



2026:HHC:14759
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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P. No. 5899 of 2025 in
Cr. Appeal No. 370 of 2022.
Reserved on : 22.04.2026.
Date of decision: 06.05.2026.

Ashwani Kumar & Another ...Applicants.

Versus

State of H.P. ...Respondent.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting? ¹

For the Applicants. Mr. George, Advocate.

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

Vivek Singh Thakur, Judge

Applicants-appellants have preferred this application for suspension of their sentence, awarded to them, vide judgment of conviction dated 24.08.2022 and order of sentence dated 25.08.2022, passed by Special Judge-II, Hamirpur, H.P. in Sessions Trial No. 11 of 2019, titled as State of Himachal Pradesh vs. Ashwani Kumar and another, in case FIR No. 79/2019, dated 03.05.2019, registered in Police

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



Station Hamirpur, under Section 20 of ND&PS Act, whereby applicants-appellants have been sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs. 1,00,000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of 1 year each.

2. As per Custody Certificate, applicants-appellants as on 15.11.2025 have undergone about 6 years & 4 months imprisonment and, therefore, as on date applicants-appellants have undergone more than 6 years & 8 months sentence.

3. Applicants, earlier also, had preferred applications for suspension of sentence bearing Cr.M.P. No. 3214 of 2022, dismissed on 05.12.2022, Cr.M.P. No. 4331 of 2023, dismissed on 01.12.2023, Cr.M.P. No. 114 of 2025, dismissed on 27.02.2025, Cr.M.P. No. 735 of 2025, dismissed on 08.04.2025, Cr.M.P. No. 5073 of 2025 and Cr.M.P. No. 5074 of 2025, dismissed on 09.12.2025.

4. Learned counsel for the applicants-appellants submits that without going into merits of the case, keeping in view the fact that applicants-appellants are first time offenders and they have served more than 1/3rd of maximum prescribed sentence for the offence alleged to be committed by them, in view of First Proviso of Section 479 of Bharatiya Nagarik Suraksha Sanhita, 2023, are entitled to be enlarged on bail, as



there is no likelihood of completion of final hearing of appeal, preferred by the applicants-appellants.

5. It has been submitted that in view of judgment of the Apex Court passed in **Satinder Kumar Antil vs. Central Bureau of Investigation**, reported in **(2022) 10 SCC 51** , provisions of 479 of BNS (436-A, Cr.P.C.) are applicable in appeals also as well as cases related to offence committed under ND&PS Act.

6. Learned counsel for the applicants-appellants in support of plea to suspend the sentence of the applicants-appellants has placed reliance upon judgments of the Supreme Court in **Union of India vs. K.A. Najeeb**, reported in **(2021) 3 SCC 713** and in **Supreme Court Legal Aid Committee representing Undertrial Prisoners vs. Union of India and another**, reported in **(1994) 6 SCC 731**.

7. It has been submitted that once the appeal was heard in part, however, thereafter due to re-constitution of the Bench, final hearing could not be concluded and now it is to be heard afresh, which may take place after a considerable long time, keeping in view the heavy Board of the Bench.

8. Learned Deputy Advocate General has submitted that applicants-appellants have been found in possession of huge commercial quantity of more than 5 kgs of Charas and have been convicted after



subjecting them to a trial and, thus, they are not entitled for suspension of sentence.

9. It has been submitted by learned counsel for the applicants-appellants that applicants-appellants are residents of District Hamirpur, H.P. and their families are also residing in Hamirpur and, therefore, there is no possibility of absconding and they have already undergone major portion (68%) of the sentence, and keeping in view the fact that hearing in the appeal has not been hampered on account of applicants-appellants or their counsel, because counsel for the applicants-appellants is ready to address final arguments, rather had addressed the same, but for request made on behalf of State, hearing could not be completed. Therefore, for no fault on the part of applicants-appellants, they are not to make suffer for adjournment in hearing of appeal.

10. It is a matter of fact that appeal was heard during last year and, thereafter, hearing could not take place for one reason or other and, therefore, keeping in view the aforesaid pronouncements of the Apex Court, substantive sentence imposed upon the applicants-appellants is suspended, subject to deposit of fine, if any, already deposited in the Trial Court and also subject to furnishing personal bond of Rs. 1,00,000/- each with one surety each in the like amount to the satisfaction of the Trial Court. On furnishing requisite bail bonds, applicants-appellants be



released forthwith undertaking therein to appear before the Court as and when directed to do so and also to surrender, in case appeal is dismissed, to serve remaining sentence.

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

12. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the same has been given only for the purpose of deciding the present application.

Application is allowed and disposed of in aforesaid terms.

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

***(Ranjan Sharma),
Judge.***

6th May, 2026
(Susheel)