

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Cr. Revision No.554 of 2026

Reserved on 16.09.2026

Decided on 29.09.2026

Uploaded on : 29.09.2026

Munish Kumar

....Petitioner

Versus

State of H.P.

.....Respondent

Coram:

The Hon'ble Mr. Justice Chirag Bhanu Singh, Judge.

Whether approved for reporting? Yes ¹

For the Petitioner : Mr. Rajesh Mandhotra, Advocate.

For the Respondent : Mr. Prashant Sen, Deputy
Advocate General.

Chirag Bhanu Singh, Judge

A short but a very important and a germane question has been raised in the present revision petition, as to whether the quantity of contraband reflected in the inventory proceedings prepared under Section 52A (4) of the Narcotic Drugs & Psychotropic Substances Act, (hereinafter referred to as the ND&PS Act), or as shown to have been recovered at the spot by the Investigating Officer, reflected in the charge sheet shall form the basis of framing charges against the accused under Section 228 of the Cr.P.C. (Section

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

251 of BNSS). The learned trial Courts have been grappling with this issue for quite some time.

2. The genesis giving rise to the present revision petition may be succinctly summarized thus. The petitioner, who is the accused came to be apprehended with charas. When the contraband came to be weighed at the spot, which was inclusive of the polythene and the carry bag, it was found to weigh 1 Kg and 02 grams.

3. During the course of the inventory proceedings, carried out before the learned Magistrate, under Section 52 A(2) of the Act, and while issuing the certificate of correctness, the learned trial Court found it to be 996 grams only

4. It would be apposite to mention at this stage that the parcel produced before the learned trial Court, during the inventory proceedings consisted of a pink coloured cloth carry bag, containing the alleged charas in the shape of sticks. The contraband was further found to have been wrapped in transparent/polythene cellophane. The contraband had been made into a homogeneous mixture by the learned Magistrate and weighed without the carry bag

and the transparent polythene. As per the order passed by the learned trial Court, it was found to be 996 grams. The question thus is, for what quantity was the accused/petitioner to be charged with?

5. During the course of trial, the learned Special Judge, Hamirpur, however, framed charges against the accused for the recovery of the contraband weighing 1 kg. 02 grams and consequently, the petitioner came to be charged under Section 20 (b) (ii) (c) of the Act.

6. Feeling aggrieved, the petitioner has assailed the impugned order dated 02.07.2026, whereby, he stands charged accordingly.

7. It is the contention of learned counsel for the petitioner that initially the contraband came to be weighed at the spot, along with polythene wrappings and the carry bag. It was found to be 1 Kg 02 grams. The learned trial Court, while preparing the inventory had however, found the contraband to be weighing 996 grams only. The said weight had been recorded after removing the contraband from the carry bag and after removing the polythene wrappers.

8. The learned counsel for the petitioner thus, would contend that seeing to be weight of the contraband, the petitioner should have been charged, under Section 20 (b) (ii) (b) and Section 29. The learned trial Court, however, has framed charges against the petitioner/accused, under Section 20(b)(ii)(c). The learned counsel for the petitioner would thus contend that the learned trial Court has failed to take into consideration the entire material collected by the police, during investigation, which has cause material prejudice to the petitioner.

9. In this behalf, the learned counsel for the petitioner has also placed strong reliance upon a judgment of the Hon'ble Supreme Court, titled as **Bharat Aambale versus State of Chhattisgarh, (2025) 8 Supreme Court Cases 452**, to contend that any inventory cum photographs/samples of seized substances prepared in compliance of the procedure laid down under Section 52-A has to be mandatorily to be treated as primarily evidence and the same thus should form the basis of framing charges under Section 228 of Cr.P.C.

10. Per contra, Mr. Prashant Sen, learned Deputy Advocate General would strenuously contend, no fault can be

attributed to the order dated 02.07.2026, as the petitioner had been apprehended with 1 Kg 02 grams of charas and as such the petitioner has rightly been charged under Section 20 (b) (ii) (c), as the contraband was commercial in quantity.

11. I have heard the learned counsels appearing for the parties and gone through the material placed on record.

12. Though the word “conscious possession” has not been explicitly defined under the ND&PS Act, but this concept has evolved primarily through judicial interpretations. The Hon’ble Supreme Court in its various decisions has repeatedly underscored that “possession” under the NDPS Act, should not only be physical but also conscious. The “conscious possession” would thus, imply that the person knew what quantity of illicit drug or psychotropic substance was with him.

13. The expression “conscious possession” is thus, a polymorphous term, which may assume different colours in different contexts. It may also carry different meanings in contextually different backgrounds. Admittedly, there would thus, be no completely logical and precise definition of “possession” uniformly applicable to all situations. Likewise

the word “conscious” would also mean awareness about a particular fact. It would thus be a state of mind, which is deliberate or intended. The import of the words “conscious possession” has been discussed in **Avtar Singh versus State of Punjab (AIR) 2002 Supreme Court 3343, Madan Lal and another versus State of H.P. (2003 SCC 465 and Rakesh Kumar Raghuvanshi versus State of Madhya Pradesh (2025) INSC 96**. The word “conscious possession” thus has indeed gained recognition in the aforesaid terms right from the very inception, i.e. when the ND&PS Act, came to be enacted in the year 1985. The Courts thus will have to bear in mind what was the quantity of contraband recovery from the “conscious possession” of the accused even while framing charge.

14. The other important aspect, which requires to be appreciated is that at the stage of framing charges, under Section 228 of the Cr.P.C, what the learned trial Courts are expected to do is, not to act merely as post offices. The Courts must indeed sift the material before it. The material to be sifted would be the material, which is produced and relied upon by the prosecution. In this behalf too reliance

can profitably be laid to the ratio laid down in **Union of India versus Prafulla Kumar Samal (1979) 3 Supreme Court Cases, 4**, which has been further consistently followed in catena of decisions including **P. Vijayan versus State of Kerala and another (2010) 2 Supreme Court Cases 398** and **Ghulam Hassan Beigh versus Mohammad Maqbool Magrey (2022) 12 Supreme Court Cases 657**.

15. Though while sifting it is not necessary for the Courts to enter into the pros and cons of the matter on into weighing an balancing of evidence and probabilities, but it may evaluate the material to find out, if the facts emerging therefrom taken at their face value established ingredients constituting the said offence.

16. Adverting to the facts of the present case, admittedly 1 kg. 02 grams of charas had come to be recovered at the spot from the petitioner/accused. It had come to be weighed along with the carry bag and the polythene wrapper. The perusal of the order passed by the learned trial Court, who prepared the inventory clearly shows that the parcel was consisting of a pink coloured carry bag which was carrying charas in the shape of sticks further

wrapped in transparent polythene. The learned trial Court had weighed the contraband without the carry bag and the polythene wrapping and found the contraband to be 996 grams only.

17. Since the inventory proceedings were also part of the material placed before the learned trial Court. It was incumbent upon the learned trial Court to have taken note of the same, while sifting the material at least for the purpose of framing the charge. For it is by now well settled that a person can be charged only for the contraband found in his conscious and exclusive possession. The contraband having been weighed without the carry bag and the polythene wrapping, thus, was the quantity which can be said to have been in the conscious and exclusive possession of the accused.

18. It further gain significance because Section 52-A of the Act, inter-alia provides that every Courts trying an offence under this Act, shall treat the inventory proceedings, the photographs of drugs and any list of samples drawn under sub-section (2) of the said section and certified by the learned

trial Court, as a primary evidence in respect of the said offence.

19. It may useful to refer to Section 52-A(4), which reads thus:

“52 A. Disposal of seized narcotic drugs and psychotropic substances.....

(4). Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying and offence under this Act, shall treat the inventory, the photographs of [narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence].

20. The Hon'ble Supreme Court has also reiterated the said view recently in a judgment titled as **Bharat Aambale versus State of Chhattisgarh (2025 8 Supreme Court Cases 452)**.

21. May be the ratio of the aforesaid judgment may not be directly applicable in the facts and circumstances of this case. However, it does conclusively lays down that presumption of truth is attached to the proceedings conducted before the learned Magistrate during the inventory proceedings.

22. It has been, inter-alia, held that the entire procedure envisaged under Section 52A of the ND&PS Act, is meant to inject fair play in the investigation and it has also been held to be a mandatory rule of evidence and when there is non-compliance of the same it would not constitute primary evidence. Since the inventory proceedings have been held to be primary evidence, it would otherwise be conducive and in the interest of justice and fair play that the contraband certified by the learned Magistrate during the inventory proceedings is considered, as the quantity recovered from the accused and consequently, he is charged accordingly.

23. The aforesaid enunciation of law discussed above leads us to the irresistible conclusion that while framing charges under the ND&PS Act, the learned trial Courts would be well advised to sift the material placed before it and keep the weight of the contraband referred in the inventory proceedings, as a basic parameter while framing charges against the accused under Section 228 of the Cr.P.C. (Section 251 of BNSS). Whatever is certified by the learned Magistrate to be the quantity of contraband under Section 52(A)

(4) of the ND&PS Act shall be the quantity with which the accused shall be charged. It will also usher in certainty in law, rule out unnecessary ambiguities and bring about predictability and uniformity, which ought to be a basic pre-requisite in a country governed by the rule of law.

24. Viewed in the aforesaid perspective, the impugned order dated 02.07.2026, passed by the learned Special Judge Hamirpur, H.P., framing charges against the accused/petitioner under Section 20(b)(ii)(c) cannot be sustained. As a sequel the same is quashed and set-aside. The learned trial Court shall reframe the charges afresh under Section 20(b)(ii)(b) keeping in view the quantity of contraband reflected in the inventory proceedings i.e. 996 grams of charas. The revision petition is disposed of in the aforesaid terms, so also the pending application(s), if any.

(Chirag Bhanu Singh)
Judge

29th September, 2026
(subhash sharma)