

**CRA-S-110-SB-2004 (O&M)****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRA-S-110-SB-2004 (O&M)****Reserved on: 21.05.2026****Pronounced on: 24.07.2026****Uploaded on: 24.07.2026**

Whether only operative part of the judgment is Pronounced : No
Whether full judgment is pronounced: Yes

Chamkaur Singh

...Appellant

Versus

State of Punjab

...Respondent**CORAM: HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL**

Present: Mr. Rajat Dogra, Advocate, for the appellant.
Mr. Amritpal Singh, DAG, Punjab, for the Respondent State.

RUPINDERJIT CHAHAL, J.

1. The present appeal has been directed against the judgment of conviction and order of sentence dated 11.12.2003 , passed by the Learned Additional Sessions Judge cum Special Judge, Amritsar whereby the appellant was held guilty and convicted under Section 15 of the Narcotic Drugs and Psychotropic substance Act, 1985 (for short 'NDPS Act) and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1 Lac, in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

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2. The facts of the case are that on 18.05.2002 S. I. Gurbans Singh along with other police officials was going from Khemkaran to Village Gazal. On their way, they joined one Sukhdev Raj, an independent witness from Khemkaran Bus Stand. When the police party had proceeded 5 to 6 kilometers, they saw a person (Appellant) sitting on poly bags, in a river bed. The said person noticed the police and tried to run away. However, the police party got suspicious and he was apprehended. The police party suspected that he was carrying some contraband and he was apprised of his right of being searched either before the Magistrate or a Gazetted Officer and he consented for his search before a Gazetted Officer. After getting his consent, the wireless messages were sent to DSP Major Singh, who reached at the spot and after disclosing his identity to the accused, he apprised him of his right of search either before him or a magistrate. However, the Appellant got his consent statement Ex.PB recorded and reposed confidence in DSP Major Singh and stated that he wanted to get his search conducted in his presence. On the directions of the DSP, all bags were searched, which were in possession of the accused and the same were found containing 20 Kgs. poppy husk each. Samples of 500 grams from each bag were taken out and sealed and the bags containing remaining poppy husk were also sealed separately bearing impressions 'GS' and 'MS', and taken into possession by the police vide recovery memo Ex.PC. and the seal was handed over to ASI Ravel Singh. Thereafter ruqa was sent to the police station, on the basis of which, FIR Ex.PF/1 was recorded. The rough site plan Ex.PE was prepared. The grounds of arrest were disclosed to the accused vide Ex.PD. On 19.05.2002, SI Gurbans Singh produced the sample and the case property

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- alongwith accused before the Area Magistrate who put his initials on the sample and the case property was again kept in safe custody by SI Gurbans Singh. The case property was deposited in the Malkhana while the samples were retained by SI Gurbans Singh in double lock. On 23.05.2002, the sample parcels were sent to the office of Chemical Examiner Jalandhar alongwith the specimen seal through Constable Satnam Singh. On receipt of the report Ex.PX which confirmed the recovered substance to be poppy husk and the completion of the investigation, challan was presented against the appellant.
3. Vide order date 30.07.2002, the Court of learned Special Judge, Amritsar ordered framing of charge under Section 15 of the NDPS Act against the appellant to which he pleaded not guilty and claimed trial.
 4. In support of its case, the prosecution examined three witnesses. PW-1 SI Gurbans Singh, the Investigating Officer, PW-2 Constable Satnam Singh and PW-3 DSP Major Singh Thereafter, the learned Additional Public Prosecutor tendered in evidence the report of the Chemical Examiner, Ex.PX, and closed the prosecution evidence.
 5. After the prosecution evidence was closed, the statement of the appellant under Section 313 of the Code of Criminal Procedure was recorded, in which the incriminating circumstances appearing against him were put to him. He denied the prosecution version in its entirety, pleaded that nothing had been recovered from him, and stated that he had been falsely implicated.

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6. In his defence, the appellant examined two witnesses. DW-1 Manjit Singh, Sub Post Master, Patti and DW-2 Gurtej Singh, the appellant's father and closed the evidence.
7. The learned trial Court, after appreciating and evaluating the evidence available on record, held the appellant guilty and convicted him under Section 15 of NDPS Act.
8. Learned counsel for the appellant submitted that he had been falsely implicated in the present case. He contended that the mandatory provisions of Section 52-A of the NDPS Act had not been complied with, as neither the inventory nor the representative samples were prepared and certified in the presence of the learned Magistrate. He further submitted that the samples were sent to the Chemical Examiner after an unexplained delay of five days, while the case property and the seals remained in the custody of the police officials, thereby rendering the link evidence doubtful. It was further argued that the prosecution before the trial Court had withheld the only independent witness, namely Sukhdev Raj, without any plausible explanation, warranting an adverse inference against the prosecution. Learned counsel also submitted that the appellant had in fact been illegally detained by the police several days prior to the registration of the FIR, which was corroborated by the telegrams sent by the appellant's father before the FIR was recorded, thereby probalising the defence version of false implication. It was lastly contended that the mandatory safeguards envisaged under Section 50 of the NDPS Act had also not been duly complied with and, in view of these serious infirmities in the prosecution case, the appellant was entitled to acquittal.

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9. Learned State counsel, per contra, supports the impugned judgment and submits that the recovery stands fully proved by the consistent testimonies of PW-1 and PW-3, that the chain of custody of contraband is intact, and that the defence of false implication is an afterthought unsupported by any independent corroboration.
10. I have heard learned counsels appearing for both sides at considerable length and with their able assistance carefully gone through the entire evidence available on record, the impugned judgment, the documentary evidence, the depositions of the witnesses as well as the relevant record.
11. Upon consideration of the rival submissions, the following questions arise for determination:
- (i) Whether the prosecution has succeeded in proving the recovery of 80 kilograms of poppy husk from the conscious possession of the appellant beyond reasonable doubt?
 - (ii) Whether there has been any violation of the mandatory provisions of Sections 50 and 52-A of the NDPS Act so as to vitiate the prosecution case?
 - (iii) Whether the delay of five days in dispatching the sample parcels to the office of the Chemical Examiner has affected the sanctity of the chain of custody?
 - (iv) Whether the non-examination of the independent witness and the defence evidence regarding alleged illegal detention probabilise the plea of false implication?

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12. The prosecution principally rests upon the testimonies of PW-1 SI Gurbans Singh, the Investigating Officer, and PW-3 DSP Major Singh, the Gazetted Officer before whom the search and seizure were conducted. It is well settled that conviction can safely be based upon the testimony of official witnesses if their evidence is trustworthy and inspires confidence. Merely because the witnesses happen to be police officials is no ground to discard their testimony. There is neither any allegation nor any material on record suggesting previous enmity or motive on the part of PW-1 or PW-3 to falsely implicate the appellant in such a serious offence. Their depositions are consistent with each other on all material particulars and receive due corroboration from the documentary evidence prepared contemporaneously during investigation.
13. The prosecution evidence establishes that the appellant was found sitting upon four bags lying in the river bed. On noticing the police party he attempted to flee, thereby arousing suspicion. The recovery of four bags containing 20 kilograms of poppy husk each was effected from his exclusive possession. The appellant has not offered any explanation whatsoever regarding his possession of such huge quantity of contraband. The quantity recovered is of the commercial quantity. Once possession is proved, the statutory presumptions under Sections 35 and 54 of the NDPS Act come into operation. The burden shifts upon the accused to satisfactorily account for such possession. Except for making a bald denial in his statement under Section 313 Cr.P.C., the appellant has failed to discharge the statutory burden cast upon him. Consequently, the presumption regarding conscious possession remains unrebutted.

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14. Learned counsel for the appellant vehemently argued that in the instant case, the mandatory provisions of Section 50 of the NDPS Act were not complied with and the appellant was liable to be acquitted. The said submission has been opposed by the learned State counsel by contending that since the recovery of the contraband had taken place from the poly bags and not from personal search, the provisions of Section 50 of the NDPS Act would not be attracted in the instant case. Their Lordships of the Hon'ble Supreme Court in *Ajmer Singh v. State of Haryana, (2010) 3 Supreme Court Cases 746*, have held that for search of bag, briefcase, container, etc. carried by accused person, compliance with Section [50](#) of the NDPS Act is not required. Their Lordships have held as under :-

"15. The learned counsel for the appellant contended that the provision of Section [50](#) of the Act would also apply, while searching the bag, brief case etc., carried by the person and its noncompliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. It requires to be noticed that the question of compliance or non-compliance of Section [50](#) of the NDPS. Act is relevant only where search of a person is involved and the said Section is not applicable nor attracted where no search of a person is involved. Search and recovery from a bag, brief case, container, etc., does not come within the ambit of Section [50](#) of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the Section speaks of taking of the person to be searched by the Gazetted Officer or Magistrate for the purpose of search. Thirdly, this



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*issue in our considered opinion is no more res-integra in view of the observations made by this court in the case of **Madan Lal v. State of Himachal Pradesh (2003) 7 SCC 465**. The Court has observed:*

*"16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see **Kalema Tumba v. State of Maharashtra and Anr. (1999) 8 SCC 257**, **State of Punjab v. Baldev Singh (1999) 6 SCC 172** and **Gurbax Singh v. State of Haryana (2001) 3 SCC 28**). The language of section is implicitly clear that the search has to be in relation to a person as contrast to search of premises, vehicles, or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case. Above being the position, the contention regarding noncompliance of Section 50 of the Act is also without any substance."*

16. x x x

17. x x x

18. It appears from the evidence on record that the accused was confronted by ASI Maya Ram and other police officials on 24.1.1996 and he was informed that he has the right to either be searched before the gazetted officer or before a Magistrate and the accused chose the later (sic former). Thereafter, the accused was taken to the DSP, Pehowa, Shri Paramjit Singh Ahalawat and as directed by him, the bag carried by accused on his shoulder was searched and the charas was found in that



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bag. Thus, applying the interpretation of the word "search of person" as laid down by this Court in the decision mentioned above, to facts of present case, it is clear that the compliance of Section 50 of the Act is not required. Therefore, the search conducted by the investigation officer and the evidence collected thereby, is not illegal. Consequently, we do not find any merit in the contention of the learned counsel of the appellant as regards the noncompliance of Section 50 of the Act."

15. Further, in the matter of "**Kallu Khan v. State of Rajasthan AIR 2022 (Supreme Court)50: 2022 (1) RCR (Criminal) 367**"; the Hon'ble Supreme Court has held as under:-

" 15. Simultaneously, the arguments advanced by the appellant regarding non-compliance of Section 50 of NDPS Act is bereft of any merit because no recovery of contraband from the person of the accused has been made to which compliance of the provision of Section 50 NDPS Act has to follow mandatorily. In the present case, in the search of motor cycle at public place, the seizure of contraband was made, as revealed. Therefore, compliance of Section 50 does not attract in the present case. It is settled in the case of Vijaysinh(supra) that in the case of personal search only, the provisions of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case, following the judgments of Surinder Kumar (supra) and Baljinder Singh (supra). Considering the facts of this Court, the argument of non-

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compliance of Section 50 NDPS Act advanced by the counsel is hereby repelled."

16. Thus, keeping in view the aforesaid principles of law and the evidence led by the prosecution in the instant case, it is observed that in the instant case, the recovery had taken place from a bag and not from the personal search of the accused. Thus, the submissions made by learned counsel for the appellant is without any substance and are rejected.

17. Learned counsel has next argued that Section 52-A of the NDPS Act has not been complied with as samples were not drawn before the Magistrate. The contention cannot be accepted. This Court is conscious that the law on the consequence of such non-compliance has since been authoritatively settled by the Hon'ble Supreme Court in ***Bharat Aambale v. State of Chhattisgarh, 2025 INSC 78***, wherein the Supreme Court had held that non-compliance or delayed compliance with Section 52A of the NDPS Act will not automatically vitiate the trial or entitle the accused to acquittal unless it leads to significant discrepancies in the physical evidence that cast doubt on the prosecution's case. It was further held that the Courts ought to consider entire evidence and assess if procedural lapses affect credibility and the non-compliance may lead to adverse inference under Section 114(g) Indian Evidence Act depending on facts but Substantial compliance is sufficient. The relevant part of the order is reproduced below:

"50. We summarize our final conclusion as under: -

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a

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broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is

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required is substantial compliance of the procedure laid therein.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be

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appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.”

18. Adverting to the facts of the present case the occurrence pertains to 18.05.2002. The evidence on record clearly establishes that on the very next day the Investigating Officer produced the case property, the sample parcels and the accused before the learned Area Magistrate, who affixed his initials upon the sample parcels as well as the case property. The samples thereafter remained in safe custody and were subsequently forwarded to the office of the Chemical Examiner. Section 52-A

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primarily provides a procedure for disposal of seized narcotic substances and for treating the inventory, photographs and certified samples as primary evidence during trial. It does not prescribe that every recovery would stand vitiated merely because an inventory in the prescribed manner was not prepared, particularly where the seized property itself has been produced before the Court and the prosecution has otherwise established the identity and sanctity of the case property. In the present case, no prejudice has been demonstrated by the appellant. The prosecution has duly proved the recovery, the sealing process, the production before the Magistrate, the safe custody and the positive report of the Chemical Examiner. Therefore, the alleged irregularity, if any, does not strike at the root of the prosecution case.

19. It has also been argued that the samples were sent to the Chemical Examiner after five days and that such delay renders the prosecution case doubtful. This submission also deserves rejection. Mere delay in dispatch of sample parcels is not by itself fatal unless the accused establishes the possibility of tampering with the seals or the case property. The Hon'ble Supreme Court in *Hardip Singh v. State of Punjab, 2008 (4) RCR (Criminal) 97* while dealing with a case relating to recovery of 7 kgs. of opium when samples were sent to chemical examiners after 40 days of recovery, however, there was no evidence that samples were tampered with or any prejudice was caused to the accused, the delay was held to be not fatal to the case of prosecution. The aspect of delay in sending the sample to the office of Chemical Examiner was discussed in *Sucha Singh v. State of Punjab 2015 (4) RCR (Criminal) 25* holding that when

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the samples were not sent to the office of Chemical Examiner within 72 hours, the prosecution and conviction cannot be vitiated on that ground since there was no specific provision in the Act in that regard and the instructions/standing orders in that respect were only the guidelines to regulate and control their internal working of Narcotic Control Bureau. In this case as has been discussed in the earlier part of the judgment, the case property had remained in safe custody and the sample parcel had reached the office of Chemical Examiner, Punjab, Chandigarh in an intact condition. Therefore, the delay of few days in sending the sample to the office of Chemical Examiner, Punjab, Chandigarh is immaterial and no prejudice is going to be caused to the appellant/accused. In the present case, PW-2 Constable Satnam Singh has categorically deposed that the sealed parcels along with specimen seals were handed over to him on 23.05.2002 and that he deposited the same in the office of the Chemical Examiner on the very same day without allowing the parcels to be tampered with. His testimony has remained unchallenged on this material aspect. The report of the Chemical Examiner also confirms that the seals on the parcels were found intact and tallied with the specimen seal forwarded separately. This circumstance rules out any possibility of tampering during the period the samples remained in police custody. Therefore, the prosecution has successfully established every link in the chain of custody and thus proved an unbroken chain connecting the recovered contraband with the sample analysed by the forensic laboratory.

20. Learned counsel has argued that Sukhdev Raj, the independent witness allegedly joined during investigation, was not examined by the

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prosecution alleging that he was won over by the appellant and thus an adverse inference ought to be drawn. This argument does not merit acceptance. Non-examination of Sukhdev Raj does not affect the credibility of the prosecution story. In *Krishan Kumar v. State of Punjab, 2016 (2) RCR (Criminal) 707*, it was observed that testimonies of the official witnesses carry the same evidentiary value as that of any other witness and their statements cannot be discarded simply on account of their official designation. A Division Bench of this Court in case *Sucha Singh v. State of Punjab 2015 (4) RCR (Criminal) 25* when an independent witness had been joined during the search and recovery of contraband; he had appeared as a witness for the defence stating that his signatures were procured on blank papers when he had visited the police station in drunken condition, had observed that such contention was not acceptable as it cannot be believed that numerous signatures on various papers having different written material could be signed by a witness on blank papers. The testimony of that witness was held to be unreliable and was discarded. In that very judgment, credibility of official/police witnesses was considered and it was observed that when there is no allegation of any enmity against the police officials to falsely implicate the appellants and there was no reason for them to depose against the appellants, the trial Court had rightly concluded that non-examination of independent witness of search and recovery being won over by the accused does not raise any doubt in the prosecution case. Even otherwise, the depositions of official witnesses are at par with that of independent witness.

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21. Furthermore, independent corroboration is a rule of prudence and not requirement of law. It is nowhere provided in any statute that independent corroboration is a must and in absence thereof, the case of the prosecution is to be rejected outrightly. In the present case, the evidence of PW-1 and PW-3 inspires complete confidence. No contradiction of material nature has been elicited in their cross-examination. Consequently, non-examination of Sukhdev Raj cannot by itself demolish the prosecution case.
22. Adverting to the plea raised by the Appellant upon the telegrams allegedly sent by his father on 15.05.2002 suggesting that the appellant had already been taken into illegal custody several days before the alleged recovery, in the considered opinion of this Court, does not probabilise the plea of false implication. In this regard the appellant examined DW-1 who substantiated that the father of appellant had booked telegrams to the Chief Justice of Punjab & Haryana High Court, Chief Minister of Punjab and DGP, Punjab and certified Ex.DA i.e. copy of telegram and Ex.DB i.e. the postal receipt. The Hon'ble Division Bench of this Court, in *Sukhpal Singh v. State of Punjab, 2022(2) DC (Narcotics) 303*, while dealing with a similar matter in which the father of the appellant had sent telegrams alleging his son's illegal detention, held that, in the absence of any previous enmity between the accused and the police officials, the plea of false implication could not be accepted. Adverting to the facts of the present case, DW-2 Gurtej Singh admitted during cross-examination that although according to him his son had been illegally detained on 10.05.2002, he neither lodged any complaint before any superior police officer nor approached any Magistrate seeking

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- production of the appellant. Even the village Panchayat allegedly informed by him passed no resolution in support of his version. The telegrams relied upon merely contain unilateral allegations made by the appellant's father. Such communications do not constitute proof of the truth of their contents. They merely establish that telegrams were sent and cannot, by themselves, establish that the appellant was in fact in illegal custody before registration of the FIR. Moreover, no independent witness has been examined to corroborate the alleged illegal detention. The certified copy of the order produced as Ex.DC and the report marked 'A' also do not establish that the appellant was detained by the police prior to the alleged recovery, rather the order Ex.DC pertains to a writ petition filed against illegal detention of one Sukhraj Singh and Pargat Singh and thus, does not advance the cause of the appellant. Consequently, the defence evidence, therefore, falls far short of creating any reasonable doubt in the otherwise cogent prosecution case.
23. Resultantly, the recovery having been proved beyond reasonable doubt, the statutory presumptions under Sections 35 and 54 of the NDPS Act automatically operate against the appellant. The appellant has not discharged the burden of rebutting these presumptions even on the touchstone of preponderance of probabilities. His plea of false implication remains a mere assertion unsupported by convincing evidence.
24. Upon appraisal of the entire evidence on record, this Court is satisfied that the prosecution has proved beyond reasonable doubt that on 18.05.2002 the appellant was found in conscious possession of four bags containing in all 80 kilograms of poppy husk, the integrity of the sample



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parcels, the chain of custody and the report of the Chemical Examiner. The testimonies of PW-1 and PW-3 are wholly reliable and inspire complete confidence. The alleged irregularities pointed out by the appellant neither constitute violations of mandatory provisions nor create any reasonable doubt regarding the prosecution case. The defence evidence is insufficient to rebut the statutory presumptions available in favour of the prosecution.

- 25. The learned trial Court has correctly appreciated the evidence and has rightly recorded the finding of guilt. This Court finds no illegality, perversity or infirmity warranting interference in the impugned judgment of conviction or the order of sentence.
- 26. Consequently, the present appeal, being devoid of merit, is dismissed.
- 27. The judgment of conviction and order of sentence dated 11.12.2003 passed by the learned Additional Sessions Judge-cum-Special Judge, Amritsar, convicting and sentencing the appellant under Section 15 of the NDPS Act are hereby affirmed.
- 28. The appellant, shall surrender forthwith before the learned trial Court to undergo the remaining part of his sentence. The trial Court shall take necessary steps to secure his custody in accordance with law.
- 29. Pending application(s), if any, shall also stand disposed of.

24.07.2026
Puneet

(RUPINDERJIT CHAHAL)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes