



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P. No. 3289 of 2025 in
Cr. Appeal No. 441 of 2025.
Reserved on : 23.04.2026.
Date of decision: 06.05.2026.

Anil Kumar ...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 Applicant. *Mr. Ganesh Barowalia & Mr. Gambhir Singh Chauhan, Advocates.*

For the Respondent: *Mr. J.S. Guleria, Deputy Advocate General.*

Vivek Singh Thakur, Judge

Applicant-appellant has preferred this application for suspension of sentence awarded to him, vide judgment and order dated 27.05.2025, by Special Judge-1, Sirmaur, District at Nahan, Himachal Pradesh in Sessions Trial No. 76-ST/7 of 2022, titled as State of H.P. vs. Anil Kumar, whereby he has been sentenced to undergo rigorous

¹ *Whether the reporters of the local papers may be allowed to see the judgment?*



imprisonment for 15 years and to pay fine of Rs. 1,50,000/- and in default to pay fine, to further undergo rigorous imprisonment for 2 years for commission of offence under Section 21(c) of the ND&PS Act.

2. Applicant-appellant, as per Custody Certificate as on 29.08.2025, had undergone 3 years, 1 month and 24 days imprisonment and, thus, as on date, he has been undergone 3 years and 9 months imprisonment. Maximum sentence prescribed for commission of offence, for which applicant-appellant has been convicted, is up to 20 years.

3. Main grounds for pleading suspension of sentence advanced on behalf of applicant-appellant is that there were two independent witnesses, alleged to be associated during search and seizure of the contraband with claim that they had witnessed the recovery of contraband from the residence of applicant-appellant.

4. It has been submitted on behalf of applicant-appellant that though witnesses have been examined as PW-10 Tulsi Ram and PW-11 Kalyan Singh, but neither of them has supported the prosecution case, rather they have stated that no contraband was recovered from the applicant-appellant in their presence. On request of learned Public Prosecutor for the State, they were permitted to be cross-examined by



the Public Prosecutor, after declaring them hostile, for resiling from previous statements recorded by the police.

5. Learned Deputy Advocate General has opposed this application on the ground that apart from independent witnesses, there are official witnesses, whose testimonies have proved commission of offence by the applicant-appellant, beyond reasonable doubt and, accordingly, applicant-appellant has been convicted after subjecting him full-fledged trial and, therefore, on the ground that independent witnesses have been turned hostile, applicant-appellant is not entitled for suspension of sentence.

6. Learned counsel for the applicant–appellant, in support of his contentions, has relied upon the judgment of the Hon'ble Apex Court in **Criminal Appeal No. 871 of 2021**, titled as **Sanjeet Kumar Singh @ Munna Kumar Singh v. State of Chhattisgarh**, and submitted that independent witnesses not merely denied their presence and participation, but also came up with an explanation as to how their signatures found a place in those documents.

7. We have perused the statements of PW-10 Tulsi Ram and PW-11 Kalyan Singh, though they have been declared hostile and cross-examined by the prosecution, but in cross-examination, PW-10 Tulsi Ram



has admitted that applicant-appellant came out of the room, police team introduced themselves to him and asked the applicant-appellant about his name and address and applicant-appellant disclosed the same in their presence. Further, that it is also correct that police team asked the applicant-appellant to conduct their personal search and applicant-appellant conducted personal search of the entire team, including independent witnesses, and that bag was unzipped in the presence of witnesses and vials were recovered in the same and were counted, and vials were put back in the same *Pithu* bag, which was again zipped and packed in the cloth parcel, which was sealed and the parcel along with sample seal and NCB form was taken into possession, vide memo Ext. P23/PW9, which bears his signatures in red circle 'B'. He has also admitted that witness Kalyan as well as applicant-appellant also signed the memo in his presence, and Investigating Officer had apprised the applicant-appellant of his legal right of being searched before a Gazetted Officer or before a Magistrate and applicant-appellant understood the value of his right and, thereafter, opted to be searched in presence of Gazetted Officer and this option was given by the applicant-appellant on the memo Ext. P24/PW9, on his own handwriting and in memo, he (this witness) had put his signatures in red circle 'B'. He identified the



applicant-appellant present in the Court and had also admitted that Tehsildar Kamrau had also visited the spot and personal search of the applicant-appellant was conducted by the police on the direction of Naib Tehsildar, but nothing was recovered and to this effect, memo (Ext. P25/PW9) was prepared, which also bears his signatures in red circle 'B'. This witness has also admitted that applicant-appellant could not produce any licence/permit to store prohibitory drug in large quantity, on demand by the police. This witness has admitted that photographs (Ext. P13/PW5-1 to Ext. P13/PW5-14) were clicked in his presence and Shillai police visited the spot and recorded their statements. He has also identified his signatures in red circle 'B' on cloth parcel Ext. MO-1 and he has also identified Pithu bag Ext. MO-2, containing vials Ext. MO-3, 71 in numbers, as the same, which were recovered in his presence.

8. PW-11 Kalyan Singh has admitted that police asked them to accompany the police party for search of house of the applicant-appellant and, thereafter, both of them accompanied the police team and when applicant-appellant came out of the room, police team introduced themselves to accused and asked about his name and address, which was disclosed by the applicant-appellant in presence of the witnesses. He has also admitted about fact of search by the applicant-appellant of the



police team including independent witnesses and preparation of memo Ext. P21/PW9, which bears his (this witness) signatures in red circle 'C'. This witness has also admitted that vials were put back in the said *Pithu* and *Pithu* was zipped and packed in cloth parcel and parcel along with sample seal and NCB form was taken into possession, vide memo Ext. P23/PW9, which bears signatures of this witness in red circle 'C', which was also signed by PW-10 Tulsi Ram as well as applicant-appellant. Further, that applicant-appellant was apprised about his legal right and applicant-appellant had opted to be searched in presence of Gazetted Officer and memo in this regard Ext. P24/PW9 was prepared, which was signed by this witness in red circle 'C'. He has also admitted visit of Naib Tehsildar and search of person of the applicant-appellant, in his presence and preparation of memo (Ext. P25/PW9) in this regard. Further, that applicant-appellant could not produce licence/permit to store prohibitory drug in large quantity. He has also identified the cloth parcel (Ext. MO-1), *Pithu* bag (Ext. MO-2), 71 vials (Ext. MO-3) and his signatures in red circle 'B' on the parcel.

9. From the aforesaid admissions of the hostile witnesses, which are corroborating prosecution's story, no benefit can be extended to the applicant-appellant.



10. Apart from the statements police officials, deposition of independent witnesses is corroborating the prosecution's story and, therefore, on this ground, no fair chance of acquittal is made out at this stage.

Accordingly, application is dismissed and disposed of.

**(Vivek Singh Thakur),
Judge.**

**(Ranjan Sharma),
Judge.**

6th May, 2026
(Susheel)