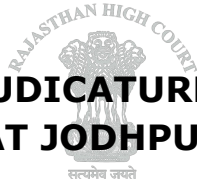


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



S.B. Criminal Misc. Suspension Of Sentence Application (Appeal)
No. 111/2025
CNR: RJHC010064052025
URN: SOSA / 252U / 2025

Dharamchand S/o Shri Megha, Aged About 26 Years, R/o Dangi
Ka Kheda, P.s. Vallbhnagar, Dist. Udaipur (Lodged In Central Jail,
Udaipur)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s)	:	Mr. Bhagirath Ray Bishnoi
For Respondent(s)	:	Mr. Narendra Singh, PP

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order

06/07/2026

S.B. Criminal Misc. Application for Suspension of Sentence

No.111/2025:-

1. Heard.
2. Learned counsel for the applicant-appellant submitted that, as per the prosecution case, on 23.07.2019, the SHO, Police Station Dhariyavad, during routine nakabandi/ round of the area following under his jurisdiction and acting upon an information from Head Constable Munim, along with the police team, reached near Deval Agricultural Farm and started following a car bearing registration No. RJ27-CG-5141. Upon noticing the police personnel, the occupants of the car, namely, Naresh and Dharamchand (the applicant-appellant), allegedly attempted to

flee from the spot but were apprehended by the police. Thereafter, after following the procedure prescribed under the NDPS Act, the offending vehicle was searched and 135.400 kilograms of poppy straw contained in seven sacks was recovered.

3. Learned counsel for the applicant-appellant submitted that while sentencing the applicant-appellant to undergo fifteen years' rigorous imprisonment, the learned trial Court failed to appreciate that the evidence against him is *prima facie* doubtful and suffers from apparent infirmities. Elaborating the submission, learned counsel contended that the material available on record clearly establishes that despite having prior information regarding the alleged transportation of contraband by the applicant-appellant and the co-accused, the SHO, Police Station Dhariyavad, failed to comply with the mandatory requirements of Section 42 of the NDPS Act. It was submitted that the information was neither reduced into writing nor forwarded to the superior officer, and the search was conducted after sunset without obtaining a warrant despite prior information. Learned counsel submitted that compliance with Section 42 of the NDPS Act has consistently been held to be mandatory by the Hon'ble Supreme Court and that non-compliance thereof vitiates the entire search and seizure proceedings.

4. Learned counsel further submitted that although, according to the prosecution, 135.400 kilograms of poppy straw was recovered from the offending vehicle, the material collected during investigation and the evidence adduced during trial clearly indicate that only 42 kilograms of the recovered contraband was allegedly

attributable to the applicant-appellant, which is below the commercial quantity prescribed under the NDPS Act.

5. Learned counsel also contended that there was an unexplained delay in sending the samples to the FSL. It was further submitted that the applicant-appellant remained on bail throughout the trial and never misused the liberty granted to him by the Court. Learned counsel submitted that the appeal is not likely to be heard in the near future owing to the heavy pendency of criminal appeals before this Court and that the applicant-appellant has no criminal antecedents. On these grounds, it was prayed that the application for suspension of sentence be allowed.

6. *Per contra*, the learned Public Prosecutor vehemently opposed the application for suspension of sentence.

7. Having heard the learned counsel for the applicant-appellant and the learned Public Prosecutor, this Court finds that, in the present case, the SHO, Police Station Dhariyavad, while conducting routine nakabandi within his jurisdiction, received information that a white-coloured car was allegedly transporting contraband, whereupon he immediately started following the offending vehicle. Thus, it cannot be said that the SHO had prior information or personal knowledge of the commission of an offence under the NDPS Act in the sense contemplated by Section 42 thereof, nor did the facts disclose sufficient time to reduce the information into writing and communicate it to the superior officer before taking action. In such circumstances, if the officer were first required to record the information in writing and forward it to the superior officer, the accused would have ample opportunity to flee from the spot or destroy the evidence. Consequently, this

Court finds no merit in the contention regarding non-compliance with Section 42 of the NDPS Act.

8. This Court also finds no substance in the submission that only 42 kilograms of the recovered contraband can be attributed to the applicant-appellant. As per the prosecution case, the entire quantity of 135.400 kilograms of poppy straw was recovered from the joint conscious possession of the applicant-appellant and the co-accused from car No. RJ27-CG-5141, which they were jointly transporting. The material available on record prima facie indicates that both the accused were fully aware that the vehicle was carrying contraband of commercial quantity and exercised joint control over the entire consignment. The record further reveals that the contraband had allegedly been jointly procured by the applicant-appellant and the co-accused from one Harish. Therefore, at this stage, the contention that only 42 kilograms can be attributed to the applicant-appellant cannot be accepted.

9. As regards the contention relating to delay in forwarding the samples to the FSL, it is sufficient to note that the contraband was recovered on 23.07.2019 and the representative samples were forwarded to the FSL on 29.07.2019. No material has been placed before this Court to suggest that the samples were tampered with during the intervening period. In the absence of any such allegation or supporting material, the delay of five days, by itself, does not vitiate the prosecution case.

10. In view of the aforesaid discussion, this Court does not find any apparent infirmity, perversity, or illegality in the findings recorded by the learned trial Court. Having regard to the gravity and seriousness of the offence and the material available on

record, this Court is not inclined to suspend the sentence awarded to the applicant-appellant during the pendency of the appeal.

11. Consequently, the present application for suspension of sentence (SOS Application No.111/2025) stands dismissed.

(KULDEEP MATHUR),J