IN THE COURT OF SH. NISHAT BANGARH,
JUDICIAL MAGISTRATE FIRST CLASS-01 (CENTRAL), DISTRICT,
TIS HAZARI COURTS, DELHI.

CNR No. DLCT02-002984-2026
FIR No. 490/2025
PS: Karol Bagh
U/s: 33 Delhi Excise Act
State Vs. Sandeep

JUDGMENT

(a)	Sr. No. of the Case	1688/2026
(b)	Date of offence	07.04.2025
(c)	Complainant	HC Anuj Kumar
(d)	Accused name	Sandeep S/o Sh. Rajkumar
(e)	Offence	Under Section 33 Delhi Excise Act
(f)	Plea of accused	Plead not guilty
(g)	Final Order	Acquitted
(h)	Date of Institution	16.01.2026
(i)	Date when judgment was reserved	21.05.2026
(j)	Date of judgment	21.05.2026

BRIEF FACTS AND REASONS FOR SUCH DECISION

1. The prosecution story, in brief is that on 07.04.2025, at about 04:45 pm, at Ashoka Pahadi Road, near Chowgule Public School, Karol Bagh, Delhi, within the jurisdiction of PS Karol Bagh, accused was found in possession of the illicit liquor as mentioned in seizure memo mark X without any license, permit or pass and in

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contravention of the notification issued by Delhi Government. Thus, it is alleged that the accused committed an offence under Section 33 of Delhi Excise Act. After completing the formalities, investigation was carried out and chargesheet was filed.

PROCEDURAL HISTORY

2. On finding a prima facie case to proceed against the accused, cognizance of the offence was taken on 16.01.2026. The provisions of Section 230 BNSS were duly complied with. Arguments on the point of charge were heard and a formal charge for commission of offence u/s 33 of Delhi Excise Act was framed against the accused on 16.03.2026, to which, the accused pleaded not guilty and claimed trial.

3. Vide order dated 15.05.2026, in compliance of the provisions of Section 294 Cr.P.C., the accused was called upon to admit/deny the FIR bearing No. 490/2025, dated 07.04.2025 along with certificate u/s 63 (4) of BSA and endorsement on Rukka, DD No. 92A, dated 07.04.2025, Excise result bearing report No. SZD7945-7946 dated 13.06.2025 and the same were accordingly exhibited as Ex. A-1 to Ex. A-4 respectively. And on the even date, he has admitted the factum of deposition of case property in Malkhana, sending the sample case property to Excise Lab. In view of the admissions made, the evidence of HC Babu Lal, ASI Anil Singh, MHC(M) CP, Sh. Rajesh Joshi and Sh. S. K. Singh were dispensed with.

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PROSECUTION EVIDENCE

4. In order to substantiate its case, prosecution has examined three witnesses.

5. PW-1 is HC Anuj Kumar who deposed that on 07.04.2025, he was posted as HC at PS Karol Bagh. On that day, he was on patrolling duty and during patrolling at about 04:45 PM when he reached Ashoka Pahadi Road near Chowgule Public School, Karol Bagh, he saw one boy standing along with one white plastic katta. On suspicion, he inquired him about the said katta to which he replied it is having household articles. On suspicion, he checked the said plastic katta, and it was found containing two gatta pettis/cartons containing illicit quarter bottles. On inquiry the name of the accused was revealed as Sandeep. Thereafter, he informed the said incident to the duty officer of the PS and after some time IO/HC Amit Kumar came at the spot. He handed over the custody of the accused and the case property to him. IO recorded his statement which is Ex. PW-1/A. IO requested 4-5 public persons to join the investigation but all of them left the spot without disclosing their name and address. Due to paucity of time no notice was served upon them by the IO. IO checked the said white plastic katta containg two gatta petis/cartons of illicit liquor. On checking, the said cartons each cartons was found containing 48 quarter bottles of Super Himmat Santra Ordinary Spiced Country liquor for sale in Delhi only, 180ml each. IO took out one sample quarter bottle from each gatta petti and gave it

Serial No. 1 and 2 and gave the carton Serial No. S1 and S2 and prepared pulandas and duly sealed them with the seal of AK. IO seized the case property vide seizure memo which is Ex. PW-1/B bearing his signature at point A. IO also prepared form M-29 at the spot. The seal after use was handed over to him. Thereafter, IO prepared tehrir/rukka and handed over the same to him for registration of FIR. Accordingly, he went to PS got the FIR registered and after registration of FIR, he came back at the spot and handed over the copy of the FIR along with original rukka to the IO. IO prepared the site plan of the spot at my instance which is Ex.PW-1/C bearing his signature at point A. IO recorded the disclosure statement of the accused which is Ex. PW-1/D bearing his signature at point A. Thereafter, the accused was served notice u/s 35(3) BNSS by the IO and was bound down and was discharged. Thereafter, he along with IO and case property came back at the PS and IO deposited the case property in the malkhana and recorded his supplementary statement and he was discharged. He correctly identified the accused and case property Ex. P-1(colly) in the court.

During cross-examination, PW-1 submits that he does not remember the DD number vide which he departed. He reached at the spot at 04:45 PM. He was patrolling on his personal motorcycle. He had not claimed any TA regarding the use of his private motorcycle for patrolling. No CCTV camera was installed at the spot. He admit that no public person was joined in investigation by him and that no notice was given by IO to any public person to

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join the investigation and that he did not record the name and addresses of the public persons and that no addition or alteration was made by him or IO once the documents were prepared. The distance of the spot from the PS was approx. 400-500 metres. He further deposed that IO recorded his supplementary statement at the PS and original statement at the spot while sitting at the road. IO had sealed the case property at the spot and handed over the seal to him after use. He deposited the seal at the malkhana on the same day in evening.

6. PW-2 is HC Krishan who has deposed that on 22.04.2025, he was posted as Constable at PS Karol Bagh. On that day, he, at the instance of IO corrected the exhibit/sample from the MHC(M)/ HC Babu Lal and deposited the same at the Delhi Excise Lab vide Road Certificate No. 61/21/25 without any tampering which is Ex. PW-2/A bearing his signature at point A. IO recorded his statement qua the above facts and he was discharged.

During cross-examination, PW-2 submits that he does not remember the DD number vide which he departed for depositing the samples at Excise Lab.

7. PW-3 is HC Amit Kumar and he deposed that on 07.04.2025, he was posted as HC at PS Karol Bagh. On that day, after receiving DD No. 92A, at about 05:10 pm, he went to the spot i.e. Ashoka Pahadi Road near Chowgule Public School, Karol Bagh. On reaching there, he met HC Anuj Kumar along with the accused whose name on inquiry was revealed as Sandeep. HC Anuj handed over the custody of accused Sandeep along with case property i.e. one

plastic katta containing illicit liquor quarter bottles. He recorded the statement of HC Anuj which is Ex. PW1/A bearing his signature at point B. He requested 4-5 public persons to join the investigation but all of them left the spot without disclosing their name and address. Due to paucity of time no notice was served upon them by the him. He checked the said plastic katta, and it was found containing two gatta pettis/cartons containing illicit quarter bottles. On checking, the said cartons each carton was found containing 48 quarter bottles of Super Himmat Santra Ordinary Spiced Country liquor for sale in Delhi only, 180ml each (total 96 quarter bottles). He took out one sample quarter bottle from each gatta petti and gave it Serial No. 1 and 2 and gave the carton Serial No. S1 and S2 and prepared pullandas and duly sealed them with the seal of AK. He seized the case property vide seizure memo which is Ex. PW-1/B bearing his signature at point B. He also prepared form M-29 at the spot which is Ex. PW3/A bearing his signature at point A. The seal after use was handed over to HC Anuj. Thereafter, he prepared tehrir/rukka which is Ex. PW3/B bearing his signature at point A and handed over the same to HC Anuj for registration of FIR at about 07:00 pm. Accordingly HC Anuj went to PS got the FIR registered and after registration of FIR, he came back at the spot and handed over the copy of the FIR along with original rukka to him. He prepared the site plan of the spot at his instance which is Ex.PW-1/C bearing his signature at point B. He recorded the disclosure statement of the accused which is Ex. PW-1/D bearing his signature at point B. Thereafter, the accused was served notice u/s 35(3) BNSS by him which is Ex. PW3/C bearing his signature at point A and was bound down vide memo which is Ex. PW3/D bearing his signature at point A and he was discharged. Thereafter, HC Anuj along with him and case property came back at the PS and he deposited the case property in the malkhana and recorded supplementary statement of HC Anuj and he was discharged. Thereafter, Ct. Krishan at his instance collected the sample case property from Malkhana Incharge, MHC(M) CP, HC Babu Lal and deposited the same at excise lab vide road certificate No. 61/21/25 dated 22.04.2025 without tampering. He recorded the statement of MHC(M) and Ct. Krishan and they were discharged. After collecting the opinion/result qua the samples from the excise lab, he placed the same on record. After completion of investigation, he filed the charge-sheet before the concerned court. He identified the accused and case property in the court.

During cross-examination, PW-3 submitted that he went to the spot on my personal bike. He reached at the spot at 05:30 pm. He met HC Anuj along with the accused at the spot. He admitted that the spot was a public place and that no public person was joined in investigation by him and that no notice was given by him to any public person to join the investigation. It is correct that He did not record the name and addresses of the public persons. No CCTV camera was installed at the spot. He does not not remember the colour of the clothes of accused which he was wearing at the time of incident. He also admitted that no addition or alteration was made by him once the documents were prepared. The distance of the spot from the PS was approx. one kilometre. He recorded supplementary statement of HC Anuj at the PS and his original statement at the spot while sitting at the road. He had sealed the case property at the spot and handed over the seal to him after use.

8. Thereafter, the prosecution closed its evidence.

STATEMENT U/S 313 Cr.P.C. r/w Section 281 Cr.P.C.

9. Statement of accused under section 313 Cr.P.C. r/w Section 281 Cr.P.C. was recorded wherein the he denied all allegations against him. He further stated that he did not wish to lead any defence evidence. Accordingly, matter was fixed for final arguments.

ARGUMENTS

10. The Court has heard the submissions made by Ld. APP for the state as well as the Ld. defence counsel at length.

11. Ld. APP for the state submits that the accused is liable to be convicted for the offences charged as the prosecution has been able to bring home the guilt of the accused.

12. Ld Defence counsel, on the other hand, submits that the prosecution has miserably failed to establish the guilt of the accused and the accused is therefore, entitled to be acquitted of the charges levelled against him. It is

submitted on behalf of the accused person that he is innocent and has been falsely implicated in this case and the falsity of the prosecution case is manifest from the fact that even though the place where the illicit liquor was allegedly recovered, public persons were present there, despite that neither any public witness was made part of the investigation nor any notice under section 179 BNSS was issued to public witness. Ld defence counsel argues that the failure on the part of the police to show that genuine efforts were made to join public persons as witnesses brings the factum of recovery itself under doubt. It is further argued by the defence counsel that the seal was also not handed over to any public person, it was in the possession of a police official i.e. HC Anuj who can tamper with the case property at any stage. Hence, it would not be safe to rely on the Chemical Examiner's report. With the recovery of illicit alcohol from the accused and the genuineness of the sample being rendered doubtful, the case of the prosecution is brought to its knees, leaving no ground for holding the accused guilty of offence under section 33 of Delhi Excise Act.

REASONING/DISCUSSION/CONCLUSION

13. I have heard the submissions of both the parties and perused the record. Before delving into the merits of the case, I find it pertinent to refer to the relevant provision of law, i.e., Section 33 of the Delhi Excise Act which reads as under:

> *33. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.*

(1) Whoever, in contravention of provision of this Act or of any rule or order made or notification issued or of any licence, permit or pass, granted under this Act—
(a) manufactures, imports, exports, transports or removes any intoxicant;
(b) constructs or works any manufactory or warehouse;
(c) bottles any liquor for purposes of sale;
(d) uses, keeps or has in his possession any material, still, utensil, implement or apparatus, whatsoever, for the purpose of manufacturing any intoxicant other than toddy or tari;
(e) possesses any material or film either with or without the Government logo or logo of any State or wrapper or any other thing in which liquor can be packed or any apparatus or implement or machine for the purpose of packing any liquor;
(f) sells any intoxicant, collects, possesses or buys any intoxicant beyond the prescribed quantity,
shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees.

14. Since the case of the prosecution is that on the fateful day, the accused was found in possession of illicit liquor, without any permit or license, the clause that is applicable on the facts of the present case is clause (f) which penalizes possession of any intoxicant beyond prescribed quantity. In order to bring home the charge against the accused, the prosecution was first of all required to prove beyond reasonable doubt the recovery of illicit liquor from the possession of accused and thus, the testimony of the recovery witness as well as

the IO is of crucial importance since both of them have testified regarding the alleged recovery.

15. However, a perusal of the testimonies of the witnesses read along with various documents placed on record shows that there are glaring loopholes in the prosecution story which have been dealt with one by one below.

16. The first weakness in the prosecution case appears in the form of absence of any public witness to confirm the factum of recovery of illicit liquor from the accused. The witnesses have testified that no public person was made to join the investigation. They further admitted that their name or address was not noted and no notice was served on any public person. It is well settled law that if a public witness is not available, then the prosecution must show that sincere effort was made to ensure the presence of public witness to join the investigation. In the present case, the prosecution has not shown proof of any such efforts, on contrary, it is admitted by the witnesses that they have not issued any notice to the public persons to join the investigation. In view of the court, the absence of public witness, therefore, weakens the case of the prosecution.

17. The final fatal weakness that shakes the foundation of prosecution story is that the seal was never handed over to a public witness. The seal was in the possession of a police official, the importance of handing over the seal to a public person cannot be ignored as it ensure that the case property seized by the

IO was not tampered with at any later point. Reference is made to the judgment of Hon'ble High Court of Delhi in ***Safiullah vs State (Delhi Administration)*** 49 (1993) DLT 193 wherein it was held that:

> *"It is nowhere the case of the prosecution that the seal after use was handed over to the independent witness. Even the public witness does not utter a word regarding the handing over of the seal after use. Therefore, the conclusion which can be arrived at is that the seal remained with the Investigating Officer or with the other member of the raiding party therefore the possibility of interference or tempering of the seal and the contents of the parcel cannot be ruled out."*

18. Reference is also made to the judgment of Hon'ble Punjab and Haryana High Court in **Ramji Singh v. State of Haryana**, 2007 (3) RCR (Criminal) 452, wherein it was held that:

> *"The very purpose of giving seal to an independent person is to avoid tampering of the case property."*

19. In the present case, the seal was handed over to a police official itself i.e. HC Amit. The fact that seal was never handed over to an independent person but to a police official who was posted at the same police station as the IO indicates that the seal was still accessible to the IO and hence, opens up the possibility of the case property being tampered with. Thus, it would not be safe to make any presumptions regarding the genuineness of the case property.

20. The facts that no independent witness was cited or examined and possibility of tampering of case property has not been ruled out, when kept in

juxtaposition to each other, cast a cloud of suspicion over the prosecution version. Hence, for these reasons, the possibility of false implication of the accused in the present case cannot be ruled out.

21. It is a well known principle in criminal jurisprudence that the standard of proof to be adopted in criminal cases is not merely of preponderance of probabilities but proof beyond reasonable doubt on the basis of cogent, convincing and reliable evidence. It is also well settled that in case of doubt, the benefit must necessarily be allowed to the accused.

22. Thus, in view of the foregoing analysis, this Court is of the considered opinion that the benefit of doubt ought to be granted to the accused, who is entitled to be exonerated of the charges against him in the present case. The accused is hereby acquitted of the offence punishable under Section 33 of the Delhi Excise Act. His surety stands discharged and bail bonds stand cancelled. Original documents, if any, be returned after cancellation of endorsement(s). Copy of the judgment be provided to the accused person free of cost.

Pronounced and Signed

in the Open Court on 21.05.2026.

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