IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. M.P. No. : 3019 of 2026
in Cri. A.(C-DB) No.: 61 of 2026
Reserved on : 06.10.2026
Date of decision : 03.11.2026
Uploaded on : 03.11.2026

Hari Chand …Applicant/Appellant.

Versus

State of Himachal Pradesh. …Respondent.

Coram
The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
The Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting?[1]

For the Appellant/applicant:	**Mr. Ajay Kochhar, Senior Advocate with Mr. Bhairav Gupta and Ms. Swati Sharma Advocates.**
For the Respondent-State :	**Ms. Sharmila Patial Additional Advocate General.**

Bhupesh Sharma, Judge

This application under Section 430 of Bhartiya Nagrik Suraksha Sanhita, 2023 (for short 'BNSS') has been preferred by the appellant/applicant/convict (hereinafter referred to as the 'accused'), seeking suspension of sentence, awarded to him by learned Special Judge-II, Nahan, District Sirmaur, H.P. vide

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

judgment of conviction and order of sentence dated 24.03.2026, in Sessions Trial Case No.22-N/7 of 2019, titled as *'State of Himachal Pradesh vs. Hari Chand'*, in case FIR No.69 of 2019 dated 09.07.2019, under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar, Nahan, District Sirmaur, H.P.

2. The accused was put to trial for the commission of offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 by the SHO, Police Station Sadar, Nahan, District Sirmaur, H.P. before learned Special Judge-II, Nahan, District Sirmaur, H.P. in Sessions Trial No.22-N/7 of 2019, titled as *'State of Himachal Pradesh vs. Hari Chand*'. The accused after his trial stood convicted for the commission of offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, vide judgment of conviction and order of sentence dated 24.03.2026, whereby he was sentenced to undergo rigorous imprisonment for a term of ten years and to pay a fine of Rs.1,00,000/- (Rupees One Lac Only) and in default of payment of fine to further undergo simple imprisonment for a term of one year.

3. As per the prosecution allegations and accusations, on 09.07.2019, at about 12:10 P.M., near the Office of 6th Indian Reserve Battalion, within the jurisdiction of Police Station Nahan, the accused was found in conscious and exclusive possession of 750 capsules of ‘Parvorin Spas’ containing Tramadol Hydrochloride, while travelling in Alto Car bearing Registration No.HP-71-6727.

4. Mr. Ajay Kochhar, learned Senior counsel appearing for the accused submits that the judgment of conviction and order of sentence dated 24.03.2026, passed by learned trial Court against the accused is bad and against the basic principles of criminal jurisprudence. The accused has been convicted by the learned trial Court without any substantive evidence on record. The accused has an arguable case in his favour and he has fair chances of acquittal. There is non compliance of Sections 42(2) and 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which completely vitiate the trial. There are material contradictions in the statements of official witnesses, which have been brushed aside, regardless of the fact that go to the root of the matter.

5. Per contra, Ms. Sharmila Patial, learned Additional Advocate General opposed the application by submitting that the learned trial Court has committed no error while passing the

impugned judgment dated 24.03.2026. The findings of the learned trial Court are based on proper appreciation of oral and documentary evidence, which inspires confidence. There are no procedural lapses vitiating the trial. Procedural safeguards, as stipulated under Section 42(2) and Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 have been strictly adhered to. The recovery and seizure of the contraband stands duly proved after going through the statements of the independent witnesses i.e. Ram Niwas, examined as PW3 and Dinesh Kumar, examined as PW4. Apart from this, the official witnesses of the search and seizure of the contraband namely C. Amit Kumar No.427, examined as PW1, HC Julfan Mohammad No.8, examined as PW5, ASI Ram Kumar examined as PW7 and ASI Pankaj Chandel, examined as PW16 have corroborated the prosecution story. The evidence of the aforesaid witnesses has been duly relied upon by the learned trial Court. The documentary evidence adduced during the course of trial stands duly corroborated by the oral testimony of the witnesses, therefore, the findings rendered by the learned trial Court vide impugned judgment of conviction and order of sentence dated 24.03.2026, cannot be faulted on any grounds and the application deserves to be dismissed. The accused deserves no indulgence of

the Court for being released on bail pending the appeal, under section 430 of BNSS.

6. Before embarking upon the factual matrix of the case, it may be pertinent to refer to the relevant case law, which is attracted while dealing with the application under section 430 of BNSS.

7. The Hon'ble Supreme Court in **Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and Another, reported in (2012) 9 SCC 446**, has observed in para No. 30, as follows:

> *"30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand*

deserves to be given priority over lifting the restriction on liberty of the accused."

(Emphasis supplied)

8. In **Bhagwan Rama Shinde Gosai and Others v. State of Gujarat, reported in (1999) 4 SCC 421**, wherein the appellants were convicted by the Trial Court against which, the appeal was pending before the High Court, the High Court successively rejected the prayer for grant of bail till the pendency of appeal after suspending the sentence. Thus, it has been held as follows:

"3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the

sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted." (Emphasis supplied)

9. In the case of **Atul Tripathi v. State of Uttar Pradesh and Others, reported in (2014) 9 SCC 177**, the Hon'ble Supreme Court apart from identifying the differences of consideration of prayer for grant of bail relating to pre-conviction stage as well as post-conviction stage, set down the principles to be followed therein.

10. In **Kishori Lal v. Rupa and Others, reported in (2004) 7 SCC 638,** the Hon'ble Supreme Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389 of the Cr.P.C. in cases involving serious offences like murder etc.

11. In **Preet Pal Singh v. State of Uttar Pradesh (2020) 8 SCC 645**, the Hon'ble Supreme Court observed as under:-

"35. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. and Anr. (supra). However, in

> *case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C."*

12. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to see that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal.

13. Furthermore, it is clearly settled that while undertaking the exercise to ascertain whether the convict has fair chances of

acquittal, what is to be looked into is something palpable, which is very apparent or gross on the face of the record. On the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable.

14. It is further a trite law that the Appellate Court should not re-appreciate the evidence at the stage of Section 430 of BNSS, 2023 and try to pick up few lacunas or loopholes here or there in the case of the prosecution.

15. Now adverting to the facts of the case and the evidence adduced by the prosecution in support thereof.

16. On 09.07.2016, at 11:15 A.M., a Police Party headed by ASI Rupinder Sharma, In-charge Special Investigation Unit (SIU), Nahan, left office for routine patrolling and detection of cases under NDPS and Excise Act etc. vide rapat No.6 dated 09.07.2019, towards Do-Sarka, Sainwala, Moginand, Kala Amb etc. He was accompanied by the police officials of Special Investigation Unit, namely, HC Pankaj Chandel No.68 Investigating Officer, HC Ram Kumar No.349, HC Julfan Mohammad No.8, C. Amit Kumar No.427 and C. Praveen Kumar No.435. The police party was travelling in a private vehicle No.HP-17C-4555 being driven by C. Shohaib Ahmed No.603. At about 11:30 A.M., the police party during the course of

patrolling reached Sabji Mandi Kanshiwala, where, Investigating Officer, HC Pankaj Chandel No.68, received a secret, specific, reliable and credible information against the accused that he was on his way from Village Kotri to Delhi Gate, Nahan, in his vehicle No.HP-71-6727 (Alto) along with huge consignment of prohibited capsules. The information was further specific that in case his vehicle is searched, huge quantity of the contraband could be recovered therefrom. Since the aforesaid information was credible and reliable, I.O. HC Pankaj Chandel No.68, acted upon the same and immediately recorded reasons of belief under section 42(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sent the same to Additional S.P. Nahan through C. Praveen Kumar No.435. Thereafter, the police party reached near the office of 6th Indian Reserve Battalion and after associating two independent witnesses namely Ram Niwas and Dinesh Kumar, intercepted the car No.HP-71-6727, being driven by the accused, coming from Village Kotri at 12:10 P.M. Thereafter, the search of the vehicle was carried out leading to recovery of 750 capsules of 'Parvorin Spas' from a carry-bag kept in the dickey (boot) of the car. Pursuant to the recovery of contraband i.e. 750 capsules of 'Parvorin Spas' from the exclusive possession of the accused, procedural formalities were

conducted in presence of independent and official witnesses. The contraband was put in the same carry-bag and was sealed in a cloth parcel after fixing 8 (eight) seals of impression ‘X’. The sample seal ‘X’ was also taken on a separate piece of cloth for the purpose of record and the seal ‘X’ after its use was entrusted to independent witness Ram Niwas. The Car No.HP-71-6727 (Alto) of the accused was also seized by the police vide separate seizure memo. The Investigating Officer also filled relevant columns of NCB-1 form in triplicate and thereafter, the contraband was taken into possession vide recovery and seizure memo in the presence of independent witnesses, official witnesses as well as in presence of the accused. The copy of seizure memo was handed over to the accused free of costs. The personal search of the accused on suspicion was also carried out in compliance to Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, however, nothing incriminating was recovered. Thereafter, the Investigating Officer prepared a rukka and sent the same to SHO, Police Station Sadar, Nahan, for registration of the FIR through C. Julfan Mohammad No.8 and in pursuance thereof, case FIR No.69 of 2020 dated 09.07.2019 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act,

1985, was registered against the accused at Police Station Sadar, Nahan, District Sirmaur, H.P.

17. Subsequent proceedings were carried out by the second Investigating Officer, HC Khajan Singh, who prepared the spot map and recorded the statements of witnesses under Section 161 Cr.P.C. Investigating Officer also conducted procedural formalities under Sections 55, 57 and 52A(3) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

18. The conviction of the accused has been recorded by the learned trial Court under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, for being in exclusive and conscious possession of prohibited narcotics i.e. 750 Capsules of Parvorin Spas containing Tramadol Hydrochloride. Learned trial Court heavily relied upon the oral and documentary evidence adduced by the prosecution during the course of trial.

19. Now adverting to the contentious issue raised by learned Senior Counsel for the accused regarding non compliance of Section 42(2), Section 50 and Section 52A(3) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Ext.P11/PW8 is the reasons of belief under Section 42(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 recorded by the Investigating

Officer immediately after receiving the information against the accused for transporting the contraband. The perusal of this document reveals that it discloses the name of the accused and registration number of the vehicle, in which, the contraband was being transported at the relevant time.

20. The factum of recording of the reasons of belief under Section 42(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985, stands duly corroborated by C. Amit Kumar No.427 examined as PW1, C. Praveen Kumar No.435 examined as PW2, HC Julfan Mohammad No.8 examined as PW5, ASI Ram Kumar examined as PW7 and ASI Pankaj Chandel examined as PW16.

21. It is further evident that the Investigating Officer HC Pankaj Chandel No.68 prior to conducting the search of the vehicle associated two independent witnesses namely Ram Niwas (PW3) and Dinesh Kumar (PW4). These witnesses remained present throughout the proceedings and their presence is duly reflected on the search, recovery and seizure memo Ext.P2/PW3. These two witnesses have supported and corroborated the prosecution case qua recovery of the contraband from the boot space of the Car No. HP-71-6727 (Alto), being driven by the accused. They have also testified regarding seizure and sealing process.

22. The factum regarding compliance of Section 52A(3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 can be inferred after going through the document Ext.P31/PW18. Also, the compliance of Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985 can be inferred after going through the resealing certificate Ext.P26/P13 and compliance under Section 57 of the Act can be inferred after going through the document Ext.P13/PW8. The mandatory provision under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 are not attracted since recovery of the contraband was effected from the Car and nothing incriminating was recovered on personal search of the accused.

23. The oral and documentary evidence led by the prosecution appears to be cogent and consistent and there is nothing emerging at this stage to infer that there were either any procedural lapses or non adherence of mandatory provisions under the Act. Therefore, the accused has failed to make out a reasonable case to seek benefit of Section 430 of BNSS.

24. The sacrosanct principle of legal jurisprudence related to bail is that bail is the rule and jail is an exception. The Hon’ble Supreme Court of India has recognized and established this

principle in catena of Judgments. However, this rule is not watertight, and it cannot be measured in a straight jacket formula and cannot be applied in all the cases. There are specific laws that state bail cannot be granted for certain offences, like those involving large amounts of drugs under the NDPS Act, 1985, unless certain conditions are met. Section 37 (2) of the Narcotic Drugs and Psychotropic Substances Act, 1985, provides for the grant of bail in NDPS cases, and it expressly excludes anything contained in the erstwhile Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) related to the grant of bail involving offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity unless the embargo contained under section 37 is fulfilled.

25. Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for offences under section 19 or Section 24 or Section 27A and also for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

26. Needless to emphasis that where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) of Cr.P.C. (now 430 of BNSS), must be duly cognizant of the fact that a finding of guilt has been arrived at by the Trial Judge at the conclusion of the trial. This is not to say that the High Court is deprived of its power to suspend the sentence under Section 389(1) of Cr.P.C. (now 430 of BNSS). The High Court may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPS Act.

27. In **Rattan Kumar Vishwas vs. State of UP & Ors. (2009) 1 SCC 482**, the Hon'ble Supreme Court held that:-

> *"a person convicted of offences under Section 27A and Section 29 of the NDPS Act should not be released on bail unless the requirements outlined in Section 37 of the Act are satisfied."*

28. The Hon'ble Supreme Court in **Union of India v. Rattan Malik (2009) 2 SCC 624** held that:-

> *"the broad principles which should weigh with the court in granting bail in a non-bailable offence have been enumerated in a catena of decisions of this Court and, therefore, for the sake of brevity, we do not propose to reiterate the same. However, when a prosecution/ conviction is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, including an application for grant of bail,*

these provisions cannot be ignored while dealing with such an application. As already noted, in the present case, the respondent has been convicted and sentenced for the offences under the NDPS Act and therefore, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under the Penal Code, 1860 the relevant provision in the said special statute in this regard had to be kept in view."

29. In **State of NCT of Delhi v. Lokesh Chadha (2021) 5 SCC 724**, the Hon'ble Supreme Court has held that:-

"when a suspension of sentence is required under section 389(1) of the Code of Criminal Procedure, 1973 (Section 430 of BNSS, 2023), the High Court must be properly cognisant of the fact that the trial judge found guilty at the end of the trial. The Court additionally noted that although the High Court retains the authority to suspend the sentence, it may do so for valid grounds that must relate to the public policy that underpins the inclusion of Section 37 of the NDPS Act."

30. Further, in the recent case of **State of Punjab vs. Sukhwinder Singh alias Gora (2026) SCC OnLine 671**, the Hon'ble Supreme Court held that:-

"the strictness of Section 37 of the NDPS Act cannot be compromised, even when considering the right to a speedy trial under Article 21 of the Constitution. This ruling overturned the High Court's order granting bail to an accused who had been found guilty of offences covered by Sections 21(c) and 29 of the NDPDS Act. It has also been decided that the twin requirements under Section 37(1) are required in cases involving the recovery of contraband in commercial quantities."

31. Based on the pronouncement of the Hon'ble Supreme Court, the accused, in the present case, having been convicted for an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985, involving in commercial quantity of the contraband, cannot be considered for grant of bail/suspension of sentence during pendency of his appeal. The material evidence referred herein above is sufficient to dis-entitle the accused from the benefit of section 430 of BNSS, 2023, therefore, we do not deem fit to accept the prayer of the accused.

32. Hence, the present application is dismissed being devoid of merits.

33. Any expression of opinion herein-above shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of the present application.

(Vivek Singh Thakur)
Judge

3rd November, 2026
(sanjeev)

(Bhupesh Sharma)
Judge