

Roop Chand Biswas Vs. State of H.P.

Cr. Appeal No. 343 of 2025

7.7.2025

Present: Ms. Divya Sood, Advocate, for the appellant.

Mr. Anup Rattan, Advocate General with Ms. Ranjna Patial, Dy. A.G., for the respondent/State.

Cr. M.P. No. 2720 of 2025

Reply to the application not filed. Time sought to do the needful. However, considering the fact that sufficient time has already been granted to file reply, the right to file the same has been ordered to be closed.

By way of the present application, indulgence of this Court has been sought to suspend the order of sentence dated 28.5.2025, passed by the Court of learned Additional Sessions Judge, Palampur, District Kangra, H.P. (hereinafter referred to as the 'trial Court'), in Drugs and Cosmetics Act case number 5-P/VII/2023/2018, titled as 'Drug Inspector versus Roop Chand Biswas'.

2. Applicant has preferred the present Criminal Appeal against the judgment of conviction, dated 13.5.2025 and order of sentence dated 28.5.2025, passed by the learned trial Court, whereby, the learned trial Court has convicted the applicant for the commission of offence punishable under Sections 28 read with Section 18-A, and Section 27(b)(ii) read with Section 18(c) of the Drugs and Cosmetics Act, 1940, in the following manner:

Sr. No.	Offences	Sentence imposed	In default
1.	Sec. 28 read with Sec. 18-A	4 months of simple imprisonment and fine of Rs. 20,000/-	15 days simple imprisonment
2.	Section 27(b)(ii) read with Section 18-C	3 years (2 years, 6 months simple imprisonment + remaining 6 months rigorous imprisonment) + fine of Rs. 1,00,000/- (being more than three times the value of the drugs confiscated of any adequate and special reason for imposing term less than the aforesaid punishment)	6 months simple imprisonment.

3. The present appeal, preferred by the applicant, will take sufficient long time, for its decision.

4. The sentence, which has been imposed by the learned trial Court, in this case, falls within the definition of “fixed term sentence” and according to the decisions of Hon’ble Supreme Court in **‘Bhagwan Rama Shinde Gosai and Others Vs. State of Gujarat’**, reported in **(1994) 4 SCC 421** and in **‘Bhupatji Sartajji Jabraji Thakor Vs. State of Gujarat’**, reported in **‘2024 SCC OnLine SC 3320’**, the sentence, imposed by learned trial Court, falls within the definition of “fixed term sentence”, can be suspended. Relevant paragraph 3 of the judgment in Bhagwan Rama Shinde Gosai’s case (supra) is reproduced, as under:-

“3. When a convicted person is sentenced to fixed period of sentence and when he files 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 limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing 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 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.”

5. Relevant paragraph 7 of the judgment in Bhupatji Sartajji Jabraji Thakor’s case (supra), is reproduced, as under:-

“7. There is a fine distinction between a sentence imposed by the trial court for a fixed term and sentence life imprisonment. If a sentence is for a fixed term, ordinarily, the appellate court may exercise its discretion to suspend the operation of the same liberally unless there are any exceptional circumstances emerging from the record to decline. However, when it is a case of life imprisonment, the only legal test which the Court should apply is to ascertain whether there is anything palpable or apparent on the face of the record on the basis of which the court can come to the conclusion that the conviction is not sustainable in law and that the convict has very fair chances of succeeding in his appeal. For applying such test, it is also not permissible for the court to undertake the exercise of reappreciating the evidence. The emphasis is on the word “palpable” and the expression “apparent on the face of the record”.”

6. Consequently, application, under consideration, is allowed and the order of sentence dated 28.5.2025, passed by the learned trial Court, is ordered to be suspended, during the pendency of the appeal, and

he is ordered to be released on bail, in this case, subject to the following conditions:

(i) That the applicant shall furnish personal bond in the sum of Rs.50,000/-, along with one surety of the like amount, to the satisfaction of the learned trial Court, within a period of four weeks from today, with an undertaking that he will surrender before the learned trial Court to serve the remainder substantive sentence, in case of ultimate dismissal of the present appeal, by this Court;

(ii) That the applicant shall deposit the fine amount, with the learned trial Court, within a period of eight weeks from today, if not, already deposited by the applicant.

(iii) The applicant shall not leave the territory of India without the prior permission of the Court.

7. Application is, thus, disposed of.

8. A copy of this order be sent to the learned trial Court, with a direction that the report of compliance of this order be submitted to this Court.

**(Virender Singh)
Judge**

July 7, 2025
(kalpana)