



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRA-S No.150-SB of 2005
Reserved on: 20.04.2026
Pronounced on: 28.04.2026
Uploaded on: 29.04.2026

*Whether only operative part of the judgment is
Pronounced or the full judgment is pronounced: operative part/full judgment*

Ram Niwas

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Argued by:- Ms. Prachi Gupta, Advocate
for the appellant.

Mr. Sahil Chowdhary, AAG, Punjab.

MANDEEP PANNU, J.

1. The present appeal has been filed against the judgment/order dated 15.12.2004 passed by learned Judge, Special Court, Patiala in S.C. No.68-T of 27.09.2004/29.08.2002, arising out of FIR No.59 dated 01.06.2002, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Julkan, whereby learned Special Court held the appellant guilty for the offence punishable under Section 18(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced him to undergo rigorous imprisonment for a period of seven years, along with a fine of Rs. 10,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.



2. Briefly stated, the case of the prosecution is that on 01.06.2002, the accused-appellant Ram Niwas was intercepted by a police party headed by Inspector Shamsheer Singh of CIA Staff, Patiala, near the canal bridge of Village Mehon while he was coming from the side of Village Kishanpura on a metalled road towards Village Mehon, carrying a small bag in his right hand. The police party was present there in connection with checking of suspected persons and was joined by independent witness Karam Singh. On seeing the police party, the accused allegedly attempted to turn back but was apprehended on suspicion. Inspector Shamsheer Singh suspected that the bag carried by the accused contained contraband and apprised him of his right to be searched before a Magistrate or a Gazetted Officer. The accused opted to be searched in the presence of a Gazetted Officer, whereupon DSP Satbir Singh Atwal (City-II), Patiala was called to the spot through a wireless message. After reaching the spot, the DSP disclosed his identity and again offered the accused the option of being searched before a Magistrate, but the accused expressed confidence in the DSP, whereafter his consent statement was recorded. On the directions of the DSP, the bag carried by the accused was searched and was found to contain opium wrapped in glazed paper. Two samples of 10 grams each were separated and converted into parcels, while the remaining opium on weighment was found to be 2 kilograms, which was also converted into a separate parcel after being placed in a box. All the three parcels were sealed with the seal bearing impression "SS" of the Investigating Officer as well as the seal of the DSP. Specimen seal chit was



prepared and the seal after use was entrusted to independent witness Karam Singh, while the DSP retained his own seal. Upon personal search of the accused, currency notes amounting to Rs.90/- were recovered and taken into possession vide memo. Memo of grounds of arrest was prepared and *ruqa* was sent on the basis of which the FIR was registered. Thereafter, on return to the police station, the case property was deposited with the MHC in intact condition. On the next day, the case property was produced by ASI Jaipal Singh before the Ilaqa Magistrate and thereafter re-deposited with the MHC. The sample parcel was later sent in intact condition to the office of FSL, Punjab, Chandigarh, and after receipt of the FSL report and completion of investigation, the challan was presented against the accused.

3. After presentation of the challan and compliance with the provisions of Section 207 Cr.P.C., the trial Court found a *prima-facie* case and framed charges against the accused under Section 18(c) of the NDPS Act, 1985, to which he pleaded not guilty and claimed trial. In order to substantiate its case, the prosecution examined PW1 HC Gurmeet Singh, Moharrir Head Constable of the Malkhana; PW2 Constable Jaswant Singh, who took the sample parcel to the office of FSL; PW3 ASI Jaipal Singh, witness to the recovery memo and who produced the case property before the Ilaqa Magistrate; and PW4 Inspector Shamsheer Singh, the Investigating Officer of the case. Thereafter, the prosecution closed its evidence after tendering the report of the FSL in evidence. The incriminating circumstances appearing against the accused were then put to him in his statement recorded under Section 313 Cr.P.C., wherein he denied the



allegations and pleaded false implication, claiming that he had already been taken into custody prior to 01.06.2002 and that the present case had, subsequently, been planted upon him. In defence evidence, the accused examined DW1 C. Budh Gir, who produced the DDR register, and DW2 Ramesh, who was examined to support the plea that the accused had been taken from his house. After hearing learned counsel for the parties and appreciating the evidence available on record, learned trial Court held that the story put-forth by the prosecution fully inspired confidence. Consequently, the accused was held guilty for commission of the offence punishable under Section 18(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, and was accordingly convicted and sentenced as stated hereinabove.

4. Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred by the appellant.

5. Learned counsel for the appellant has vehemently argued that the very first circumstance which dents the prosecution case and renders the recovery proceedings doubtful is with regard to the consent memo Ex.PD. It has been contended that the said memo was, in fact, not a consent memo but a dissent memo. Learned counsel submits that in the heading of the memo, the word written in Punjabi was originally “ਅਸਹਿਮਤੀ” (dissent), however, later on white correction fluid appears to have been applied on the first letter of the word so as to convert it into “ਸਹਿਮਤੀ” (consent). Not only this, even in the body of the memo at two places, correction fluid has been used to alter the contents so as to depict



that the accused had reposed confidence in the Gazetted Officer. According to learned counsel, this clearly shows that when the offer was initially made to the accused-appellant that he could get his search conducted in the presence of a Magistrate or a Gazetted Officer, the accused did not repose confidence in the DSP and his dissent statement was recorded and memo was accordingly prepared. However, subsequently, in order to overcome the legal consequences flowing therefrom, the same was converted into a consent memo. It has been argued that the said document is available on record as Ex.PD, and such interpolation in a vital document strikes at the root of the prosecution case. Learned counsel further submits that this material discrepancy has been lightly brushed aside by learned trial Court by merely observing that the ink remover fluid had been applied at two places in Ex.PD only for rectifying a clerical mistake and for no other purpose and, therefore, no benefit could be derived by the defence therefrom. According to learned counsel, the said observation is wholly erroneous. It is argued that compliance of Section 50 of the NDPS Act is a valuable safeguard available to an accused and the consent/dissent memo assumes immense significance in order to establish whether the accused had voluntarily waived his right of search before a Magistrate. Any interpolation in such a crucial document creates serious doubt regarding the fairness and authenticity of the recovery proceedings.

6. Per contra, learned State counsel has argued that the correction in the memo is merely clerical in nature. It has been submitted that admittedly white correction fluid was applied on the first letter of the word



“ਅਸਹਿਮਤੀ” in Punjabi script and at one place in the body of the document, however, the same was done only to rectify an inadvertent clerical mistake. It has further been argued that learned trial Court has rightly observed that no undue advantage can be granted to the accused on account of such minor correction, particularly when the prosecution witnesses have consistently deposed that the accused had reposed confidence in the Gazetted Officer and consented to the search being conducted in the presence of DSP Satbir Singh Atwal.

7. This Court has thoughtfully considered the rival submissions and finds considerable force in the contention raised on behalf of the appellant. The memo in question is not an ordinary procedural document but a crucial piece of evidence intended to demonstrate due compliance of the mandatory safeguards embodied under Section 50 of the NDPS Act. The right of an accused to be searched before a Magistrate or a Gazetted Officer is a substantive safeguard meant to ensure transparency and fairness in the search proceedings. Therefore, the document recording the response of the accused must inspire complete confidence and should be free from any suspicion or interpolation.

8. In the present case, it is not disputed that white correction fluid was applied on the first letter of the relevant Punjabi word in the heading of the memo and also at two places in the body of the document. The prosecution has failed to furnish any convincing explanation as to why such corrections were required in a document of such significance. Had it been a simple clerical mistake, the natural course would have been to



record a fresh memo or at least obtain signatures of the accused and witnesses acknowledging such correction. No such precaution was taken. The unexplained alteration creates a legitimate apprehension that the original document may not have reflected the actual intention of the accused.

9. The prosecution was required to establish beyond reasonable doubt that the accused had consciously waived his valuable right under Section 50 of the NDPS Act. However, once the very document recording such waiver becomes doubtful due to visible alterations, the benefit of such doubt must necessarily go to the accused. Learned trial Court, in the opinion of this Court, erred in treating the said discrepancy as insignificant. The alteration in the consent memo goes to the root of the prosecution story and materially affects the credibility of the alleged recovery proceedings. Consequently, this Court is of the considered view that the prosecution has failed to prove strict and unimpeachable compliance of the mandatory procedural safeguards, thereby rendering the recovery proceedings doubtful.

10. It is next contended by learned counsel for the appellant that the discrepancies in the prosecution case are not confined only to the consent memo, rather similar irregularities are apparent in Ex.PF, i.e the memo pertaining to the personal search of the accused, which further demolishes the prosecution version. Learned counsel submits that the said document contains visible cuttings, overwriting and alterations, which clearly indicate that the documents were not prepared at the spot during the



alleged recovery proceedings and were subsequently manipulated merely to complete the paperwork. It has been argued that at point 'B' on Ex.PF, where the name/signatures of the accused were allegedly required, the writing appears to have been struck off and no signatures of the accused are available at the said point. Thereafter, at point 'D', signatures purportedly of the accused appear, though at the same place the words "CIA Patiala" have been mentioned. Further, at point 'E', the words "CIA Patiala" appear to have been written in a different ink, thereby creating further doubt regarding the genuineness of the document. Learned counsel submits that such repeated alterations and interpolations in official documents reveal that the alleged proceedings were not conducted in the manner projected by the prosecution and that the documents were prepared subsequently while sitting in the police station.

11. Per contra, learned State counsel has argued that although the Investigating Officer, during his cross-examination, admitted the existence of such cuttings and corrections in Ex.PF, the same were merely clerical mistakes and do not strike at the root of the prosecution case. It has been contended that minor discrepancies of this nature are bound to occur during preparation of documents at the spot and cannot be made a ground to discard an otherwise reliable prosecution case.

12. This Court has considered the rival submissions and finds merit in the argument raised on behalf of the appellant. A perusal of Ex.PF clearly reflects multiple unexplained cuttings and alterations. At point 'B', where the name/signatures of the accused were expected, the writing has



been visibly struck off and no satisfactory explanation has been furnished by the prosecution as to why such cutting was required. Likewise, at point 'D', signatures of the accused appear at a place which creates ambiguity with regard to the actual execution of the document. Further, the words "CIA Patiala" appearing at point 'E' are evidently written in a different ink, which lends credence to the defence argument that additions were made subsequently.

13. These discrepancies cannot be brushed aside as mere clerical mistakes, particularly when similar alterations had already been noticed by this Court in the consent memo. The repeated occurrence of cuttings, overwriting and use of different ink in material documents creates a serious dent in the prosecution story. In cases arising under the NDPS Act, where stringent punishments are prescribed, the prosecution is expected to establish complete fairness and transparency in the procedural safeguards adopted during recovery proceedings. The documentary evidence must be unimpeachable and free from suspicion.

14. In the present case, the cumulative effect of the alterations in Ex.PF clearly raises a legitimate doubt regarding the authenticity of the proceedings allegedly conducted at the spot. The possibility that the documents were prepared later merely to complete formalities cannot be ruled out. The prosecution has failed to furnish any convincing explanation for these material irregularities. This Court is, therefore, of the considered opinion that learned trial Court committed an error in treating these discrepancies as insignificant. Rather, these irregularities materially affect



the credibility of the prosecution case and further strengthen the defence plea that the alleged recovery proceedings were not conducted in the manner asserted by the prosecution.

15. It has been further contended by learned counsel for the appellant that there are additional serious infirmities in the prosecution case which further render the alleged recovery doubtful. Learned counsel submits that after the alleged recovery, the case property was never produced before the Station House Officer (SHO) for affixing his seal or for ensuring safe custody in accordance with the established procedure. It has been argued that such a safeguard is intended to rule out the possibility of tampering with the case property and to maintain the sanctity of the chain of custody. Learned counsel further contends that although the prosecution has alleged that the search was conducted in the presence of DSP Satbir Singh Atwal, who was the Gazetted Officer called at the spot, the said DSP was not examined by the prosecution during trial. Likewise, Karam Singh, the alleged independent witness joined at the time of recovery proceedings, was also withheld from the witness box without any plausible explanation. According to learned counsel, non-examination of these material witnesses creates a serious dent in the prosecution case, particularly when the entire recovery proceedings have already become doubtful on account of the material alterations in the documentary record.

16. Per contra, learned State counsel has argued that mere non-production of the case property before the SHO would not by itself vitiate the prosecution case, particularly when the prosecution has otherwise led



evidence regarding deposit of the case property with the MHC and dispatch of the sample parcel to the Forensic Science Laboratory in intact condition. It has further been contended that non-examination of the independent witness and the Gazetted Officer is also not necessarily fatal in every case, as conviction can be sustained on the testimony of official witnesses if their statements are otherwise found to be trustworthy and reliable. Learned State counsel submits that no adverse inference should be drawn merely because every witness associated during investigation was not examined by the prosecution.

17. This Court finds that the legal proposition canvassed by learned State counsel cannot be disputed. It is indeed settled that non-examination of an independent witness or even a Gazetted Officer would not invariably prove fatal to the prosecution case if the testimonies of the recovery witnesses and the Investigating Officer otherwise inspire confidence and the prosecution succeeds in proving an unbroken chain of custody of the contraband. Similarly, every lapse regarding handling of case property may not, by itself, be sufficient to discard the prosecution case if the evidence on record otherwise remains unimpeachable.

18. However, the facts of the present case stand on an entirely different footing. As already noticed hereinabove, this Court has found serious and unexplained alterations in the consent memo as well as the personal search memo. The repeated cuttings, overwriting, use of correction fluid and writing in different ink in material documents have already rendered the prosecution version highly doubtful and have created



a legitimate apprehension that the documents were prepared subsequently merely to complete procedural formalities. It has been held by the Co-ordinate Bench of this Court in *Rajwinder Singh @ Happy vs. State of Haryana, CRA-S No.564 of 2021* decided on 03.08.2021 that over-writing in notice and consent memo under Section 50 NDPS Act creates doubt about the authenticity and credibility of the prosecution's case and the accused is entitled to benefit of doubt.

19. Once such doubt has arisen regarding the genuineness of the proceedings allegedly conducted at the spot, the non-examination of the DSP, who was the most material witness to prove the legality of the search proceedings, assumes great significance. His testimony was essential to dispel the doubts surrounding the alleged consent proceedings and to establish that the accused had voluntarily reposed confidence in him. Likewise, the non-examination of independent witness Karam Singh further deprives the prosecution case of independent corroboration.

20. Moreover, the prosecution has also failed to satisfactorily establish the safe custody of the case property, as the same was admittedly not produced before the SHO. In a case under the NDPS Act, where severe punishment is prescribed and strict procedural compliance is expected, the prosecution is required to establish an unbroken and reliable chain of custody of the recovered contraband. The failure to do so, when read in conjunction with the aforementioned suspicious circumstances, further weakens the prosecution case and raises a genuine possibility of tampering.

21. Thus, the cumulative effect of the suspicious alterations in



material documents, non-examination of the Gazetted Officer and independent witness, and failure to establish proper custody of the case property creates serious doubt regarding the fairness and genuineness of the alleged recovery proceedings. It is a settled principle of criminal jurisprudence that where two views are possible, the one favourable to the accused must be adopted. The prosecution has failed to prove its case beyond reasonable doubt.

22. Consequently, the present appeal is allowed. The judgment of conviction and order of sentence dated 15.12.2004 passed by learned trial Court are hereby set aside. The appellant-accused Ram Niwas is acquitted of the charges framed against him by extending the benefit of doubt. He be released forthwith, if not required in any other case.

23. All pending applications, if any, also stand disposed of.

28.04.2026
neetu

(MANDEEP PANNU)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>