



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

314

CRA-D-148-DBA-2005

Date of decision: August 19, 2025

STATE OF PUNJAB

...Appellant

Versus

AVTAR SINGH

...Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL
HON'BLE MR. JUSTICE H.S. GREWAL**

Present: Mr. Amit Rana, Sr. DAG, Punjab.

Mr. Tapan Masta, *Amicus Curiae*
for the respondent.

MANJARI NEHRU KAUL, J.

1. The present appeal preferred by the State of Punjab is directed against the judgment of acquittal dated 25.09.2004 passed by the learned Additional Sessions Judge-cum-Special Judge, Amritsar in case FIR No.42 of 1998 under Sections 15/18/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Bhikhiwind, District Amritsar, whereby the accused-respondent i.e. Avtar Singh was acquitted of charges framed against him.

2. As per the case of the prosecution, on 08.03.1998, Inspector Swaran Singh (PW4), while on patrol duty along with other police officials, allegedly received secret information that the respondent-accused Avtar Singh was residing in a Dera of Baba Marhana and was cultivating poppy plants, preparing opium therefrom, consuming the same, and further indulging in its sale.



3. The information was conveyed to Dr. Naresh Kumar, ASP, Tarn Taran, who was requested to reach the spot, and *ruqa* (Ex.PC) was simultaneously sent to the police station through Constable Warian Singh, on the basis of which FIR (Ex.PC/1) was lodged.

4. Inspector Swaran Singh (PW4) along with his party reached the 'T' point of village Sugga, where Shamsher Singh (PW5) joined them. Soon thereafter, Dr. Naresh Kumar also arrived. The police party proceeded to the Dera where the accused was found standing amidst a poppy crop. He was apprehended on the spot.

5. A photographer was called, who took photographs of the standing crops. Two independent witnesses namely Bachitar Singh and Gurnam Singh were also joined at the spot. At the instance of Dr. Naresh Kumar, ASP, Tarn Taran, the poppy crop spread over one kanal of land was harvested. From the harvested crop, two samples of 5 kgs each were separated, packed, and sealed with the seals of Dr. Naresh Kumar ('NK'), Inspector Swaran Singh ('SS') and SI Shamsher Singh ('SS'). The remaining crop, weighing about 3 quintals and 35 kgs, was packed into 13 bags and similarly sealed. The sealed parcels were entrusted to SI Bachitar Singh, and four sample parcels were later sent to the laboratory for analysis. Upon completion of investigation, challan was presented, and the accused was charged under Sections 15/18/61/85 of the NDPS Act. He pleaded not guilty and claimed trial.



6. The prosecution examined 5 witnesses besides tendering documentary evidence. In his statement under Section 313 Cr.P.C., the accused denied all allegations, pleaded false implication, and did not lead any evidence in defence.

7. The learned Special Judge, Amritsar vide judgment dated 25.09.2004 acquitted the accused on the following broad grounds:-

- Independent witnesses Bachitar Singh and Gurnam Singh, though joined at the time of recovery, were not examined. More significantly, Dr. Naresh Kumar, ASP, Tarn Taran, in whose presence the crop was allegedly harvested and sealed, was also not examined.
- The prosecution failed to establish a consistent chain of custody. There was variance between affidavits of official witnesses and their oral testimony regarding the number of samples drawn, deposited, and sent for analysis.
- The report of the Chemical Examiner was negative. It categorically opined that the sample did not contain any poppy heads and ruled out the possibility of the same even after examining the remaining portion of the sample.



8. On these considerations, the learned trial Court held that the prosecution failed to establish guilt of respondent-accused beyond reasonable doubt and accordingly acquitted him.

SUBMISSIONS ON BEHALF OF THE APPELLANT-STATE:

9. Learned State counsel contended that the learned trial Court erred in acquitting the accused on technical grounds. It was urged that:

- The non-examination of Dr. Naresh Kumar, ASP, was not fatal to the prosecution, and there is no mandate of law that a Gazetted Officer associated with recovery must invariably be examined. The testimony of Inspector Swaran Singh (PW4) and SI Sharmsher Singh (PW5), both recovery witnesses, was sufficient to prove recovery.
- Both these witnesses were official functionaries who had no motive to falsely implicate the accused. Their evidence was cogent and reliable, and in the absence of any suggestion of enmity, it could not be discarded.
- The alleged discrepancy regarding one or two samples being sent to the Chemical Examiner was, at best, a clerical error. Since the Chemical Examiner reported that the sample seal tallied with the specimen seal, the chain of custody remained intact.



- The prosecution also examined an independent photographer, who had no ill-will against the accused, and who produced photographs of the standing crops along with negatives in Court. His testimony remained unshaken.

10. On these premises, it was urged that the learned trial Court had committed a grave error in discarding the prosecution evidence on conjectures and surmises, thereby resulting in miscarriage of justice. It was prayed that the impugned judgment be set aside and the respondent-accused be convicted and sentences in accordance with law.

11. *Per contra*, learned counsel for the respondent supported the impugned judgment. It was contended that the acquittal was well-reasoned and does not call for interference in view of the following:-

- Firstly, the failure of the prosecution to examine independent witnesses Bachitar Singh and Gurnam Singh, who were admittedly present at the time of alleged recovery, casts serious doubt on the fairness of the investigation. No plausible explanation was offered for withholding their testimony.
- Secondly and more importantly, Dr. Naresh Kumar, ASP, in whose presence the entire process of harvesting, weighing, sealing and preparing of samples was carried out, was not examined. He was the most material witness, and his non-examination fatally undermines the case of the prosecution.



- Thirdly, there was a glaring contradiction in the prosecution evidence regarding the handling of samples. While the affidavit of Head Constable Anokh Singh (PW2) recorded that two samples of 5 kgs each were deposited in the *malkhana* and later sent to the Chemical Examiner, the affidavit of Constable Hazara Singh (PW1) and the report of the Chemical Examiner itself stated that only one sample was deposited. Such inconsistency, as per the learned counsel, struck at the root of the link evidence.
- Lastly, the report of the Chemical Examiner returned a categorical negative finding, opining that the sample contained no poppy heads. Once the scientific evidence rules out the presence of the contraband, the entire prosecution case stood collapsed.

12. It was, therefore, submitted that acquittal of the respondent was fully justified and the appeal deserved to be dismissed.

13. We have heard learned counsel for the parties and perused the evidence on record.

14. At the outset, it must be observed that in a prosecution under the NDPS Act, where the punishments are stringent and the statute imposes strict procedural safeguards, the Courts are required to adopt a scrupulous



approach in examining compliance with mandatory requirements and in assessing the evidence.

15. In the present case, the following infirmities are glaring:-

(I) ***Non-examination of Material Witnesses:***

Although the prosecution associated two independent witnesses namely Bachitar Singh and Gurnam Singh, neither was examined at trial. Their absence was never explained. Even if the prosecution apprehended that they might turn hostile, they were required to be brought into the witness box and confronted in cross-examination. Similarly Dr. Naresh Kumar, ASP, who played a central role in supervising the recovery and sealing process, was withheld from the witness box. His non-examination creates a serious dent in the case of the prosecution.

(II) ***Missing Link in Custody of Samples:***

According to the affidavit (Ex.PB) of Head Constable Anokh Singh (PW2), two sample parcels of 5 kgs each were deposited in the *malkhana* and later handed over to Constable Hazara Singh (PW1) for being taken to the Chemical Examiner. However, Constable Hazara Singh (PW1) in his affidavit (Ex.PA) stated that he deposited only one sample in the office of the Chemical Examiner. The report of the Chemical Examiner (Ex.PH) also records the receipt of only one sample. This variance is material, not clerical. It undermines the integrity of the chain of custody and creates a reasonable possibility of tampering.



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(III) **Negative Chemical Report:**

Most crucially, the Chemical Examiner's report (Ex.PH) categorically found that the sample contained no poppy heads. Even upon further analysis, the result remained negative. Once the scientific evidence fails to establish the contraband nature of the samples, the foundation of the prosecution case crumbles.

16. In light of these factors, the learned trial Court rightly concluded that the prosecution failed to prove its case beyond reasonable doubt. The acquittal was not based on technicalities, but on substantive deficiencies in evidence.

17. The impugned judgment of acquittal is, therefore, well-reasoned, based on fair appreciation of the evidence, and suffers from no perversity warranting interference in appeal.

18. Accordingly, the instant appeal filed by the State of Punjab stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

August 19, 2025

Jaspreet Kaur

(H.S. GREWAL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*