



HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 321 of 2025

Ramavatar Gupta S/o Late Ayodhya Prasad Gupta Aged About 55 Years R/o Village Chhoti Gorgi, Mahsaw, P.S. Gud, District Rewa (M.P.)

... Appellant

versus

State Of Chhattisgarh Through Station House Officer, Police Station- Gudiary, District- Raipur (C.G.)

... Respondent

29.04.2025	Mr. Varun Tankha, Counsel for the Appellant, assisted by Mr. Ashish Tiwari, Advocate along with Mr. Harshit Bari, Advocate and Mr. Aayush Shukla, Advocate. Mr. Jitendra Shrivastava, Government Advocate for the State/respondent. Heard on admission as well as on I.A. No. 01/2025, an application under Section 430(2) of B.N.S.S, 2023 for suspension of sentence and grant of bail. Admit. By virtue of the impugned judgment of conviction and

order of sentence dated 06.01.2025 passed by Learned Special Judge (NDPS Act), Raipur, District-Raipur in Special Case No. 43/2024 (Annexure A/1), whereby the appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentences</u>
Under Section 22(B) of the NDPS Act, 1985	Rigorous Imprisonment for <u>05 years</u> and fine of Rs. 50,000/- and in event of default in payment of fine additional Rigorous imprisonment for 10 month.
Under Section 29 of the NDPS Act, 1985	Rigorous Imprisonment for <u>05 years</u> and fine of Rs. 50,000/- and in event of default in payment of fine amount additional Rigorous Imprisonment for 10 months.
Both the sentences are directed to run concurrently.	

Learned Counsel appearing for the appellant submits that the quantity of Tramadole Capsules seized from the appellant weighed 37.52 grams. The small quantity is 05 grams and the commercial quantity is 250 grams. Hence the quantity seized from the possession of the present appellant is in between the small and the commercial quantity. The appellant was in custody for 11 months and he has been sentenced for 05 years. There is no documentary evidence

available on record which could show that the compliance of Section 42, 50 and 57 of the NDPS Act, 1985 has been made out. He contended that the presumption of Section 54 of the NDPS Act has taken against the appellant, but it could not be taken against the present appellant as until and unless these procedures are not followed, possession is not proved and if possession is not proved the presumption of Section 54 would come in force. Moreover the memorandum of accused no. 1 doesn't name the appellant. Also there were two witnesses who have signed the memorandum, are the two independent witnesses, who have turned hostile. Hence the appellant is innocent and has been falsely implicated in connection with the alleged crime. Since the appeal will take some considerable time for its conclusion, therefore, the jail sentence as awarded by the Trial Court be kept in abeyance, till the disposal of this criminal revision.

On the other hand, learned counsel appearing for the Respondent/State has opposed the said application.

Having considered the aforesaid contention of the parties, considering the nature of incident and act committed by the petitioner it has been observed that on the basis of the memorandum statement given by the co-accused Mohd. Salman Shah, Investigating Officer has proceeded for further investigation at one Gupta Medical Store and the co-accused Mohd. Salman Shah has identified

the present appellant as a seller of the contraband which has been recovered from him which weighed 37.52 gram. There is no document exhibited which could show that the Investigating Officer has complied the provisions of Section 50 of the NDPS Act, 1985. Section 50 of the NDPS Act, 1985 deals with personal search of the person and as per Ex. P-59, 37.52 gram of contraband has been recovered from the personal search of the present appellant. And after the personal search the Investigating Officer has not taken the appellant before the Gazetted Officer or the Magistrate and even it is not shown that after a search is conducted under sub-section (5) the Officer recorded the reason for such belief which necessitated such search and within seventy two hours send the copy thereof to his immediate official superior.

Thus looking to the peculiar facts and circumstances of the case, I am inclined to **allow** this application for suspension of sentence and grant of bail without further commenting anything on the merits of this case.

Accordingly, **I.A. No. 01/2025 is allowed** and it is directed that the substantive jail sentence imposed upon appellant shall remain suspended during the pendency of this criminal revision and he shall be released on bail on his furnishing a personal bond for a sum of Rs.10,000/- along with two surety in like sum to the satisfaction of the

concerned trial Court for his appearance before the Registry of this Court on 09th of May, 2025. He shall thereafter appear before the Trial court on a date to be given by the Registry of this Court he shall continue to appear on all such subsequent dates as are given to him by the said Court till the disposal of this criminal revision.

In view of above, I.A. No. 01/2025, stands allowed.

List this case for final hearing in its due course.

sd/-

(Arvind Kumar Verma)

Judge