

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CRMP No.3241 of 2025 in****Cr. Appeal No.427 of 2025****Reserved on: 05.08.2026****Date of decision: 06.08.2026****Uploaded on: 06.08.2026**

Kanshi Ram.

...Applicant/Appellant.

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. Peeyush Verma, Senior Advocate
appellant with Mr. Anuj Bali and Mr. Ajay Kumar
Sharma, Advocates.

For the respondent(s) : Mr. Gautam Sood, Deputy Advocate
General.

Vivek Singh Thakur, Judge

This application has been filed for suspending the substantive sentence imposed upon the applicant-appellant, who has been convicted and sentenced vide judgment and order dated 24.06.2025 passed by Special Judge, District Mandi, Himachal Pradesh, in **ND&PS Act No. 26/2024/2018** [CIS Registration No.07 of 2018] titled as '**State of Himachal Pradesh vs. Kanshi Ram,**

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

arising out of FIR No.88 of 2017, dated 22.09.2017, registered at Police Station Padhar, District Mandi, HP, for having been found in possession of 3.012 Kilograms of Charas, an offences punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short '**NDPS Act**'), whereby the applicant/appellant has been sentenced to undergo rigorous imprisonment for a period of 12 years and to pay a fine of ₹1,20,000/- for the offence punishable under Section 20(b)(ii)(C) of NDPS Act and in default of payment of fine, to further undergo simple imprisonment for one year.

2. Learned Counsel for the applicant/appellant has submitted that from the order dated 07.09.2017 (Exhibit PW-12/K) passed by Judicial Magistrate Ist Class, at the time of issuing certificate under Section 52A(3) of the NDPS Act, dated 23.09.2017 (Exhibit PW-12/M) in comparison with averments made in application (Exhibit PW-12/N) submitted by the I.O. for seeking permission for destruction of the contraband, order dated 11.01.2018 (Exhibit PW-12/O) passed by the same Judicial Magistrate as well as chemical examination report (Exhibit PW-12/S), it is evident that prosecution has failed to link the contraband sent to the State FSL with the contraband claimed to be recovered from the

applicant/appellant, as well as the contraband produced before the Magistrate on 23.09.2017 and on 11.01.2018.

3. It has been submitted that according to the prosecution case, at the time of seizure of the contraband on the spot, 10 seals bearing seal impression "PDR O" were affixed on the parcel of the contraband and it was produced before the Judicial Magistrate on 07.09.2017, who, after verifying the inventory of contraband by opening the parcel, had again put the three packets, S1, S2 and S3 in the same bag and parcel and had sealed the parcel under six seal impressions of Court seal impression "ACJM JNR" put on the parcel at the time of re-sealing it. At that time, contraband was weighing 3.017 kilograms.

4. Learned counsel for the applicant/appellant has referred chemical examination report (Exhibit PW-12/S), wherein against Sr. No.7, description of parcel has been given as 'one sealed cloth parcel bearing 10 seals of PDR O and 6 seals of ACJ' with further verification that seals were found intact and tallied with specimen seals sent by the forwarding authority, and seal impression of 'PDR O' impressed on Form NCB-1. Total weight of contraband in State FSL was found to be 2.987 kilograms.

5. It has been submitted by learned counsel for the applicant/appellant that contraband was sealed by the Magistrate with seals 'ACJM JNR', but the parcel sent to State FSL was found sealed with seals of 'ACJ'. It has been submitted that though it is the stand of the prosecution that it is a clerical mistake, but this mistake was never got clarified by the prosecution by summoning the concerned witness from the State FSL.

6. It has been further submitted that aforesaid mistake is not a case of clerical mistake, because the State FSL has categorically recorded that seals were found intact and tallied with specimen seal sent by forwarding authority. Whereas Magistrate had sent specimen seal of 'ACJM JNR', which indicates that not only parcel was replaced, but the specimen seals were also replaced, and only in that eventuality, the seal impression 'ACJ' would have tallied with the specimen seal sent by the forwarding authority.

6. It has been further submitted that after receiving the report and contraband back from the FSL on 25.11.2017, an application was submitted by Officer-in-Charge, Police Station, Padhar (Exhibit PW-12/N) on 29.11.2017 before the Judicial Magistrate with request to take out sample of 150 grams of Charas and to permit to destroy remaining contraband as it was difficult to keep the same safe in the Malkhana.

7. Learned Counsel for the applicant/appellant has pointed out that in the application, it has been stated by the SHO that after checking the contraband, at the time of verification of inventory, seal impressions 'ACJM JNR' were affixed on six places. However, in order dated 11.01.2018 (Exhibit PW-12/O), the Magistrate has recorded that SI Pritam Singh produced one parcel sealed with 5 seals of FSL and seals were intact. Magistrate has also recorded that cloth parcel was earlier sealed with seal of 'PDR O' which is 10 in numbers. But the Magistrate has not recorded existence of any seal impression, much less six seal impressions of seal 'ACJM JNR', put on the parcel by the Magistrate at the time of verifying the inventory on 23.09.2017.

8. Learned counsel for the applicant/appellant submitted that it is more than sufficient to construe that there is some tampering in the contraband alleged to be recovered from the applicant and the parcel sent to State FSL, and therefore, link to connect the report of State FSL detecting the contraband as Charas is missing.

9. Learned counsel for the applicant/appellant has further submitted that aforesaid contention is fortified by the findings recorded by the Magistrate in order dated 11.01.2018 (Exhibit PW-12/O), where she has refused to certify the correctness of the inventory for variation of weight of parcel, firstly on 23.09.2017 as

3.017 kg, and after taking sample by FSL, weight was 2.653 kg, which was considerably less than the weight certified on 23.09.2017, about six months ago.

10. After deducting weight of 150 grams contraband taken out as sample by the Magistrate, even then there is a difference of approximately 200 grams of Charas, which is not a reasonable reduction of weight even after passage of time.

10. It has been submitted that despite refusal by the Magistrate to verify the weight of contraband on 11.01.2018 (Exhibit PW-12/O), prosecution did not take any step, in case there was no tampering in the contraband, to clarify the facts on record.

11. It has been further submitted that when the first witness in the case was examined on 25.06.2018, and official witnesses, including the Investigating Officer, were examined thereafter, and evidence was closed in December 2024. There was sufficient time to rectify the mistake, if it was a mistake. But as it was not a mistake, but tampering with the contraband, therefore, prosecution failed to clarify the aforesaid discrepancies, as a result whereof, there is a missing link to connect the exhibit, sent to FSL, and recovered contraband and the parcel sent for chemical analysis and received back therefrom.

12. It has also been pointed out that Judicial Magistrate was not examined as a witness and order passed by the Magistrate has been placed on record by Inspector Pritam Singh (PW-12), which also creates doubt about the prosecution story.

13. Learned counsel for the applicant/appellant has further submitted that a number of discrepancies and contradictions exist in the deposition of official witnesses, which, coupled with the aforesaid discrepancies probable tampering with the parcel, are sufficient to consider that there is a strong chance of acquittal.

14. Learned Deputy Advocate General has submitted that as recorded by the Trial Court, the discrepancy in recording of description of seal on parcel, is a clerical mistake, and therefore, it does not go to the root of the case. He has further submitted that at the time of producing the orders passed by the Magistrate on record, no objection was taken on behalf of applicant/appellant, and therefore, examination of Magistrate in the case was not necessary, and it does not make any difference as the orders passed by Magistrate have been duly proved on record

15. After taking into consideration the aforesaid submissions, this Court is of the opinion that the orders passed by the Magistrate, the explicit refusal to certify the correctness of the

inventory under Section 52A, the unexplained variation in seal impressions and the weight discrepancy are sufficient to create substantial doubt about the connection of alleged recovered contraband and the contraband sent for chemical analysis to State FSL.

16. At this stage, after taking into consideration the aforesaid submissions, we are of the considered opinion that in the present case, the balance of convenience lies in favour of the applicant/appellant and there is a possibility of acquittal, as the hearing of the appeal may take a considerably long time, a case for suspension of sentence is made out.

17. Considering the entire material on record and the peculiar facts and circumstances, the substantive sentence imposed upon the applicant/appellant is suspended during the pendency of the appeal, subject to furnishing personal bond in the sum of Rs.2,00,000/- with one surety in the like amount to the satisfaction of Trial Court 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 to serve the sentence.

18. Needless to say, the applicant shall not be involved in any illegal activity or commission of offence, especially repetition of

an offence under the NDPS Act. In case of any such involvement, the suspension of sentence shall be liable to be cancelled.

19. Bail bonds so furnished shall be transmitted by the Trial Court to the Registry of this Court for placing the same on record.

20. Observations made hereinabove shall not have any bearing on the final adjudication of the appeal, as these observations are *prima facie* and preliminary in nature, made strictly for the purpose of considering the suspension of sentence of the applicant.

21. Parties are permitted to produce copy of this order downloaded from the website of the High Court of Himachal Pradesh before the Court below, and the Court below shall not insist upon the production of certified copy, but shall verify the passing of this order from the web page of the High Court.

22. The application is allowed and disposed of in the aforesaid terms.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge

6th August, 2026
(Pardeep)