

Ishan vs. State of H.P.

Cr. Appeal (C-SB) Nos. 48 and 45 of 2026

2.6.2026 Present:

Mr. Harish Chauhan, Advocate, for the appellant(s), in both the appeals.

Mr Jitender Sharma, Additional Advocate General, for the respondents-State, in both the appeals.

Cr.MP No. 838 of 2026 in Cr. Appeal (C-SB) No. 48 of 2026

The appellant/applicant has filed the present application for suspension of the sentence awarded by the learned Special Judge, Rohru, District Shimla, H.P. (learned Trial Court). It has been asserted that the applicant/appellant was tried and convicted by the learned Trial Court for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) and was sentenced to undergo rigorous imprisonment for five years, pay a fine of ₹50,000/- and in default of payment of fine to undergo simple imprisonment for one year. The applicant has filed an appeal before this Court, which is likely to be allowed. The learned Trial Court overlooked major contradictions in the statements of the prosecution witnesses. The applicant's mother is a widow and is suffering from uterine cancer. She lives alone, and there is no person to look after her. The applicant is the only caregiver. She would suffer from the continuous detention of the applicant. Hence, it

was 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 making preliminary submission regarding the lack of maintainability. It was asserted that 13.10 grams of heroin was recovered from the conscious possession of the applicant and co-accused Surinder Kumar. The police investigated the matter and filed the charge sheet against the petitioner and the co-accused. The learned Trial Court convicted the applicant of the commission of an offence punishable under Section 22 read with Section 29 of the NDPS Act and sentenced him to undergo imprisonment for five years, pay a fine of ₹50,000/- and in default of payment of the fine to undergo additional imprisonment for a period of one year. The applicant/appellant has committed an offence against society, and he does not deserve any leniency from the Court. The petitioner would indulge in the commission of a similar offence if released on bail. Hence, it was prayed that the present petition be dismissed.

3. I have heard Mr Harish Chauhan, learned counsel for the appellant/applicant and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

4. Mr Harish Chauhan, learned counsel for the appellant/applicant, submitted that the sentence imposed by the learned Trial Court is disproportionate. There are various contradictions in the statements of prosecution witnesses, which make the prosecution's case doubtful. Learned Trial Court had not noticed these aspects. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

5. Mr Jitender Sharma, learned Additional Advocate General for the respondent/State, submitted that the petitioner was found in possession of heroin, which is adversely affecting the young generation of society. No leniency should be shown to the petitioner. Hence, he prayed that the present petition be dismissed.

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

7. The judgment of the learned Trial Court shows that the petitioner was found to be in possession of 13.10 grams of heroin. The Central Government has notified 250 grams of heroin as the commercial quantity, which means that a person possessing 250 grams of heroin can be sentenced to imprisonment of 10 years. If the principle of proportionality applies to the present case, the petitioner could not have been *prima facie* sentenced to undergo

rigorous imprisonment for five years. He filed the appeal in the year 2026, and this Court has the Roster of the appeal till the year 2025. The petitioner would have undergone a substantial part of the imprisonment that could have been awarded to him at the time of the decision of the appeal, if the sentence imposed upon him is suspended. Therefore, the petitioner is entitled to the suspension of the sentence.

8. In view of the above, the present petition is allowed, and the substantive sentence of imprisonment awarded by the learned Trial Court is suspended subject to deposit of fine and furnishing of personal and surety bonds in the sum of ₹1,00,000/- each, undertaking to appear before this Court as and when directed to do so and surrender before the learned Trial Court in case of dismissal of the appeal.

9. The bail bonds so furnished by the applicant/petitioner be transmitted to this Court for record.

10. The present application stands disposed of.

**Cr.MP No. 807 of 2026 in Cr. Appeal (C-SB)
No. 45 of 2026**

11. The substantive sentence imposed upon the co-accused has been ordered to be suspended in Cr.MP No. 838 of 2026, therefore, the sentence of the applicant/

appellant in the present case is also suspended on the principle of parity.

12. The present application stands disposed of.

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The record has been received. List the matter(s) for hearing in due course.

(Rakesh Kainthla)
Judge

2nd June, 2025
(Chander)