner's wife, we require the State to take all possible measures for the purpose of securing the mental health condition of the petitioner's son and his future treatment, as observed in the report extracted supra.”

2. Learned counsel for the applicant has submitted that earlier application was dismissed in September, 2025 and thereafter applicant has served one more year of his sentence and, therefore, this is a changed circumstance, entitling the applicant to approach the Court again.

3. Learned counsel for the applicant has also referred observations made by the Supreme Court in paras 4 and 5 of SLP (Cr.) No. 16566 of 2025, with the submissions that State is not taking proper care of son of the appellant.

4. Firstly, passing of 1 years after dismissal of earlier application in September, 2025, does not make any changed circumstance because as of now applicant/appellant has undergone sentence of about 5 years 5 months and he has yet to serve 7 years 7 months sentence imposed upon him out of total sentence of 13 years awarded to him.

5. Even reference of Section 479 of BNSS is of no help to the applicant, as admittedly he is a second time offender and in such eventuality for making out a case for suspension of sentence on the ground of period of detention, it must be 50% of maximum specified sentence, which can be awarded for commission of offence, the same in present case is 20 years and half of the same is 10 years.

6. In the application, there is no averment to this effect that State is not taking care of the child of the applicant and further there is no reference of mental status of the son of the applicant and only a ground has been taken that the applicant is a best person to take care of his child. In our considered opinion the Apex Court though has recorded observations in paras 4 and 5 of SLP (Cr.) No. 16566 of 2025, but it was not found by the Apex Court a valid ground for suspension of sentence and thus observations were made by the Apex Court after dismissal of SLP, preferred by the applicant as withdrawn.

7. Before parting with this application, we also observe that, as already observed by the Apex Court, State is expected to take all possible

measures for the purpose of securing the mental health condition of son of the applicant and his future treatment.

8. With aforesaid observations, we do not find any merits in prayer made for suspension of sentence. Accordingly, application is dismissed.

9. Any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the same has been given only for the purpose of deciding present application only.

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

**(Bhupesh Sharma),
Judge.**

30th September, 2026
(Keshav)