



**110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-44618-2023 in/and
CRM-A-1475-2023 (O & M)
Date of decision: 23.01.2025**

STATE OF HARYANA

...PETITIONER

V/S

NARESH ALIAS LANGRA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

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This is an application filed seeking condonation of delay of 218 days in filing the appeal.

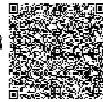
For the reasons mentioned in the application, the same is allowed.

Delay of 218 days in filing the appeal is hereby condoned.

MAIN CASE

1. The present application is preferred against the judgment of acquittal dated 09.12.2022 passed by learned Additional Sessions Judge, Charkhi Dadri, in case bearing FIR No.165 of 28.06.2020 registered under Sections 21/61/85 of NDPS Act at Police Station Badhra.

2. Brief facts of the case of the prosecution are that on 28.06.2020, ASI Pawan Kumar was present at Krantikari Chowk, Badhra in connection with patrolling duty, where he received a secret information that Naresh son of Mehtab Singh (respondent herein) is involved in the business of selling and consuming smack in village Badhra and he has gone to Harijan Mohalla, Badhra for selling smack and will come after some time towards his house. On



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the basis of secret information, barricade process was conducted and on the basis of suspicion, respondent/accused was apprehended with the help of co-officials. Upon search conducted by Constable Kuldeep, smack containing in white colour pouch from the right pocket and Rs.2,800/- and a piece of silver fold paper from the left pocket of his lower were recovered. On weighing smack along with pouch, it came out to be 46.5 grams. Hence the FIR (*supra*) was registered.

3. Having heard the learned State counsel and after perusing the record of the case with her able assistance, it transpires that not even a single public witness was joined in the search and seizure of the contraband. PW2 i.e. the investigating officer of the case has also not furnished any explanation for non-joining of public witness and the entire case of the prosecution is based upon the testimonies of official witnesses, which does not inspire confidence of this Court. Further, the evidence of official witnesses is inconsistent, untrustworthy and unreliable, besides there are material irregularities, which are fatal for the prosecution. Moreover, prosecution has failed to produce the case property in the court as it could have produced the second sample parcel or the parcel, which was sent to FSL for examination but even the sample parcels are not produced by the prosecution in the Court. Thus, primary evidence is withheld by the prosecution, without which, report of FSL cannot be read into evidence, which is fatal for the prosecution. As such, only vague allegations are levelled by the complainant/applicant against the accused and the prosecution has failed to prove its case beyond the shadow of reasonable doubt. As a result, the evidence led by the prosecution does not inspire confidence of this Court.



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4. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See *H.D. Sundara and others vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram vs. State of H.P., 1973 (2) SCC 808 and Chandrappa and others vs. State of Karnataka, (2007) 4 SCC 415*). A Division bench of this Court in the judgment passed in *State of Haryana vs. Ankit and others* passed in *CRM-A No.3 of 2022* decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

5. In view of the facts and circumstances of the case, this Court finds that learned State counsel has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

(HARPREET SINGH BRAR)
JUDGE

January 23, 2025
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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |