

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. Appeal No. 419 of 2025****Reserved on: 07.09.2026****Date of Decision: 18.09.2026**

Chuni Lal	...	Appellant
Versus		
State of H.P.	...	Respondent

*Coram**Hon'ble Mr Justice Rakesh Kainthla, Judge.**Whether approved for reporting?¹ No*

For the Appellant : Mr Ajay Kochhar, Senior Advocate with Mr Bhairav Gupta.

For Respondent/State : Mr Ajit Sharma, Deputy Advocate General.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction dated 27.06.2025, and order of sentence dated 30.06.2025 passed by learned Special Judge, Kullu, District Kullu, H.P. (learned Trial Court) vide which the appellant (accused before learned Trial Court) was convicted and sentenced as under:

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.



Sections	Sentence
Section 20(b)(ii)(B) of NDPS Act	To undergo rigorous imprisonment for eight years, pay a fine of ₹80,000/- and in default of payment of fine, to undergo simple imprisonment for six months.

(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused before the learned Trial Court for the commission of an offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act). It was asserted that SI Vijay Kumar (PW11), Constable Nikhil Kaundal (PW9), Lady Constable Lata Devi, and Constable Anu Thakur (PW8) were checking the vehicles coming from Kullu on 17.05.2017. An Alto car bearing registration No. HP-66A-2232 came from Kullu at about 04:40 p.m. The occupants of the vehicle appeared to be frightened. The police stopped another car bearing registration No. HP-34B-0045. The driver revealed his name as Yeg Chand (PW1). The police joined him as an independent person and enquired about the names of the occupants of the Alto car

bearing registration No. HP-66A-2232. The driver revealed his name as Chuni Lal, and the woman sitting beside the driver revealed her name as Sita Devi. The police checked the car and found one carry bag containing 4 khaki packets. The police opened the packets and found transparent polythene packets containing 12 pieces in the shape of rectangles, pancakes, and balls/toffees. These were found to be cannabis. Their weight was found to be 980 grams. These were put in the carry bag in the same manner in which they were recovered. The carry bag was put in a cloth parcel, and the parcel was sealed with nine impressions of seal "M". Sample seal (Ext.PW1/A) was taken on a separate piece of cloth. NCB-1 Form (Ext.P2/PW5) was filled in triplicate, and the seal was put on the form. The seal was handed over to Yeg Chand (PW1) after use. The cloth parcel, sample seal, NCB-1 form, the car and the documents were seized vide memo (Ext.PW1/B). Rukka (Ext.P14/PW11) was prepared and was handed over to Constable Nikhil Kaundal (PW9) with a direction to carry it to the Police Station where FIR (P15/PW11) was registered. Vijay Kumar (PW11) investigated the matter. He prepared the site plan (Ext.P16/PW11) and recorded the statements of the witnesses as per their version. He arrested the

occupants of the Alto car vide memos (Ext.P4/PW9 and Ext.P5/PW9). ₹40,000/- and other articles were found with Sita Devi, which were seized vide memo (Ext.PW1/D). ₹46,000/- and other articles were found in possession of the accused Chunni Lal, which were seized vide memo (Ext.PW1/C). The case property and the accused were produced before SHO Ajay Kumar (PW5), who resealed the parcel with three seals of impression "T". He obtained the specimen seal impression "T" (Ext.P1/PW5) on a separate piece of cloth and the NCB-1 form. He deposited the cloth parcel, sample seal, and NCB-1 form with Head Constable Chander Shekhar (PW6), who made an entry in the Malkhana register at Sl. No. 139 and deposited the case property in the Malkhana. The case property was produced before learned Chief Judicial Magistrate Kullu, who conducted the proceedings under Section 52A of the NDPS Act. Two representative samples of 25 grams each were drawn from the bulk parcel, and the samples were sealed with 4 seals of "CJM" each. The remaining bulk parcel was also sealed with 5 seal impressions of "CJM". Sample seal "CJM" was drawn on a separate piece of cloth (Ext.P1/PW6). The photographs of the proceedings were taken. The case property was deposited with

MHC Chander Shekhar after the proceedings. He sent the cloth parcel containing 25 grams of charas, NCB-1 form in triplicate, sample seal of CJM, copies of FIR, seizure memo and the proceedings under Section 52A of the NDPS Act to FSL, Junga on 19.05.2017 through Constable Annu Thakur (PW8), who deposited them at FSL Junga and handed over the receipt to MHC on his return. Vijay Kumar (PW10) prepared a special report (Ext.P1/PW2) and handed it over to Additional SP Nishchint Singh Negi on 18.05.2017. Additional SP Nishchint Singh Negi made an endorsement on the special report and handed it over to his Reader, ASI Nirat Singh (PW2), who made an entry at Sl. No. 48 of the special report register and retained the special report in his custody. The result of analysis (Ext.P20/PW11) was issued, in which it was mentioned that the exhibit was an extract of cannabis and a sample of charas. Statements of witnesses were recorded as per the version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, they were charged with the commission of offences punishable under

Section 20 of the NDPS Act, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined 11 witnesses to prove its case. Yeg Chand (PW1) did not support the prosecution case. ASI Nirat Singh (PW2) was working as a Reader to the Additional SP to whom the special report was handed over. HC Lal Chand (PW3), Constable Jai Singh (PW4) and Constable Vijay Kumar (PW10) proved the entries in the daily diary. Dy. SP. Ajay Kumar (PW5) was working as SHO, who resealed the case property. Head Constable Chander Shekhar (PW6) was working as MHC, with whom the case property was deposited. HC Shyam Singh (PW7) brought the case property from FSL. Constable Annu Thakur (PW8) and Constable Nikhil Kaundal (PW9) are the official witnesses to recovery. Vijay Kumar (PW11) investigated the matter.

5. The accused, in their statements recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), denied the prosecution case in its entirety. They claimed that Sita Devi was being taken to Chandigarh for her treatment. The police stopped the car at TCP Bijora and demanded the documents of the car. The car was checked, but nothing incriminating was

found in the car. The car was allowed to leave. The police recovered one packet from a drain and claimed that the packet belonged to Sita Devi. However, no such packet was found in the car. Some other police officials were also called to the spot, and the occupants of the car were taken to Police Station Bhuntar, where their signatures were obtained. They were innocent. They did not produce any evidence in their defence.

6. Learned Trial Court held that the testimonies of official witnesses corroborated each other. The minor contradictions were bound to come with time and could not be used to discard the prosecution version. There was nothing in the cross-examination of the witnesses to show that they had any reason to depose against the accused. The statements of prosecution witnesses cannot be discarded because they happened to be official witnesses. The integrity of the case property was established. Sita Devi was not found to be in possession of the charas. Hence, the learned Trial Court convicted the accused Chuni Lal and sentenced him as mentioned above and acquitted the accused Sita Devi.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused has filed the present appeal

asserting that the learned Trial Court erred in appreciating the material on record. The statements of prosecution witnesses materially contradicted each other. As per the prosecution version, the vehicle was stopped at 04:40 p.m., whereas Constable Annu Thakur (PW8) claimed that the vehicle was stopped at 07:40 p.m. There was no evidence of the fact that representative samples were drawn. The independent witness had not supported the prosecution case, and the Court should have examined the evidence with due care and caution. Hence, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

8. I have heard Mr Ajay Kochhar, learned Senior Advocate, assisted by Mr Bhairav Gupta, learned Counsel for the appellant/accused and Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State.

9. Mr Ajay Kochhar, learned Senior Advocate for the appellant/accused, submitted that the learned Trial Court failed to properly appreciate the material on record. There were major contradictions in the statements of official witnesses which made the prosecution case doubtful. The case property was found to be 980 grams on the spot, but it was found to be 891 grams in

the proceedings conducted under Section 52A of the NDPS Act. Representative samples were not drawn. The independent witness has not supported the prosecution case, which made the prosecution case suspect. Learned Trial Court erred in holding that the contradictions were minor and bound to come with time. Therefore, he prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside. He relied upon the judgment in *Mehboob Shah vs. State of Madhya Pradesh* 2026 INSC 729, *Krishan Chand vs. State of H.P.* (2018) 1 SCC 222 and *Sarwan Dass vs. State of H.P. Latest HLJ 2017 (HP) 1179* in support of his submissions.

10. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the statements of official witnesses corroborated each other on material particulars. The statements were recorded after 7 years, and minor contradictions were bound to come with time. The learned Trial Court had rightly held that minor contradictions cannot be used to discard the prosecution version. The learned Trial Court had properly appreciated the evidence and this Court should not interfere with the well-reasoned judgment passed by the learned

Trial Court. Hence he prayed that the present appeal be dismissed.

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

12. It was the specific case of the prosecution that police had weighed the charas on the spot and found its weight to be 980 grams. This fact was recorded in the seizure memo (Ext.PW1/B), Special Report (Ext.P1/PW1), NCB-1 Form (Ext.P2/PW5), and Rukka (Ext.P14/PW11). Constable Annu Thakur (PW8), Constable Nikhil Kaundal (PW9) and Vijay Kumar (PW11) also stated this fact in their statements on oath. However, when the case property was produced before the learned Chief Judicial Magistrate for inventory proceedings, the weight of charas was found to be 891 grams. This fact was recorded in the order (Ext.P2/PW6). Learned Chief Judicial Magistrate also made an endorsement on the inventory (Ext.P19/PW11) that the entries in the inventory were incorrect except that the net weight of the charas was found to be 891 grams. Thus, there was a difference of 89 grams or about 9% in the weight of the charas.

13. It was laid down by this Court in *Iacopo Lombardi vs State of Himachal Pradesh* 2002(2) Shim.LC 431, that the

prosecution has to establish the link evidence from taking the sample till its analysis by the chemical examiner. Where the sample of 25 grams was drawn on the spot, and the weight of the same in the laboratory was found to be 17 grams, link evidence is missing. It was observed: -

“24. It may also be noticed here that the samples which were initially drawn as per the prosecution version weighed 25 gms. Each. However, the sample which was delivered in the Laboratory and was analysed weighed only 17.892 gms. Had the investigating agency sent to the Laboratory the sample of 25 gms., allegedly separated and sealed on the spot, the weight of such sample could not be reduced to 17 and odd grams. This reduction of about 7 grams in the weight of the sample is also indicative of the fact that the sample had been tampered with.”

14. In *Ramesh Kumar vs State of HP 2005 (3) Shim. LC 101*, the weight of the sample was reduced from 20 grams to 13.1276 grams, and it was held that the sample taken on the spot was not proved to have been analysed. It was observed:

15. In view of the contents of Ext. PW-9/B and the statements of the aforesaid witnesses, it is absolutely clear that the sample sent to CTL was not of the case property in this case. This conclusion is further strengthened by the fact that, as per the prosecution case, the weight of each of the samples drawn from the recovered Charas was 20 grams. However, as per the contents of the report of the Chemical Examiner Ext. PW-9/C, the sample received in the laboratory weighed 13.1276 grams only. A marginal difference in the weight may not be construed to hold that the sample was not of the case property, but a difference



of 1/3rd of the total weight is not a difference which can be ignored. Thus, the only permissible conclusion in such a situation will be that either the sample had been tampered with or the sample which was delivered in the laboratory was not the sample of the case property which, according to the prosecution itself, was of 20 grams.

15. In *Satnarayan vs State of H.P. 2009 (3) Shim. LC 57 HP*, two samples of twenty grams were taken on the spot, but the Chemical Examiner found its weight to be 30.8116 grams. It was held that the increase was sufficient to cast doubt regarding the prosecution case. It was observed:

“10. Above-stated position apart, it is also doubtful if the report of the Chemical Examiner Ex. PW-10/D pertains to the sample of the stuff allegedly recovered from the appellant. According to the prosecution, two samples, each weighing 20 grams, had been separated. The sample, which was sent to the Chemical Examiner, contained 30.8116 grams of Charas. That means there was a substantial increase in the weight of the Charas sample. The increase was to the order of 54 per cent, approximately. Such a huge variation is not possible due to climatic reasons or the condition of the place, like dampness etc., where the samples might have been stored or on account of there being slight variation while weighing the stuff or on account of some error in the weighing scale.”

16. In the present case, the difference is about 9% of the weight of charas stated to have been recovered by the police, which would make the prosecution case suspect.

17. It was mentioned in the recovery memo (Ext.PW1/B) that the charas was found in 4 packets in the form of 12 pieces of

pancake, rectangles, and ball/toffee. Constable Annu Thakur (PW8) stated that black rectangles, chapattis, balls, and sticks were found in the interlocked polythene packets. Constable Nikhil Kaundal (PW9) stated that black balls/toffee were recovered. Vijay Kumar (PW11) stated that 12 rectangles, chapattis, balls and toffees were found. The learned Magistrate noticed in the order sheet (Ext.P2/PW6) that 12 rectangular pieces of charas in 6 poly packets, 2 in each poly packet and 1 poly packet containing 20 small balls of charas were found. Thus, as per the learned Magistrate, 7 poly packets were found containing only rectangular pieces and balls. Thus, there is a discrepancy regarding the shape of the charas and the number of packets. It was laid down by this Court in *Nanda Bhadur v. State of H.P., 2022 SCC OnLine HP 3411* that where there is a discrepancy regarding the number of the packets, it will make the prosecution's case doubtful. It was observed:

“18. Thus, a perusal of the report of the Forensic Science Laboratory reveals that when the cloth parcel was opened, it contained seven transparent poly packets along with three transparent and yellow cello tape packets, one brown cello tape packet and three Hindi newspaper packets externally lined with transparent cello tape and pinkish white colored marking cloth torn bag with strings. However, the recovery witnesses have not deposed with regard to taking in possession of three transparent and yellow cello tape packets, one brown cello tape packet,



three Hindi newspaper packets externally lined with transparent cellotape and a pinkish white colored marking cloth torn bag with strings. It is not the case of the recovery witnesses that the said articles, which were found by the Forensic Science Laboratory along with seven transparent poly packets, had also been taken in possession and had been sealed in the cloth parcel. This fact is a major discrepancy and makes the prosecution case doubtful. The possibility that the case property was tampered with cannot be ruled out.”

18. The learned Magistrate stated that two representative samples of 25 grams each were drawn in his presence from the bulk charas. The result of analysis (Ext.P20/PW11) mentions that cannabis was found in the form of irregularly shaped pieces. HC Chander Shekhar (PW6) stated in his cross-examination that charas was in ball and rectangular shape. A few pieces were randomly taken and broken to complete two samples of 25 grams each, which was not stated by any other person and was not mentioned even by the learned Magistrate.

19. It was the specific case of the prosecution that the car was intercepted at 04:40 p.m. Constable Annu Thakur (PW8), on the other hand, stated that one white coloured car coming from Kullu was stopped at 07:40 p.m. The learned Trial Court held that the discrepancy in the time is not material. There can be no dispute with this proposition of law. However, in the present case, there was not a mere discrepancy in time but a discrepancy

in the time of the day because 04:40 p.m. and 07:40 p.m. are different times of the day; when the sun has not set and when the sun has set. A person can be mistaken about the time but cannot be mistaken about the fact whether the sun had set or not.

20. Constable Annu Thakur (PW8) stated that the search of the vehicle was started from the driver's side and thereafter the other portion of the vehicle was searched. Constable Nikhil Kaundal (PW9) stated that before searching the dashboard, other parts of the vehicle were checked. Vijay Kumar (PW11) stated that he started checking the car of the accused person from the seat adjoining to the driver's seat. He checked the area underneath the seat of the conductor and thereafter checked the dashboard of the car. He recovered the packets and thereafter checked the remaining portion of the car in a cursory manner. Therefore, the witnesses are not consistent regarding the manner of the search of the vehicle.

21. Vijay Kumar (PW11) stated that Constable Nikhil Kaundal (PW9) arrived on the spot and handed over the case file to him. He recorded the statement of Constable Nikhil Kaundal (PW9), interrogated the accused, and arrested them. Constable Nikhil Kaundal (PW9) also stated that he had brought the case

file to the spot and handed it over to SI Vijay Kumar (PW11), who conducted the investigation. Chunni Lal and Sita Devi were arrested. Thus, the arrest memos were prepared after getting the case file containing the FIR number. However, the arrest memos of the accused (Ext.P4/PW9 and Ext.P5/PW9) contain the FIR number in red ink, suggesting that the FIR number was not known to the Investigating Officer at the time of arresting the accused, and was filled later, which falsifies the statement of the Investigating Officer and Constable Nikhil that he had brought the case file containing the FIR number to the spot.

22. Independent witness Yeg Chand (PW1) did not support the prosecution version. Learned Trial Court held that the mere fact that an independent witness had not supported the prosecution version is not sufficient to doubt the prosecution case. There can be no dispute with this proposition of law. However, in view of the discrepancies noticed above, the fact that an independent witness had not supported the prosecution case will assume significance.

23. It was laid down in *Noop Ram v. State of H.P.*, 2022 SCC *OnLine HP 6850* that the prosecution evidence has to be scanned minutely to check and test its genuineness and veracity under the

NDPS Act. When the prosecution case is scanned minutely in the present case, the prosecution's case becomes doubtful because of the infirmities noticed above, and the accused is entitled to the benefit of doubt, which is extended to him.

24. The judgments cited at the bar turn on their own facts and do not apply to the present case.

25. In view of the above, the present appeal is allowed, and the judgment and order passed by the learned Trial Court are ordered to be set aside, and the accused is acquitted of the commission of an offence punishable under Section 20(b)(ii)(B) of the NDPS Act after extending him the benefit of doubt. He be released from custody, if not required in any other case. Release warrant be prepared and sent to the Jail Superintendent, Model Central Jail Nahan and the learned Trial Court by FASTER.

26. The fine, if deposited, be refunded to the appellant/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

27. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik

Suraksha Sanhita, 2023 (BNSS)], the accused is directed to furnish personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the appellant/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

28. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(Rakesh Kainthla)
Judge

18th September, 2026
(Nikita)