2026 INSC 332

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026
(Arising out of SLP (Crl.) No. 19691 of 2025)

HEM RAJ ...APPELLANT

VERSUS

THE STATE OF HIMACHAL PRADESH ...RESPONDENT

J U D G M E N T

N.V. ANJARIA, J.

Leave granted.

2. The present appeal is directed against common judgment and order dated 05.12.2023 passed by the High Court of Himachal Pradesh in Criminal Appeal No. 93 of 2020 and Criminal Appeal No. 230 of 2020, in so far as the decision relates to Criminal Appeal No. 93 of 2020, which was the appeal preferred by the appellant herein.

2.1. The High Court partly allowed the appeal by modifying the sentence part of the judgment of learned Special Judge by reducing the substantive sentence of the

appellant to 10 years of rigorous imprisonment from 12 years of rigorous imprisonment, separately imposed for the offences under Section 20(b)(ii)(C) and also under Sections 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985[1]. Rest of the sentence awarded by the Special Judge remained unaffected.

2.2. The Court of learned Special Judge, Chamba Division, Chamba (H.P.) decided Sessions Trial No. 8 of 2015 (NDPS Act) by its judgment dated 07.11.2019 against the present appellant Hem Raj, son of Shri Devi Singh and co-accused Kulwant, son of Shri Bhagwant. Both the accused including the appellant herein came to be convicted for commission of offence punishable under Sections 20(b)(ii)(C) and 25 read with Section 29 of NDPS Act.

2.2.1. After hearing the convicts on the quantum of sentence, learned Special Judge by the order dated 16.11.2019 sentenced both the convicts to undergo rigorous imprisonment for a period of 12 years each and to pay fine of Rs. 1,20,000/- each and in default of payment

[1] **Hereinafter, "NDPS Act".**

of the amount of fine, to undergo rigorous imprisonment for a period of one year each for the commission of offence punishable under Section 20(b)(ii)(C) of the NDPS Act.

2.2.2. In respect of offence punishable under Section 25 read with Section 29 of the NDPS Act, the appellant and the co-convict were sentenced to undergo rigorous imprisonment for a period of 12 years each and to pay a fine of Rs. 1,20,000/- each and in default of payment of fine, to undergo rigorous imprisonment of further period of one year each.

2.2.3. It was directed that both the sentences shall run concurrently. In the appeal preferred by appellant Hem Raj before the High Court as stated above, the sentence came to be reduced to 10 years from 12 years of rigorous imprisonment. The remainder part of the sentence stood confirmed as awarded by learned Special Judge.

2.3. As noted by this Court in order dated 28.11.2025, the assail to the judgment and order of the High Court in this appeal is on two grounds. Firstly, that the appellant could not have been convicted separately for offence

punishable under Section 20(b)(ii)(C) on one hand and Sections 25 and 29 of the NDPS Act on the other. Second ground has been that the fine sentence could not have been imposed separately for both the offences and that since the sentences were ordered to run concurrently, the appellant is not required to pay the double amount of fine.

3. Noticing the facts, on 22.12.2014, the police squad was exercising *Nakabandi* duty at Tunnuhatti Police Barrier in wee hours. At around 3.50 a.m., while checking the vehicles, a grey coloured Esteem car bearing registration No. PB-65A-9377 was seen coming from the side of Banikhet. The police party stopped the car for checking. The driver revealed his name to be Kulwant Singh who was also the registered owner of the car, and the appellant Hem Raj sitting on the front seat, were the two occupying the car. When driver Kulwant Singh opened the window glass, the smell of cannabis spread out.

3.1. Upon search of the said two persons and the vehicle, a blue coloured carry bag having transparent polythene packets containing black hard substance was found kept

below the leg space of the front seat occupied by the appellant herein. The said blue coloured bag had in it eight transparent polythene packets containing black substance in round and stick shape. When it was checked with the drugs detection kit, the same was found to be *charas* of the quantity of 4 kgs.100 gms.

3.2. After undertaking the necessary procedure both the accused were nabbed and were charged with the offence punishable under Sections 20(b)(ii)(C) and 25 read with Section 29 of the NDPS Act in the chargesheet filed on 14.08.2015.

4. Learned Counsel for the appellant Mr. Ajay Marwah while not challenging the conviction, highlighting the limited yet substantial challenge to the sentence imposed, submitted that the courts below were not justified in imposing separate punishments for the offences under Section 20 as well as under Section 25 read with Section 29 of the NDPS Act, despite the fact that both the convictions arose from one indivisible transaction. Learned counsel took the court through Sections 20, 25 and 29 of the Act to

pinpoint that no separate punishment was provided under Section 25 and Section 29 of the Act.

4.1. It was additionally submitted that as borne out from chargesheet, the registered owner of the vehicle was co-accused Kulwant Singh and not the appellant herein, therefore, it was submitted, in absence of ownership, the 'occupation' and 'control' over the vehicle was not of the appellant and that he could not have "knowingly permitted its use" . On such basis it was sought to be submitted that the very foundation of invoking Section 25 of the Act against the appellant was lacking and that the appellant could not have been convicted under Section 25.

4.1.1. It was next submitted without prejudice that even if the appellant could be booked for the offence under Sections 25 and 29, the said provision does not prescribe an independent punishment or sentence. According to the learned counsel for the appellant, the offences contemplated under these Sections are merely in the nature of extension of the main offence in the nature of commission of supplemented act creating vicarious liability with the

principal offence, which was under Section 20(b)(ii)(C) of the Act. It was submitted that the sentence awarded to the appellant amounted to double punishment which is prohibited under Section 71 of the Indian Penal Code, 1860[2] as well.

4.1.2. It was the next submission on behalf of the appellant that when the sentences for the said offences were directed to run concurrently, the entire punishment including the fine should have a concurrent operation. In this regard it was submitted that 'punishments' under Section 53, IPC includes both imprisonment and fine, therefore, treating imprisonment to be concurrent but treating the fine as cumulative would be illogical and would not be permissible.

4.1.3. Learned counsel for the appellant submitted that due to poor condition, the appellant is not in a position to pay the fine. It was submitted that till January 2026, the appellant has already suffered incarceration for about 11

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[2] Hereinafter, "IPC".

years including the remission, as indicated in the custody certificate.

4.2. On the other hand, learned counsel for the respondent State Mr. Bimlesh Kumar Singh refuted the arguments advanced on behalf of the appellant to submit that FIR No. 140 of 2014 dated 22.12.2014 was registered against the appellant and the co-convict which was for the offences punishable under Sections 20, 25 and 29 of the NDPS Act for possessing, transporting and commissioning the crime with criminal conspiracy, to have in the car below the front driver seat 4 kgs and 100 gms of *Charas* and that both the persons came to be convicted for the said offence, the appellant having not challenged the said conviction.

4.2.1. It was submitted that the High Court considering the aspect that appellant had already undergone 9 years of imprisonment and further that there was no complaint in the jail conduct of the appellant, the substantive sentence came to be reduced to 10 years from 12 years for the offences committed under Section 20 as well as 25 and 29 of the Act.

4.2.2. Learned counsel for the respondent further submitted that the sentence prescribed under Section 20(b)(ii)(C) is of rigorous imprisonment of not less than 10 years which may extend to 20 years and fine to be not less than Rs. 1 lakh extendable to Rs. 2 lakh. It was highlighted that the commercial quantity of *Charas* was found to be in possession of the accused persons which was proved in the trial leading to conviction under Section 20(b)(ii)(C) of the Act. The car was used for transportation of narcotics, submitted learned counsel for the respondent, the offence attracted Section 25 read with Section 29, which provisions prescribed for awarding same sentence as of the main offence.

4.2.3. It was emphasised that the appellant was "occupier" of the car from whom the contraband was found and recovered and both acted in criminal conspiracy as held by the courts below. It was submitted that therefore the conviction and imposition of sentence under the said sections separately done is justified. Learned counsel for the

respondent submitted that there is no error in imposition of separate fine amounts which is part of sentence.

4.2.4. Learned counsel for the respondent also submitted that the sentence awarded is in consonance with the provision of the Section 65 of the IPC which provides that the term for which the court may direct the offender to be in prison in default of payment of fine shall not exceed up to 1/4th of the term of imprisonment which is the imprisonment maximum fixed for the offence if the offence is punishable with imprisonment as well as with fine.

4.2.5. By relying on the decision of this Court in **Shahejadkhan Mahebubkhan Pathan v. State of Gujarat**[3], it was submitted by learned counsel for the respondent that the term of imprisonment in default of payment of fine is not a sentence, but it is a penalty which a person incurs on account of non-payment of fine. Same principle was sought to be highlighted from another decision of this Court in **Shantilal v. State of M.P.**[4] It was

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[3] **(2013) 1 SCC 570**
[4] **(2007) 11 SCC 243**

submitted that the minimum sentence prescribed is 10 years of rigorous imprisonment, therefore no option is available but to impose such minimum sentence in the list, which is done by the High Court.

4.2.6. Learned counsel for the respondent proceeded to submit about deleterious impact of narcotic drugs and the activities in dealing with the narcotic drugs on the society and that how the menace of drug addiction has the tendency of destroying the life of an individual and the derailing the quality of the society to have the effect on the generations to come, by pressing into service the observation of this Court in **Gurdev Singh v. State of Punjab**[5]**.**

5. In order to find an answer as to whether separate sentence for the offence under Section 20 on one hand and, on the other hand, for the offences committed under Sections 25 and 29 of the Act is permissible to be awarded and whether offences under Sections 25 and 29 could be considered as part of the main offence under Section 20,

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[5] **(2021) 6 SCC 558**

and therefore not attracting separate punishment and sentence, it is necessary to consider various provisions in Chapter IV of the NDPS Act 1985, titled as "Offences and Penalties". In different Sections, the punishment for contravention of different kinds of contrabands prohibited under the Act is considered.

5.1. Section 15 of the Act is about punishment for contravention in relation to poppy straw, whereas punishment for contravention in relation to coca plant and coca leaves is dealt in Section 16. Punishment for contravention in relation to prepared opium in Section 17 whereas punishment for contravention in relation to opium poppy and opium is contemplated in Section 18.

5.1.1. The measure of sentence in Sections 15, 17 and 18 is made dependent upon whether the quantity involved is small quantity or the quantity lesser than commercial but greater than small quantity or whether the contravention involves commercial quantity as the case may be. Section 16 as well as Section 19 provide for punishment for embezzlement of opium by cultivator. In the provisions from

Section 15 onwards, the specific punishment of the term of imprisonment, is expressly provided for.

5.1.2. Similar is the punishment for contravention in relation to manufactured drugs and preparations under Section 21, wherein also the specific punishment is provided for, depending upon the quantity of the contraband involved. Provision of Section 22 is in respect of punishment for contravention in relation to psychotropic substances whereas Section 23 is for punishment for illegal import into India, export from India, or transhipments of narcotic drugs and psychotropic substances. Section 24 is about punishment for external dealings in narcotic drugs and psychotropic substances in contravention of Section 20. For the offences under these sections also, punishment is expressly and specifically provided.

5.2. In the present case, the commission of offence under Section 20(b)(ii)(C) is established against the appellant convict. Section 20 which is in respect for punishment for contravention in relation to cannabis plant and cannabis reads as under,

‘20. Punishment for contravention in relation to cannabis plant and cannabis.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,—

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable,— (i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),—

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.’

5.2.1. The conviction against the appellant is also recorded under Sections 25 and 29 of the Act. Section 25 relates to the punishment for allowing premises, etc., to be used for commission of an offence. The said section is extracted hereinbelow,

> **'25. Punishment for allowing premises, etc., to be used for commission of an offence.-**Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.'

5.2.2. Section 29 dealing with the punishment of abetment and criminal conspiracy, is reproduced hereinbelow,

> **'29. Punishment for abetment and criminal conspiracy.**—(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.
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> (2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.'

5.3. Reading Sections 15 to 19, 21 to 24, 25A, 27 as well as Section 20 which is relevant to the present case, it would be noticed that all these sections prescribed punishment and sentence separately for the offence related to contraband mentioned therein. Section 25 however says that a person who is found to be owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, is found to be knowingly permitting it to be used for the commission by any other person of an offence punishable under any provision of this Act shall be punishable with "the punishment provided for that offence". Similar phraseology is employed in respect of punishment in Section 29 which says that a person found guilty of abetment and criminal conspiracy to commit an

offence under Chapter IV "be punishable with the punishment provided for the offence", notwithstanding anything contained in Section 116 of the IPC.

5.4. The argument is sought to be founded on the variation of language in Section 20 (as also noticeable in other sections mentioned above) vis-a-vis Sections 25 and 29 that since Section 20 specifically provides for a particular punishment and Sections 25 and 29 only says that punishment for the said offences which may be imposed would be the same "as provided for that offence", the conviction under Sections 25 and 29 could not have attracted a separate and distinct punishment. What is contended is that punishment imposed under Section 20 on the appellant would take care of the punishment for the conviction under Section 25 and Section 29 of the Act, which according to learned counsel of the appellant, are only part of substantive offence.

5.5. The submission namely that the appellant could not have been held to have committed offence under Section 25 of the Act in as much as the appellant was only sitting in

the front seat in the car belonging to the other person – the co-convict, therefore, could not have been said to have 'knowingly permitted' the car to be used for the commission of offence by that another person, may be dealt with. The submission which looks attractive at the first blush, has no substance when Section 25 is read carefully.

5.5.1. The provision contains the words "occupier" as well as "use of any house, space, conveyance, etc. by person". The appellant was an occupier of the car. In capacity of occupier the appellant could be said to have committed the crime under Section 25. Section 25 could be applied to operate in two ways. In any view, along with Section 25, conviction is also recorded under Section 29. The conviction is not challenged.

5.6. There exists an apparent fallacy in what is sought to be canvassed that separate sentence is not permissible to be awarded. Various sections in Chapter IV of the Act relate to different independent offences pertaining to the contraband. Section 25 and Section 29, which are part of the group of sections, also speak of the offences. Allowing

premises etc. to be used for commission of an offence is conceived by the legislature to be a separate offence and engrafted in the Act accordingly as an independent offence under Section 25.

5.6.1. In a given case, an offender may have permitted the other person to use the house, room, space, place, animal or conveyance etc. to facilitate the commission of any offence under the Act. This conduct would fall squarely within Section 25 to become a distinct and independent offence by that person who so permits the use of house, conveyance etc. for the purpose of committing an offence by the other person.

5.7. Looking at Section 29, it speaks of punishment for the offence of abetment and criminal conspiracy. An abetment of a thing is an independent offence mentioned in the IPC. Section 116, IPC mentions about the abetment of offence punishable with imprisonment - if offence be or be not committed.

5.7.1. Section 116, IPC is relevant to be noticed as under,

> **'116. Abetment of offence punishable with imprisonment—if offence be not committed**.—

> Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both; if abettor or person abetted be a public servant whose duty it is to prevent offence.—and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.'

5.7.2. Now, Section 29 says that "notwithstanding anything contained in Section 116 of the IPC, be punishable with the punishment provided for the offence". What it contemplates is that whoever abets the offence under the NDPS Act in Chapter IV shall be punished for the 'punishment provided for the offence'. In other words, the fetter and limitation about the term of imprisonment mentioned in Section 116 IPC, is done away with in relation to offence of abetment under Section 29 of the NDPS Act.

5.8. The offence of criminal conspiracy which is inherently covert and rarely leaves behind direct traces and

whose existence could be inferred from the surrounding facts and circumstances, where any overt commission of act not always present, is seldom capable to be proved by direct evidence. Section 120B, IPC is the punishment for the offence of criminal conspiracy.

5.8.1. It is well settled that conspiracy is an independent offence. In **Gurdeep Singh v. State of Punjab**[6]**,** this Court referred to its earlier decision in **State (NCT of Delhi) v. Navjot Sandhu**[7]**,** as also in **Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra**[8], to underline that conspiracy is an independent offence and may be punishable even if the substantive offence committed by the conspirators does not ultimately materialise.

5.8.2. It was held in **Noor Mohammad** (supra) that Section 120B, IPC makes criminal conspiracy a substantive offence which postulates an agreement between two or more persons to do or cause to be done an act by illegal means.

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[6] (2025) SCC OnLine SC 1669
[7] (2005) 11 SCC 600
[8] (1970) 1 SCC 696

Thus, criminal conspiracy, which is an independent offence, is so incorporated in Section 29 of the NDPS Act.

6. When the offence under Section 25 is entirely possible to be committed separately as an independent offence to remain distinct in itself, and when the offences of abetment and criminal conspiracy mentioned in Section 29 are in themselves independent offences, it is entirely logical to deduce and conclude that commission of these offences once established, would attract separate punishment and sentence.

6.1. It would not be right to say that when Section 25 and Section 29 mention the punishment for allowing premises to be used for the offence or for abetment and criminal conspiracy in the commission of an offence under the Chapter, and that punishment is not expressly mentioned, but what is mentioned is "punishment for that offence," it would mean that the imposition of separate punishment is not contemplated. Both the Sections 25 and 29 mention that the commissioner of offence in question

shall be punishable with the punishment provided for "that offence" or "the offence".

7. Section 25 and Section 29 insofar as they provide that the punishment for the respective offences mentioned therein is same which would be for the principal offence, is an instance of legislation by reference. The legislature has referred to the punishment mentioned in the particular section to be referred to and applied for the purpose of punishment and sentence to be imposed under another section. Stating differently, the punishment provided for the offence under Section 20 of the Act is mentioned by way of reference under Section 25 and Section 29 to be read into it in a similar way to be applied for the imposition.

7.1. The doctrine of reference is a well-recognised tool of legislation. It is a process whereby the legislature refers to the provision of one statute in the provisions of the other statute to be read into the other statute. In that way, the provision in one statute becomes part of the provisions of the other statute in which it is referred to. Analogous is the doctrine of incorporation, which bears a fine distinction

with the doctrine of reference where provision from one statute is bodily lifted to be incorporated to be part of provision in another enactment.

7.2. While the Court is not concerned in this case with the distinction, it would suffice to say that the provisions of Section 20, or as the case may be, vis-à-vis Sections 25 and 29 in the NDPS Act, when refers to the punishment under Section 20 conforming to the main offence, as the case may be, to be also the punishment under Section 25 and Section 29 of the Act, it also becomes legislation by incorporation, since provision in one section of the statute is made to be referred, to be read into, and to be applied in the provision of other sections of the same statute. Given this legislative mandate, the contention has to be negatived that no separate punishment and sentence is contemplated in respect of Section 25 and Section 29 of the Act.

8. However, a riding clarification may be necessary. Even though punishment for the offences under Section 25 and Section 29 of the Act is separately contemplated and could be imposed independently and additionally, in a given

case and in most of the cases these offences have a connect and an interaction with any of the main offences mentioned in Sections 15 to 19, 20 to 24 and others. It may happen in large number of cases that offences under Section 25 and 29, as the case may be, take place along with the other substantive offences mentioned in Chapter IV, in course of the same transaction. The two offences may be part of an inclusive transaction. In other words, though separately punishable, the offences under Sections 25 and 29 could be parasitic and derivative.

8.1. The conviction is possible for two offences which may be inclusive or interdependent arising out of same course of action or the transaction. However, since the offences committed for their kind and nature, would be distinct offences, would entail separate punishment. Therefore, even while imposing separate punishment for such different offences, it would be the rule of wisdom to be followed by the court that in such cases, the sentence is made to run concurrently. In the instant case, the sentences are ordered to run concurrently.

8.2. The punishment and sentence should not result in double jeopardy. One of the objects of concurrent running of the sentence is to avoid double punishment. This principle would readily apply when two separate punishments are awarded, and sentences are imposed for two offences relatable to one set of facts. It would call for applying concurrent sufferance of punishment.

9. This takes the Court to the second remaining question as to whether the fine imposed separately as part of the punishment of two offences would be liable to be treated concurrent along with the sentences of imprisonment.

9.1. Section 53 IPC deals with the punishments. It says that punishments for which the offenders are liable under the provisions of this Code are death, imprisonment whether rigorous or simple, forfeiture of property and fine. Both imprisonment and fine are treated as punishments.

9.2. In the present case, the appellant is sentenced by the High Court to undergo 10 years rigorous imprisonment, and to pay fine of ₹1,20,000/- and in default to undergo

further rigorous imprisonment for one year. This is a default imprisonment. In **Shahejadkhan Mahebubkhan Pathan v. State of Gujarat**[9], this Court observed that the term of imprisonment in default of payment of fine is not a sentence it is a penalty which a person incurs on account of non-payment of fine. On the other hand, it was further observed, if sentence is imposed, an offender must undergo unless it is modified or varied in part or whole in the judicial proceedings.

9.3. What it implies is that although the default imprisonment clause is taken out of the concept of sentence and is treated as penalty for not observing sentence of fine, the amount of fine imposed required to be paid by the convict is a sentence and has to be treated as part of sentence. Section 53, IPC mentioned above also includes fine as a punishment to be part of sentence. In that view when the sentence is directed to run concurrently, the appellant cannot be made to pay fine twice.

10. It is not in dispute that the appellant has undergone total 11 years of imprisonment till January 2026, which

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[9] **(2013) 1 SCC 570**

includes the default imprisonment. Since the appellant has suffered the default imprisonment also and that he is not required to pay double amount of fine, he is entitled to be released from the jail.

10.1. As a result, the appellant is directed to be set at liberty forthwith unless he is required to be detained in respect of any other offence.

11. The appeal is disposed of in the above terms and the direction.

Interlocutory applications, as may have been pending, shall not survive.

.....,J.
[PRASHANT KUMAR MISHRA]

.....,J.
[N.V. ANJARIA]

NEW DELHI;
APRIL 08, 2026.