

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal (C-SB) No. 144 of 2026

Reserved on: 30.6.2026

Date of Decision: 10.7.2026.

Devi Chand

...Appellant

Versus

State of HP

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Appellant : Mr Paras Dhaulta, Advocate.

For the respondent : Mr Jitender K. Sharma, Additional
Advocate General.

Rakesh Kainthla, Judge

The present appeal is directed against the order dated 02.05.2025, passed by learned Special Judge, Chamba, District Chamba, H.P., (learned Trial Court), vide which the respondent (accused before the learned Trial Court) was sentenced to undergo rigorous imprisonment for 5 years, pay a fine of ₹50,000/- and in default a payment of fine to undergo simple imprisonment for one year for the commission of an offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and

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

Psychotropic Substances Act and (NDPS Act). (*The parties shall hereinafter be referred to in the same manner in which they were arrayed before the learned Trial Court for convenience*).

2. Being aggrieved by the sentence imposed by the learned Trial Court, the accused has filed the present appeal asserting that the learned Trial Court failed to assign any reason to award a sentence of five years. The accused was a first-time offender. The quantity recovered was intermediate, and there was no allegation of conspiracy, trafficking or organised crime. The learned Trial Court relied upon the judgment of the Hon'ble Supreme Court, which dealt with the commercial quantity. The appellant/accused had voluntarily pleaded guilty, which saved judicial time. He had no criminal antecedents, and the contraband was meant for personal use. The sentence was not proportionate to the commission of the crime. Therefore, it was prayed that the present appeal be allowed and the sentence passed by the learned Trial Court be set aside.

3. I have heard Mr Paras Dhaulta, learned Legal Aid Counsel for the petitioner and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

4. Mr Paras Dhaulta, learned counsel for the appellant/accused, submitted that the learned Trial Court erred in not assigning adequate reasons to impose the sentence. The reasons are essential while imposing the sentence. Learned Trial Court had not considered the mitigating circumstances, and the sentence imposed is excessive. Therefore, he prayed that the present appeal be allowed and the sentence imposed by the learned Trial Court be modified. He relied upon the judgment of the Hon'ble Supreme Court in *Accused X vs. State of Maharashtra*, (2019) 7 SCC 1 in support of his submissions.

5. Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State, submitted that the appellant/accused was found in possession of 446 grams of charas, which is a huge quantity. If the principle of proportionality is applied to the present case, the sentence imposed by the learned Trial Court is adequate. Learned Trial Court had assigned a valid reason that the offences of Narcotics affect society adversely, and a deterrent view had to be taken. Therefore, he prayed that the presumption be dismissed.

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

7. Learned Trial Court noticed the ill effects of drug abuse on society. The Learned Trial Court also noticed that the offences punishable under various provisions of the NDPS Act were on an increase. The learned Trial Court balanced the facts of the case, the conditions of the convict, and sentenced him to undergo rigorous imprisonment for 5 years and pay a fine of ₹50,000/-. Hence, the submission that the Learned Trial Court had not provided any reasons before imposing the sentence is not acceptable, and the judgment in X (supra) does not apply to the present case.

8. The Central Government has notified one kilogram of charas as a commercial quantity, which means that a person possessing one kilogram of charas can be sentenced to 10 years of imprisonment. It was laid down by the Hon'ble Supreme Court in *Uggarsain v. State of Haryana*, (2023) 8 SCC 109: 2023 SCC OnLine SC 755 that the Courts have to apply the principle of

proportionality while imposing a sentence. It was observed at page 113:

10. This Court has, time and again, stated that the principle of proportionality should guide the sentencing process. In *Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat* [*Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat*, (2009) 7 SCC 254 : (2009) 3 SCC (Cri) 368 : (2009) 8 SCR 719] it was held that the sentence should “deter the criminal from achieving the avowed object to (sic break the) law,” and the endeavour should be to impose an “appropriate sentence.” The Court also held that imposing “meagre sentences” merely on account of lapse of time would be counterproductive. Likewise, in *Jameel v. State of U.P.* [*Jameel v. State of U.P.*, (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582 : (2009) 15 SCR 712] while advocating that sentencing should be fact dependent exercises, the Court also emphasised that : (*Jameel case* [*Jameel v. State of U.P.*, (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582 : (2009) 15 SCR 712], SCC p. 535, para 15)

“15. ... the law should adopt the corrective machinery or deterrence based on a factual matrix. By deft modulation, the sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.” (emphasis supplied)

11. Again, in *Guru Basavaraj v. State of Karnataka* [*Guru Basavaraj v. State of Karnataka*, (2012) 8 SCC 734 : (2012) 4 SCC (Civ) 594 : (2013) 1 SCC (Cri) 972 : (2012) 8 SCR 189] the Court stressed that : (SCC p. 744, para 33)

“33. ... It is the duty of the court to see that an appropriate sentence is imposed, regard being had to the commission

of the crime and its impact on the social order”
(emphasis supplied)

and that sentencing includes “adequate punishment”. In *B.G. Goswami v. Delhi Admn.* [*B.G. Goswami v. Delhi Admn.*, (1974) 3 SCC 85: 1973 SCC (Cri) 796 : (1974) 1 SCR 222], the Court considered the issue of punishment and observed that punishment is designed to protect society by deterring potential offenders as well as prevent the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question of awarding appropriate sentences.

12. In *Sham Sunder v. Puran* [*Sham Sunder v. Puran*, (1990) 4 SCC 731: 1991 SCC (Cri) 38: 1990 Supp (1) SCR 662], the appellant-accused was convicted under Section 304 Part I IPC. The appellate court reduced the sentence to the term of imprisonment already undergone, i.e. six months. However, it enhanced the fine. This Court ruled that the sentence awarded was inadequate. Proceeding further, it opined that: (SCC p. 737, para 8)

8. ... The court, in fixing the punishment for any particular crime, should take into consideration the nature of the offence, the circumstances in which it was committed, and the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of the offence. The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. We are of the opinion that to meet the ends of justice, the sentence has to be enhanced.” (emphasis supplied)

This Court enhanced the sentence to one of rigorous imprisonment for a period of five years. This Court has emphasised, in that sentencing depends on the facts, and the adequacy is determined by factors such as “the nature

of crime, the manner in which it is committed, the propensity shown and the brutality reflected” [*Ravada Sasikala v. State of A.P.* [*Ravada Sasikala v. State of A.P.*, (2017) 4 SCC 546 : (2017) 2 SCC (Cri) 436 : (2017) 2 SCR 379]]. Other decisions, like: *State of M.P. v. Bablu* [*State of M.P. v. Bablu*, (2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1 : (2014) 9 SCR 467]; *Hazara Singh v. Raj Kumar* [*Hazara Singh v. Raj Kumar*, (2013) 9 SCC 516 : (2014) 1 SCC (Cri) 159 : (2013) 5 SCR 979] and *State of Punjab v. Saurabh Bakshi* [*State of Punjab v. Saurabh Bakshi*, (2015) 5 SCC 182 : (2015) 2 SCC (Cri) 751 : (2015) 3 SCR 590] too, have stressed on the significance and importance of imposing appropriate, “adequate” or “proportionate” punishments.

9. This position was reiterated in *Israfil v. State of M.P.*, 2026 SCC OnLine SC 1189, wherein it was observed:

18. At the same time, while considering the question of sentence, the Court is required to balance the nature of the offence with the attendant facts and circumstances of the case, the role attributed to the accused, the period of incarceration undergone, the passage of time and other mitigating circumstances relevant to sentencing jurisprudence. The principle of proportionality remains central to the sentencing process. Sentencing cannot be reduced to a purely retributive exercise divorced from the factual matrix of the case and the overall circumstances of the offender.

10. It was submitted on behalf of the appellant that the learned Trial Court had not considered the plea of guilty, which showed genuine remorse on the part of the accused, and his case should not have been equated with the case of another person who contests the case and thereafter pleads for mercy after the

prosecution proves its case against him. There is a force in this submission. The appellant's conduct of pleading guilty showed that he has remorse for his conduct, and he wanted to reform himself by repaying his debt to society. This aspect should have been considered while imposing the sentence.

11. Therefore, the sentence imposed by the learned Trial Court is to be interfered with.

12. The order passed by the learned Trial Court shows that the appellant had pleaded that he is the first offender and a poor person. His family would suffer in case of his detention. Balancing these factors and the fact that accused/appellant had voluntarily pleaded guilty, as well as the adverse impact of the charas on the society, the appellant/convict is sentenced to undergo rigorous imprisonment for a period of 4 years and pay a fine of ₹40,000/- and in default of payment of fine, to further undergo simple imprisonment for 9 months for the commission of offence punishable under Section 20(b)(ii)(B) of the NDPS Act.

13. Subject to this modification, the rest of the sentence is upheld.

14. The modified warrants be prepared.
15. A copy of this judgment, along with the record of the learned Trial Court, be returned. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

10th July, 2026
(Chander)