



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Revision No.711 of 2025
Date of Decision: 27.05.2026**

Hem Raj Sharma

.....Petitioner

Versus

State of Himachal Pradesh

.....Respondent

Coram

**Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.**

For the petitioner: Mr. R.L. Chaudhary & Mr. H.R. Sidhu,
Advocates.

For the Respondent: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional
Advocates General with Mr. Anish Banshtu,
Deputy Advocate General.

Sandeep Sharma, J. (Oral)

Instant criminal revision petition filed under Section 438 read with Section 442 of Bharatiya Nagrik Suraksha Sanhita, lays challenge to order dated 12.08.2025 passed by learned Special Judge, Kullu, District Kullu, H.P., in Sessions Trial No.06 of 2021, titled as ***State of Himachal Pradesh Vs. Kewal Raj & Ors.***, whereby the Court concerned, while hearing the matter on the quantum of sentence to be imposed upon convicts Kewal Raj and Kuldeep Singh under Sections 20, 25 and 29 of the NDPS Act, ordered confiscation of Alto Car bearing registration No. HP-01-H-2014, allegedly used in the commission of the offence by the convicts named hereinabove.



2. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. R.L. Chaudhary, learned counsel representing the petitioner, is that since it never came to be proved that contraband allegedly recovered from the vehicle detailed hereinabove was being transported by the convicts named hereinabove with the prior consent and knowledge of the petitioner herein, who happens to be owner of the vehicle, there was no occasion, if any, for the court below to straightway order for confiscation of the same. Mr. Chaudhary, while making this Court peruse order dated 12.08.2025, vehemently argued that court below, despite having knowledge that car detailed hereinabove belongs to person namely Hem Raj Sharma i.e. petitioner herein, coupled with the fact that no cogent and convincing evidence ever came to be led on record by the prosecution that contraband recovered from aforesaid vehicle on the date of alleged incident was being transported with the knowledge of the owner of the vehicle, proceeded to order confiscation of the same that too without giving prior notice to the petitioner. Mr. Chaudhary further argued that owner of the vehicle i.e. petitioner herein was also cited as a prosecution witness (PW-4), who, while deposing before court below, categorically stated that contraband recovered from his vehicle was being illegally transported by his driver namely Kuldeep Singh, but despite the aforesaid statement, learned trial Court ordered confiscation of the vehicle in violation of provisions contained under Section 60 of ND & PS Act.



3. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, while supporting the impugned order dated 12.08.2025, vehemently argued that once it is not in dispute that vehicle otherwise sought to be released was used for commission of offence and contraband was recovered from the aforesaid vehicle, no illegality can be said to have been committed by the Court below, while passing order laid challenge in the instant proceedings. He further submitted that since vehicle, from where contraband came to be recovered, was owned and possessed by the petitioner, coupled with the fact that he himself had engaged convict Kuldeep Singh as driver of the vehicle, Court below rightly ordered confiscation of the vehicle in terms of Section 60 of ND & PS Act. Lastly, Mr. Kahol, submitted that accused has already filed an appeal against the conviction before this Court, as a result thereof, car, which has otherwise been ordered to be confiscated, continues to remain case property and therefore, cannot be sold by the petitioner.

4. Having heard learned counsel for the parties and perused material available on record vis-a-vis reasoning assigned in the impugned order dated 12.08.2025, whereby court below ordered confiscation of the vehicle bearing registration No. HP-01-H-2014 owned and possessed by the petitioner, this Court is persuaded to agree with learned counsel for the petitioner that court below acted in a hot haste manner, while ordering confiscation of the vehicle. Material adduced on record nowhere suggests that petitioner was ever arrayed as an accused in the case registered against convicts Kewal Raj and Kuldeep Singh under the ND & PS Act,



rather precise case of the prosecution, as came to be presented before court below, was that commercial quantity of contraband was recovered from the car detailed hereinabove, which at relevant time was being driven by convict Kuldeep Singh. It is admitted case of the parties that convict Kuldeep Singh was working as driver in the vehicle detailed hereinabove, which was owned and possessed by the petitioner. Prosecution itself examined owner of the vehicle as PW-4, wherein he categorically stated that convict Kuldeep Singh was engaged as driver of the vehicle and he misused the vehicle by transporting commercial quantity of the contraband. True it is that vehicle used for transportation of the contraband is liable to be confiscated but in case owner of the vehicle is able to establish that his vehicle was used for transportation of contraband without his knowledge and he had no knowledge whatsoever with regard to transportation of the contraband, if any, in his vehicle, court concerned shall not order confiscation. At this stage, it would be apt to take note of Sections 60 to 63 of the ND & PS Act:

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation. —

(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance or controlled substances lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substances which is liable to confiscation under sub-section (1)



and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance or controlled substances, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3)Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

61. Confiscation of goods used for concealing illicit drugs or substances.—

Any goods used for concealing any narcotic drug, psychotropic substance or controlled substance which is liable to confiscation under this Act shall also be liable to confiscation.

Explanation: In this section "goods" does not include conveyance as a means of transport.

62. Confiscation of sale proceeds of illicit drugs or substances. —

Where any narcotic drug, psychotropic substance or controlled substance is sold by a person having knowledge or reason to believe that the drug or substance is liable to confiscation under this Act the sale proceeds thereof shall also be liable to confiscation.

63. Procedure in making confiscations.—

(1)In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2)Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:Provided that no order of confiscation of an article or



thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim: Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, controlled substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale."

5. Section 60(3) of the ND & PS Act clearly provides that any animal or conveyance used for carrying any narcotic drug, psychotropic substance, controlled substance, or any article liable to confiscation under sub-section (1) or sub-section (2), shall itself be liable to confiscation, unless the owner of such animal or conveyance proves that it was so used without his knowledge or connivance, and without the knowledge or connivance of his agent, if any, or the person in charge of the animal or conveyance, and that each of them had taken all reasonable precautions against such use. Section 63(2) of the Act as reproduced hereinabove clearly provides that where any article or thing seized under the Act appears to be liable to confiscation under Section 60, 61 or 62 of ND & PS Act, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly. Proviso (ii) to the aforesaid provision further provides that no order of confiscation of any article or thing shall be made until the expiry of one month from the date of seizure, or without affording an opportunity of hearing to any person who



may claim any right thereto and to produce evidence, if any, in support of such claim.

6. Careful perusal of order dated 12.08.2025 laid challenge in the instant proceedings nowhere suggests that court concerned ever issued notice to owner of the vehicle i.e. petitioner herein, who was otherwise cited as prosecution witness (PW-2) by the prosecution. Court below, while passing order qua quantum of sentence, also proceeded to pass order regarding confiscation of the allegedly vehicle used in transportation of the contraband. However, as has been taken note hereinabove, prior notice was required to be given to the person, whose vehicle/article was proposed to be confiscated. Very purpose and object of issuing notice is to provide the owner of the vehicle an opportunity to prove that he had no knowledge with regard to transportation of contraband in his vehicle and the same was used without his knowledge or permission. However, such procedure was not followed in the case at hand, as a result thereof, great prejudice came to be caused to the petitioner, who despite his having made statement on behalf of the prosecution to prove the guilt of the accused, has been condemned unheard. The prosecution case, as came to be projected in final report under Section 173 Cr.P.C, nowhere suggests that petitioner had any prior connivance with the convict Kuldeep Singh for transportation of the contraband in his vehicle, rather petitioner himself, while deposing as PW-2, categorically admitted factum of his having engaged convict Kuldeep



as a driver, but he nowhere stated that he had prior knowledge, if any, with regard to transportation of contraband in his car.

7. Consequently, in view of the above discussion made hereinabove, this Court finds merit in the present petition and accordingly, the same is allowed. Order dated 12.08.2025 passed by the learned Sessions Judge, Kullu, District Kullu, Himachal Pradesh, whereby court below ordered confiscation of the vehicle bearing registration No. HP-01-H-2014, is quashed and set aside. However, such order shall be subject to final outcome of the appeal filed by the accused, laying therein challenge to judgment of conviction and order of sentence against him.

(Sandeep Sharma)
Judge

May 27, 2026
(sunil)