IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMP No.128 of 2026 in
Cr. Appeal No.256 of 2024
Reserved on: 21.04.2026
Date of decision: 25.04.2026

Anil Kumar. ...Appellant/Applicant.

Versus

State of Himachal Pradesh. …Respondent.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting?[1]

For the appellant/applicant	:	Mr. Manoj Pathak, Advocate.
For the respondent(s)	:	Mr. J.S. Guleria, Deputy Advocate General.

Vivek Singh Thakur, Judge

This application has been filed seeking suspension of sentence during pendency of the appeal. The applicant/appellant is a convict in case FIR No.59 of 2021 dated 22.06.2021, registered at Police Station Kumarsain under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short '**NDPS Act**') and is serving the sentence awarded to him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹1,00,000/-, and in default of payment of fine, to further undergo

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

simple imprisonment for six months, in Model Central Jail, Kanda, District Shimla.

2. In the present case, there are four convicts. As per the prosecution story, co-convict Gurjant Singh was apprehended with about 8 kg Charas while travelling in a bus on 22.06.2021.

3. It is the case of the prosecution that after his (Gurjant Singh) arrest, he disclosed that he had received Charas from applicant-Anil Kumar, who along with two other persons, namely Harsh Sharma and Akshay Kumar, were travelling in a car ahead of him, whereas he (Gurjant Singh) was travelling on a motorcycle along with the contraband, and Anil Kumar informed him that there was a Naka set up by the police and advised him to park his motorcycle in any nearby vicinity and thereafter travel in a bus. Thereafter, he (Gurjant Singh) parked the motorcycle near a Dhaba at Murthal, near Verma Bhojnalay, and thereafter boarded a private bus, wherefrom he was apprehended by the police after recovery of Charas from his bag.

4. Learned counsel for the applicant/appellant submits that the applicant has served sentence of about three years and five months and there is no other evidence against the applicant, except the disclosure statement of Gurjant Singh and so-called telephonic conversation with Gurjant Singh, and thereafter, in view of settled

law, the applicant deserves to be enlarged on bail. In sequel to the disclosure statement by Gurjant Singh, nothing incriminating material or evidence has been recovered or extracted from the applicant-Anil Kumar or co-convicts, Akshay Kumar and Harsh Sharma.

5. It has been submitted that in view of the judgment of the Apex Court passed in ***Tofan Singh versus State of Tamil Nadu***, reported in **(2021) 4 SCC 1** and ***State (by NCB), Bengaluru versus Pallulabid Ahmad Arimutta and another***, reported in **(2022) SCC 633**, the applicant deserves to be enlarged on bail by suspending his sentence during pendency of the appeal.

6. It has been further submitted that with identical facts, co-accused, Akshay Kumar and Harsh Sharma, have been enlarged on bail by Coordinate Division Bench of this Court vide a common order dated 05.01.2026, passed in **CRMP No. 2625 of 2025 in Criminal Appeal No. 238 of 2024**, titled ***Akshay Kumar vs. State of HP***, and **CRMP No. 2626 of 2025 in Criminal Appeal No. 233 of 2024**, titled ***Harsh Sharma vs. State of HP***. Therefore, on the ground of parity also, it has been contended that the applicant is similarly situated and deserves to be enlarged on bail by suspension of sentence.

7. It has been contended that it is the case of the prosecution that applicant-Anil Kumar was using mobile phone

number 8894802524 and he was in regular touch with Gurjant Singh on his mobile number 8580605818. To substantiate this plea, call detail records of these numbers have been produced in evidence as Exhibit P4/PW-19 and Exhibit P5/PW-19, respectively. It has been submitted by learned counsel for the applicant that PW-19 Arun Mishra, Nodal Officer of Reliance Jio, has been examined by the prosecution, but has categorically admitted in his cross-examination that application form of Gurjant Singh for issuing mobile SIM was not requisitioned by the Investigating Officer. It has been further submitted that there is nothing on record to connect mobile phone number 8894802524 with applicant Anil Kumar, as the application form for issuing mobile number submitted by applicant-Anil Kumar, available on record, depicts the mobile number of Anil Kumar was 9625253355. There is no application form or any identification document of Anil Kumar to connect him with mobile number 8894802524.

8. Learned Deputy Advocate General has submitted that the applicant has committed a heinous crime, which is causing grave harm to the society and, therefore, he is not entitled for suspension of sentence.

9. The Apex Court in ***State (by NCB), Bengaluru vs. Pallulabid Ahmad Arimutta*** (supra) has observed as under:-

> "11. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.
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> 12. It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu[2], that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019…."

10. In ***Tofan Singh versus State of Tamil Nadu*** (*supra*), it has been held by the Apex Court that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of offence under the NDPS Act, unless it leads to recovery of material substance on the basis of such confessional or voluntary statement, in absence thereof, such statement cannot form the basis for rejection of plea of the applicant-convict to enlarge him on bail.

11. Indisputably, similarly situated co-accused, Akshay Kumar and Harsh Sharma, have been enlarged on bail by

[2] (2021) 4 SCC 1

suspending their sentence vide order dated 05.01.2026 in the cases referred *supra*.

12. Considering the aforesaid facts and circumstances and also the fact that co-convicts with similar allegations have already been enlarged on bail by suspending their sentence, the sentence imposed upon the applicant/appellant, referred *supra*, is suspended during pendency of the appeal, subject to furnishing personal bond in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of Trial Court and also subject to deposit of fine amount, if not already deposited. On furnishing the requisite bail bonds, he be released forthwith, however, with undertaking to appear before this Court as and when directed, and in the event of the dismissal of the appeal, the applicant/appellant will surrender before the Court. Bail bonds so furnished shall be transmitted by the Trial Court to the Registry of this Court for placing the same on record.

13. Needless to say, the aforesaid observations made in the application, shall not have any bearing on the final adjudication of the appeal, as these observations are preliminary in nature by considering the material on record, *prima facie,* for purpose of suspension of sentence of the applicant.

14. Parties are permitted to produce a copy of this order downloaded from the web-page of the High Court of Himachal

Pradesh before the Court below and the Court below shall not insist for production of a certified copy of order, rather, the Court below shall verify passing of this order from the web-page of the High Court.

15. Application is allowed and disposed of in aforesaid terms.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge.

25th April, 2026
(Pardeep)