Karan Singh & Anr. vs. State of H.P.

Cr. MP No. 1383 of 2026 in
Cr. Appeal (C-SB) No. 76 of 2026
Reserved on 15.10.2026

02.11.2026 Present: Mr N.S. Chandel, Senior Advocate, with Ms Shwetima Dogra, Advocate for the appellants.

Mr Jitender Sharma, Additional Advocate General for the respondent/State.

The appellants/applicants have filed the present application for suspension of the sentence awarded by learned Special Judge-cum-Principal Judge, Family Court, Kangra at Dharamshala (learned Trial Court) on 19.03.2026. It has been asserted that the Investigating Officer, ASI Rajmal (PW2), had not made any effort to join independent witnesses. This fact was also confirmed by other witnesses. The non-association of independent witnesses makes the prosecution case highly suspect. As per the prosecution, the pillion rider was holding a backpack on his lap. No photograph of the pillion rider holding the backpack on his lap was placed on record. There were major contradictions in the statements of the prosecution's witnesses, which made the prosecution case highly doubtful. The link evidence regarding the case property was missing, and the learned Trial Court erred in convicting and sentencing the accused. The applicants have an arguable case in their favour, and their appeal is

not likely to be taken up for hearing soon. Hence, it has been prayed that the present application be allowed and the sentence awarded by the learned Trial Court be suspended during the pendency of the appeal.

2. The application is opposed by filing a reply asserting that the police intercepted a motorcycle bearing registration No. HP-53-8387 at Ghatta on National Highway on 23.08.2019 at about 09:50 p.m. The motorcycle rider disclosed his name as Karan Singh, and the pillion rider disclosed his name as Gaurav Kumar. Gaurav Kumar had kept a backpack on his lap. The police checked the backpack and recovered 536 grams of charas. The police conducted the investigation and filed the charge sheet before the Court. The prosecution has proved its case before the learned Trial Court by examining the witnesses. The applicants have committed grave offence, and there is no chance of their acquittal. Releasing the applicants on bail would have a detrimental impact on society. Therefore, it was prayed that the present application be dismissed.

3. I have heard Mr N.S. Chandel, learned Senior Advocate, assisted by Ms Shwetima Dogra, learned counsel for the appellants/applicants and Mr Jitender Sharma, learned Additional Advocate General for the respondents/State.

4. Mr N.S. Chandel, learned Senior Advocate for the appellants/applicants, submitted that the sample was not made representative and homogeneous by grinding it and the prosecution has not proved that the recovered substance was charas. The appeal is likely to take some time, and the applicants would have undergone a substantial part of the imprisonment awarded to them by the time the appeal comes up for hearing. The applicants were on bail during the trial, and they had not misused the concession of liberty extended to them. Therefore, he prayed that the present application be allowed and the sentence imposed by the learned Trial Court be suspended during the pendency of the appeal.

5. Mr Jitender Sharma, learned Additional Advocate General for the respondents/State, submitted that the prosecution had proved its case beyond reasonable doubt. The sample would lose its representative character by grinding. The learned Trial Court had discussed the contradictions and held that they were not significant. The applicants do not have any arguable case in their favour, and their appeal is likely to be dismissed. Therefore, he prayed that the present application be dismissed.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. The submission made on behalf of the applicants that the sample has to be made homogeneous by grinding is not *prima facie* acceptable because the sample would cease to be representative by grinding. It was laid down in ***Basant Rai v. State*, *2012 SCC OnLine Del 3319: (2012) 130 DRJ 471*** that it is impermissible to break the charas to take the sample. It was observed at page 475:

> **25.** After hearing both the learned counsel for the parties and going through the trial court Record, I find force in the submission of learned counsel for the appellant. Admittedly, the samples were drawn after breaking small pieces from 08 of the polythene bags which were allegedly kept in a green-coloured bag by the appellant in his right hand. The IO prepared two samples of 25 g each after taking a small quantity from each of the slabs.
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> **26.** Though the settled law is that if it is not practicable to send the entire quantity, then sufficient quantity by way of samples from each of the packets of pieces recovered should be sent for chemical examination. Otherwise, the result thereon may be doubted.
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> **27.** For example, if the 08 packets were allegedly recovered from the appellant and only two packets had contraband substance and the remaining 6 packets did not have any contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two, then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process

> adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity. Proper procedure has to be followed; without that, the results would be negative.

8. No judgment to the contrary was brought to the notice of this Court. Therefore, the submission that the applicants are entitled to bail because the contraband was not crushed cannot be accepted.

9. However, a perusal of the judgment of the learned Trial Court shows that many contradictions were pointed out, but these were brushed aside with the observations that they were insignificant. In the present case, the independent witnesses have not been joined. The non-association of independent witnesses would put the Court on guard and require that the testimonies of the official witnesses be seen with due care and caution. This aspect was not considered by the learned Trial Court. Hence, the applicants have an arguable case in their favour, which requires a thorough examination. The appeal was filed in the year 2026 and is not likely to be taken up for hearing before the applicants have undergone a substantial part of the imprisonment awarded to them. Therefore, the present application is allowed, and the order dated 19.05.2026 passed by this Court is made absolute.

10. The application stands disposed of.

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11. Record has been received.

12. Bonds have been furnished, and the amount has been deposited.

13. List the matter for hearing in due course.

(Rakesh Kainthla)
Judge

2nd November, 2026
(Nikita)