

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-161-DBA-2004 (O&M)

Date of Reserved: 03.11.2025

Date of Pronouncement: 29.11.2025.

State of Punjab

....Appellant.

Versus

Avtar Singh

...Respondent.

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Bhanu Pratap Singh, Addl. A.G., Punjab

Mr. Anmoldeep Singh, Advocate and
Mr. Sarabjot Singh, Advocate
for the respondent.

Sukhvinder Kaur, J.

1. The appellant-State has preferred the instant appeal against judgment dated 11.03.2003, passed by learned Judge, Special Court, Ludhiana, vide which respondent-accused Avtar Singh has been acquitted.

2. Factual Scenario, as per prosecution version is that on 12.11.1998, when SI Gurmail Singh along with other police officials was present on the bridge seepage drain in the area of village Raikot, Malkiat Singh met the police party. At about 8.30 A.M. a person carrying some weight on his back was seen coming from the side of village Littran and on seeing the police party, he got perplexed and turned backwards. On suspicion, the said person was apprehended and he disclosed his name as

Avtar Singh (accused/ respondent) being suspected of having some

contraband in his possession, the accused was given offer to get his search conducted in the presence of a Gazetted Officer or a Magistrate. However, he reposed confidence in SI Gurmail Singh and accordingly the search of the bag carried by the accused on his right shoulder was conducted wherein opium wrapped in a glaze paper was found, out of which two samples of 10 grams each separated and on weightment it was found to be 4 kg 980 grams and the contraband was put into the separate plastic container. Samples parcels and the bulk were sealed with seal of 'GS' and the seal after used was handed over to Malkiat Singh. The case property was taken in possession vide recovery memo Ex.PB. Formal FIR was registered. Rough site plan of the place of recovery was prepared. A cash amount of Rs.60/- was also recovered from the search of the accused. Accused was arrested. As per report, Ex.PK the contents of the samples were opined to be undertaken having contained meconic acid and morphine 3.125% which are the active contents of the opium, by the FSL. On completion of investigation, challan against the accused person was presented in the court, for judicial verdict.

4. After finding a prima facie case against the accused, he was charge-sheeted for the offence punishable under Section 18 of NDPS Act, to which he pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution has examined PW1-SI Gurmail Singh, PW2-ASI Pal Singh, PW3-SI Jasbir Singh, PW4-MHC Kewal Singh and PW5-C- Jasbir Singh.

7. Statement of accused under Section 313 Cr.P.C. was recorded in which, all incriminating evidence was put to him, which he denied and pleaded innocence. In their defence evidence, the accused examined DW1-

Sr. Assistant Sham Lal, DW2-HC Hardev Singh, DW3- Constable Balwinder Singh, DW4-Kammo Devi, DW5-Sr. Assistant Madan Lal, DW6-Sajjan Singh, DW7-HC Gurtej Singh, DW8-HC Chetan Kumar and DW9-S.S.P. G.P.S. Bhullar, and also tendered into evidence some documents.

8. Learned trial Court concluded that prosecution had failed to prove its case against the accused beyond reasonable doubt and acquitted the accused of the offences in the present case.

9. Aggrieved of the said decision, present appeal has been filed by the appellant-State challenging acquittal of the accused Avtar Singh.

10. Learned counsel for the appellant-State has vehemently contended that the trial Court has wrongly acquitted the accused without appreciating the facts and circumstances of the case in a proper manner, whereas there was cogent and convincing evidence against the accused. Learned trial Court has failed to appreciate that the fact that it was a chance recovery effected by the Investigating Officer in the presence of the other police officials during Nakabandi. Learned trial Court held that independent witness has not supported the prosecution version but in such cases it usually happens. The accused appears to be a rich smuggler of opium and there is ever possibility that he had won over the independent witness. Although provisions of NDPS Act have been duly complied with by the investigating agency but learned trial Court has wrongly held that provisions of Sections 50 and 57 of the Act have been violated. Sections 40, 41, 54 and 55 of the Act are merely procedural and not mandatory in nature and mere violations of these provisions of the Act do not adversely effect the prosecution case and has prayed that present appeal be allowed,

impugned judgment dated 11.03.2003 be set aside and accused be convicted for the offences as charged with and be punished in accordance with law.

11. We have heard learned counsel for the parties and have also perused the record.

12. After having heard learned counsel for the appellant-State and having perused the judgment as well as the other relevant record, we are of the considered opinion that the prosecution was indeed not able to prove its case against the accused beyond the shadow of reasonable doubt and that learned trial Court has correctly acquitted him of the charges framed against him.

13. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record has been ignored unjustifiably by the trial Court. Reference in this regard can be made to judgments of Hon'ble the Supreme Court in 'Mahamadkhan Nathekhan vs. State of Gujarat' 2014 (14) SCC 589 and Mallappa and others Vs. State of Karnataka, 2024 AIR (SC) 1252.

14. NDPS Act provides for very stringent punishment in case the accused is found to have committed an offence under the same, so several safeguards have been provided under the Act, compliance of which is mandatory. In the light of above, it is to be examined whether learned trial Court correctly concluded that prosecution could not prove its case beyond the shadow of reasonable doubt regarding recovery of contraband in question from conscious possession of accused person.

15. In the instant case, the recovery was allegedly effected in the presence of one independent witness Malkiat Singh but the said independent witness was not examined by the prosecution and was given up as having been won over. DW2-Hardev Singh No.2222 of OASI Branch SSP Office Patiala, stated that the said Malkiat Singh was recruited as SPO by the Patiala Police in the year 1994 and thereafter, he was transferred to District Sangrur vide order of Deputy Inspector of General, Punjab No.6703/4/A2 dated 19.04.1996. The presence of said independent witness at the time of recovery is quite doubtful. PW3-SI Jasbir Singh stated that Malkiat Singh had come to the place of recovery at about 7.30 A.M. which is much prior the apprehension of the accused, who was allegedly apprehended at about 8.30 A.M. The consent statement Ex.PA of the accused recorded by PW1 SI Gurmail Singh, also does not bear the signatures of Malkiat Singh, which again makes his presence at the time of recovery doubtful. PW3-SI Jasbir Singh, stated that Malkiat Singh was earlier known to the Investigating Officer while PW1 SI Gurmail Singh stated in his cross-examination that the public witness Malkiat Singh was not known to him earlier. Learned trial Court has thus rightly observed that, it shows that an attempt was made by the official witness to conceal the identity of the independent witness, who actually belonged to the police department.

16. In the instant case, no special report had been sent by the Investigating Officer to his immediate superior officers and the investigation was also not verified by any Gazetted Police Officer. The Investigating Officer did not comply with the directory provisions of Sections 52 and 57 of the NDPS Act, when no information was sent to the

senior police officers in compliance of provisions of Section 57 of the NDPS Act. Rather it appears that every thing was kept as a guarded secret, which has adversely effected the case of the prosecution.

17. It has been held by the Hon'ble Apex Court in Gurbax Singh Vs. State of Haryana, 2001(1) RCR (Criminal), 702 (SC), that non compliance of provisions of Sections 52 and 57 which are no doubt, directory and violation thereof, would not ipso-facto vitiate the trial or conviction. However, the Investigating Officer cannot totally ignore these provisions as such failure will have bearing on the appreciation of evidence regarding search of the accused and seizure. So non compliance of the above said provisions has adversely effected the case of the prosecution.

18. Even in the statements of the official witnesses that have been examined by the prosecution, there are material contradictions. PW1 SI Gurmail Singh stated that the weighment was carried out with the help of the hand scale and the weights, which were being carried in the investigating bag. Whereas PW3-SI Jasbir Singh stated that the Investigating Officer had got arranged the scale and the weights through some police official.

19. The memo of arrest Ex.PF is shown to have been signed by Harbhajan Singh, father of the accused. The recovery of opium was allegedly effected from the possession of the accused in the area of village Raikot. However, it has not been explained that how the presence of Harbhajan Singh father of accused Avtar Singh was procured from his village Urlana, Police Station Guhla Cheeka, District Kaithal for signing the arrest memo.

20. DW1-Sham Lal, Sr. Assistant, Punjab Human Rights,

Chandigarh has proved Ex.D1, the copy of the enquiry report regarding the enquiry which was conducted by the Human Rights Commission on the basis of complaint filed by Harbhajan Singh. DW3-Constable Balwinder Singh, Internal Vigilance Cell, Chandigarh got proved Ex.D4 to Ex.D20, the copies of the statements of the witnesses recorded in the enquiry Ex.D3, copy of enquiry report has also been proved on record as Ex.D22. So, in these circumstances, defence plea cannot be completely overlooked and the alleged recovery of the opium from the accused becomes doubtful.

21. Thus, keeping in view all these discrepancies and snags the trial Court has rightly reached at the conclusion that the prosecution witnesses were not successful in bringing home guilt to the accused beyond the reasonable doubt and it becomes doubtful if the recovery took place in the mode and manner as alleged by the prosecution. So, the accused has been rightly acquitted by giving him the benefit of doubt.

22. In view of the above, this appeal being bereft of any merit is dismissed with impugned judgment dated 11.03.2003 passed by learned trial Court being upheld.

23. Pending applications, if any, also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

29.11.2025.

Komal

Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No