

Chovehswar vs. State of Himachal Pradesh

CR.A No.88 of 2025

07.09.2026 Present : Mr. N.S. Chandel, Senior Advocate with Ms. Shwetima Dogra, Advocate, for the appellant/applicant.

Mr. Yashwardhan Singh Chauhan, Senior Additional Advocate General, for the respondent.

CRMP No.2524 of 2026

This application has been filed on behalf of the applicant for suspension of substantive sentence during pendency of the appeal, on the ground that there is a fair chance of acquittal and, therefore, the applicant is entitled for suspension of sentence.

Learned counsel for the applicant/appellant has submitted that it was a case of prior information and two independent witnesses were allegedly associated by the police, in whose presence recovery of a huge quantity of 111 kilograms of charas has been claimed by the prosecution, whereas the applicant/appellant has been convicted for having been found in possession of 2 kilograms of charas, and co-accused, namely Pradeep Kumar alias Murli and Dev Pal alias Bittu, allegedly accompanying the applicant at the time of interception by the police, have been acquitted by the Trial Court.

It has been further submitted that both independent witnesses have turned hostile and there is no independent witness in support of the prosecution case, despite the fact that independent witnesses are alleged to have been associated by the police party at their own, well in time, on account of prior information received from reliable source. Therefore, it is fatal for the case of the State that two

independent witnesses of the choice of the prosecution have turned hostile and have not supported the prosecution case.

Further, though recovery of 111 kilograms has been alleged, however, only for 2 kilograms the applicant/appellant has been convicted. It has also been submitted that there are discrepancies and contradictions in the statements of official witnesses and thus, in the aforesaid facts, the applicant is entitled for suspension of sentence, during pendency of this appeal, which is not likely to be heard in the near future because of heavy pendency of old appeals in the Court.

Learned Senior Additional Advocate General has submitted that though independent witnesses have turned hostile, however, they have admitted their presence on the spot by admitting their signatures on the documents, including search and seizure memos and other documents prepared on the spot by the Investigating Officer. Further, after taking into consideration the entire evidence on record, the Trial Court has convicted the applicant/appellant, as the prosecution has been able to prove the case against the applicant beyond reasonable doubt, and therefore, the presumption of innocence has also been rebutted by the State against the applicant.

It has been further submitted by the learned Senior Additional Advocate General that minor discrepancies or contradictions do not go to the root of the case and, in any case, all these contradictions, if any, are to be assessed and evaluated at the final adjudication of the appeal, as their statements with regard to the time

and place of the recovery are duly corroborated by the independent witnesses despite being declared hostile.

Learned Senior Additional Advocate General has also submitted that applicant has been convicted for commission of a heinous crime, which is not only against the individual, but also the society as well as Nation at large, and therefore, he does not deserve any leniency, much less suspension of sentence.

After taking into consideration the material on record and the rival contentions made by learned counsel for the applicant as well as learned Senior Additional Advocate General, this Court is of the considered opinion that it is not a case where *ex facie* it can be stated at this stage that no case is made out against the applicant or that there is a fair chance of acquittal at this stage.

Accordingly, the application is dismissed.

(Vivek Singh Thakur)
Judge

(Bhupesh Sharma)
Judge

7th September, 2026
(Pardeep)