

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr.MP No. 2168 of 2026 in Cr. Appeal No.
371 of 2025**

Decided on: 10.9.2026

Baldev.

...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. Suneel Awasthi, Advocate.

For the Respondent:

***Mr. Yashwardhan Chauhan, Senior
Additional Advocate General.***

Vivek Singh Thakur, Judge

This application has been filed by applicant/appellant for suspension of sentence, which has been awarded to him vide judgment/order dated 27.5.2025 passed in Sessions Case No. 3-D/VII/2024, titled as State of H.P. Vs. Baldev in case FIR No. 365/2023, dated 23.11.2023, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after referred to the 'NDPS' Act) in Police Station Nurpur, District Kangra, H.P., whereby

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

applicant/appellant has been sentenced to undergo rigorous imprisonment of 10 years and to pay fine of ₹1,00,000/- and in default of payment of fine to further undergo 3 years simple imprisonment.

2. Learned counsel for the applicant has submitted that in the application submitted by the Investigating Officer to the Judicial Magistrate, there is no mention of taking samples, however, samples have been drawn and sent to FSL, Junga, but there is nothing on record to reflect that who and in what manner and at what time samples were taken.

3. It has been further submitted by learned counsel for the appellant that in the NCB Form, resealing has been stated to have been done with seal Q.G, whereas in inventory sample seal has been mentioned as QG, which is different than the seal stated to have been affixed at the time of resealing.

4. It has been further submitted by learned counsel for the applicant that Magistrate had affixed seal of 5 Rupees coin on the parcel, but in the State FSL, the seal has been found of National Emblem. On the aforesaid grounds, he has prayed that these discrepancies are sufficient for suspension of sentence of the applicant, who had undergone about 3 years detention, which is also about $\frac{1}{4}$ of the sentence awarded to the applicant.

5. Perusal of the record indicates that though order dated 24.11.2023 passed by the Magistrate has not been exhibited in documents, however, certificate Ex. P64/PW13 issued by the Magistrate, certifying the

inventory has been placed on record and further that in the challan, order dated 24.11.2023 passed by the Magistrate is on record, wherein it has been categorically stated that entire contraband was grinded in the Mixer for making the contraband homogeneous to take representative sample of the contraband and, therefore, plea with respect to absence of evidence regarding taking of sample on record, is not tenable at this stage.

6. Plea with respect to discrepancy in seal of re-sealing the contraband is also not tenable as in the sample seal facsimiled on NCB Form reflects that seal was QG only and the 'dot' put by the SHO, at the time of filling NCB form after re-sealing, is immaterial, because the sample seal matches with the sample seal in the application filed for certification of inventory.

7. Seal of 5 Rupee coin put by the Magistrate at the time of proceedings under Section 52 A of NDPS Act also contains National Emblem on it and, therefore, at this stage the plea taken in this regard for suspension of sentence on behalf of applicant is also not tenable as seal of National Emblem put by the Court was found in the State FSL, which exists on 5 Rupee coin also.

8. Plea with respect to suspension of sentence, considering the detention period can also not be acceded to, because Section 479 of BNSS provides for suspension/release on detention of $\frac{1}{3}$ period of specified sentence for the offence and in present case applicant has been convicted

for having been found in possession of commercial quantity of contraband, for which specified sentence is 20 years and $\frac{1}{3}$ thereof would be 6 years 8 months.

9. In aforesaid facts we are of the opinion that at this stage no case is made out for suspension of sentence and the application for suspension of sentence deserves to be dismissed.

10. At this stage, learned counsel for the applicant submits that liberty be granted to the appellant to file fresh application, if so required. It is made clear that for filing fresh application on behalf of applicant, no liberty of the Court is required and applicant may avail any remedy including filing of fresh application, as permissible under law.

11. 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.

The application is dismissed in aforesaid terms.

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

**(Bhupesh Sharma),
Judge.**

10th September, 2026
(Keshav)