

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-669-DBA-2004 (O&M)

Date of Reserved: 09.10.2025

Date of Pronouncement: 28.10.2025.

State of Punjab

....Appellant.

Versus

Kala Singh and another

...Respondents.

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

.....

Present: Mr. I.P.S. Sabharwal, DAG, Punjab.

Ms. Manjot Kaur, Advocate for
Mr. S.S. Gill, Advocate
for the respondents.

Sukhvinder Kaur, J.

1. The appellant-State has preferred the instant appeal against judgment dated 13.12.2003, passed by learned Judge, Special Court, Sangrur, vide which respondents-accused Kala Singh and Paramjit Singh @ Pammi have been acquitted.

2. Factual Scenario, as per prosecution version is that on 8.9.1997, Sub Inspector Gurpreet Singh along with ASI Davinder Singh and other police officials proceeded for patrolling duty on an official Gypsy bearing registration No.PIS-1006, driven by Constable Suresh Kumar for checking of suspects. When the police party reached at village Uthawal, Chowkidar Ghumand Singh met the police party and he was associated police party. At about 5.30 p.m. an Eicher tractor with an attached trolley, on which three

persons including the driver, were sitting came from the side of Sunam and after reaching near the turning point of the road, it turned towards the bridge of canal minor. On seeing the police, accused Sukha Singh, who was sitting on the left side mud-guard of tractor and accused Paramjit Singh alias Pammi, who was sitting on the right side mud-guard of tractor jumped from the tractor and ran away. These persons were identified by Head Constable Avtar Singh, who was already knowing these persons. Accused persons could not be apprehended despite being chased by members of the police party. However, driver of the tractor, was apprehended by the Investigating officer with the help of other members of police party. During investigation, name of driver came to be known as Kala Singh. Thereafter the Investigating officer checked the trolley, after removing the black polythene sheet with which four bags lying in the tractor-trolley had been covered. Investigating officer, thereafter, told driver Kala Singh that bags lying in the tractor-trolley were required to be searched and that if he so desired, then a Magistrate or any Gazetted officer could be called, Since accused Kala Singh opted for his search in the presence of a Gazetted officer, as such his consent statement Ex. PW4/A was recorded, which was thumb marked by accused Kala Singh and was attested by PW Ghumand Singh, ASI Davinder Singh, and ASI Bhupinder Singh. Thereafter, DSP (R) Jagjit Singh Gill was requested to reach at the spot and on his arrival search of the gunny bags lying in the trolley was conducted under his supervision. All the bags were found to contain poppy husk. Out of each bag two samples of 250 grams each were separated and converted into parcels. The remaining poppy husk upon being weighed came to be 29 Kgs 500 grams in each bag and these bags were also converted into parcels and were sealed by the Investigating

officer with his seal bearing impression 'GS. Sample seal chit Ex. P-1 was separately prepared and seal after use was handed over to ASI Davinder Singh. The entire case property including tractor-trolley bearing registration No.PUW-7984 and polythene sheet were taken into possession vide recovery memo Ex.PW4/B. On personal search of accused Kala Singh, currency notes of Rs.100/- were recovered which were also taken into possession vide memo Ex.PW4/C. Thereafter ruqa Ex. PW5/A was sent to the police station through constable Gurtej Singh, on the basis of which formal FIR, Ex.PW5/B was recorded by ASI Sukhwinder Singh. Investigating officer then prepared rough site plan of the place of recovery Ex.PW5/C and recorded the statements of the witnesses, thereafter, accused Kala Singh was arrested and Investigating officer deposited the case property with MHC Bhim Sain. On 27.10.1997 SI Ranjit Singh of CIA staff Bahadur Singh Wala arrested accused Paramjit Singh alias Pammi and on the same day ASI Gurdeep Singh arrested accused Sukha Singh. During Investigation, tractor bearing registration No. PUW-7984 was found to be registered in the name of Babu Ram son of Jhau Ram. RC of the tractor was taken into possession and statement of Ashok Malik, Clerk. DTO Office, Muktsar was recorded and accused Babu Ram was arrested under section 25/61/85 NDPS Act on 18.11.97 by ASI Gurdeep Singh. After receiving the report of the Chemical Examiner Ex.P-11 and on completion of investigation, challan against the accused persons was presented in the court, for judicial verdict.

4. After finding a prima facie case against the accused, they were charge-sheeted for the offences punishable under Section 15 of NDPS Act, to which they pleaded not guilty and claimed trial. Accused Sukha and Babu

Ram died during pendency of the trial and their names were ordered to be deleted from the report filed by the police under Section 173 Cr.P.C and the case of the prosecution against these deceased accused persons was closed.

6. In order to prove its case, the prosecution has examined PW1-Head Constable Bhim Sain, PW2-Constable Avtar Singh, PW3-Constable Amrik Singh, PW4-ASI Devinder Singh, PW5-Sub Inspector Gurpreet Singh, PW6-Gurpreet Singh, PW7-DSP Jagjit Singh Gill and PW8-Ashok Kumar, Junior Assistant Office of DTO Muktsar.

7. Statement of accused under Section 313 Cr.P.C. was recorded in which, all incriminating evidence was put to them, which they denied and pleaded innocence and closed their defence evidence.

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 Kala Singh and Paramjit Singh @ Pammi.

10. Learned counsel for the appellant-State has vehemently contended that the trial Court did not properly appreciate the evidence brought on record by the prosecution and also ignored the report of the Chemical Examiner, which was produced on record against the accused persons. He further contended that it is a case of very huge recovery and such huge recovery cannot be planted by the police. There was no reason for the police to falsely implicate the accused. He urged that trial Court also failed to appreciate that even if the independent witness had given up, there was sufficient evidence on record of the official witnesses, who

corroborated the prosecution version on all the material points regarding recovery of poppy husk from the accused persons and their evidence was sufficient to prove the guilt of the accused. He argued that undue importance has been given by learned trial Court to minor discrepancies and contradictions in the statements of prosecution witnesses, which were bound to occur due to lapse of time and these discrepancies do not go to the roots of the prosecution case. He submitted that report of chemical examiner duly established that accused were found in possession of commercial quantity of poppy husk and has prayed that present appeal be allowed, impugned judgment dated 13.12.2003 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 appellant-State 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 them of the charges framed against them.

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 Nathekhhan 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 persons.

15. In the instant case, as per the prosecution version independent witness Ghumand Singh Chowkidar of village Ubhawal came present at the time of the alleged recovery and he was associated with the police party. PW5-SI Gurpreet Singh, who is the Investigating Officer also deposed regarding the fact that thumb impression of PW Ghumand Singh had also been affixed over the consent memo, recovery memo of the contraband and personal search memo. Thus, being an independent witness aforesaid Ghumand Singh was a very material witness of the prosecution, who could have lended independent corroboration to the case of the prosecution. Said Ghumand Singh was not examined by the prosecution and was given up as won over by the accused, without assigning any reason for reaching at the said conclusion. Thus, non examination of Ghumand Singh, independent witness had caused a deep dent in the case of the prosecution and it causes grave doubt regarding the credibility of the other official prosecution witnesses examined during their trial.

16. Perusal of testimony of PW5-SI Gurpreet Singh reveals that he deposed that seal after use was handed over to ASI Davinder Singh. Again

no reason has been assigned that why the seal was not handed over to independent witness Ghumand Singh, if he had already been associated with the police party at the time of the alleged recovery. In the normal circumstances, it was expected that if the independent witness was there, then the seal was to be handed over to him. Thus, it has not been explained that what prevented the Investigating Officer to hand over the seal to the independent witness instead of official witness ASI Davinder Singh. If the seal had been handed over to independent witness Ghumand Singh, it would have certainly strengthened the case of the prosecution regarding the alleged recovery of the contraband from the accused persons.

17. Perusal of consent memo Ex.PW4/A reveals that the FIR number and offences have been mentioned therein, before starting recording of the consent statement, which also seriously reflects upon the veracity of the prosecution version. It is quite surprising that how the Investigating Officer came to know before searching the gunny bags that the same were containing poppy husk. It is also not explained that from where he came to know about FIR number of the case, as admittedly the ruqa was sent much later. It rather reflects that the entire proceedings was a shame exercise and it becomes highly doubtful that the entire proceedings were conducted at the spot as alleged.

18. There is unexplained delay of about 43 days in sending of sample to the chemical examiner. As stated by PW5-SI Gurpreet Singh, the seal had been handed over to ASI Davinder Singh instead of to independent witness Ghumand Singh. He also stated that the said seal was returned back by ASI Davinder Singh on 09.09.1997. As per affidavit Ex.PA, samples were handed over to constable on 20.10.1997. Thus, the seal remained with

SI Gurpreet Singh for a period of 42 days.

19. In Ramji Singh Vs. State of Haryana 2007(3) RCR (Criminal), 452, it has been held that as per the standing instructions issued by the Narcotics Control Bureau, the sample must be dispatched to the laboratory within 72 hours of its seizure to avoid any legal objections. In that case, the samples were forwarded to the Chemical Examiner, after 43 days of their seizure and this circumstance was held to be fatal to the prosecution case. In the instant case also, when there is unexplained delay of 43 days in sending of the sample and till sending of the sample the sample seal remained with the police, then possibility of the tampering with the sample cannot be ruled out, which has adversely effected the case of the prosecution.

20. As per the prosecution version, on seeing the police party accused Paramjit Singh and Sukha made good their escape. The trial Court has rightly observed that it does not seem probable that both these accused persons managed to escape on seeing the police party, despite the fact that the police party was consisting of about eight members and was also armed with weapons. It has also been alleged that while escaping those accused persons were identified by Head Constable Avtar Singh. He has admitted that when both the accused jumped from the tractor it was slightly dark. It again makes the prosecution story doubtful that even then Head Constable Avtar Singh could identify those persons while fleeing away.

21. Thus, keeping in view all these discrepancies and snags the trial Court 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 become doubtful if the recovery took place in the mode and

manner as alleged by the prosecution. So, the accused have been rightly acquitted by giving them the benefit of doubt.

22. In view of the above, this appeal being bereft of any merit is dismissed with impugned judgment dated 13.12.2003 passed by learned trial Court being upheld.

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

(SUKHVINDER KAUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

28.10.2025.

Komal

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