

**IN THE COURT OF JUDICIAL MAGISTRATE, IST CLASS AT
SAMANA
(PRESIDED OVER BY MS. DIMPLE GARG)
(UID No. PB00803)**

CNR No. PBPTC10032432022

C.I.S No : CHA-225/2022

Date of Institution : 07.12.2022

Date of Decision : 14.07.2026

State Vs Gurmukh Singh son of Piara Singh, r/o village
Marori, PS Sadar Samana, District Patiala.

....**Accused.**

FIR No: 183 dated 20.08.2022

U/s: 61 of the Punjab Excise Act, 1914

Police Station: Sadar Samana.

Present: Sh. Harjot Singh, Ld. APP for the State.
Accused Gurmukh Singh on bail.
Sh. K.K Murari, Advocate, counsel for accused.

JUDGMENT

This judgment of the Court shall dispose of the case instituted against Gurmukh Singh (hereinafter 'accused') based on the police report filed on 07.12.2022 alleging the commission of an offence under Section 61 of The Punjab Excise Act, 1914 (hereinafter referred as 'Act').

1. The brief facts of the present case as envisaged in the police report submitted under Section 173 of Code of Criminal Procedure, 1973 (hereinafter 'Cr.PC') and documents appended therewith, is that, on 20.08.2022, ASI Labh Singh, along with other police officials was present at Mardaheri road T point village Marori for prevention of drug addiction movement. They were using a private vehicle and were

equipped with a laptop and a printer. During the course of patrolling, ASI Labh Singh received secret information indicating that the accused habitually distills and sells illicit liquor in his house and if raid be conducted at his house, he can be caught red handed.

Investigation:

2. Thereafter, acting upon the information received, the police party conducted a raid at the disclosed place. When the police party reached the main gate of the house of accused, they saw a young man wearing a turban/scarf on his head. He was inside the house, inserting a plastic pipe into a plastic drum of blue colour and was drawing out some liquid from the drum. On seeing the police party, he immediately dropped the plastic pipe into the drum and the bottle he was holding and fled away from the spot. He was followed by ASI Charanjit Singh but could not be apprehended. On return, ASI Charanjit Singh told ASI Labh Singh that the person who fled away from the spot is Gurmukh Singh son of Piara Singh, r/o village Marori, PS Sadar Samana as he was already known to him. Thereafter, ASI Labh Singh removed the plastic pipe from the drum and checked it and the same was containing illicit liquor. Another plastic drum lying nearby was also opened. On checking, it was containing illicit liquor. Thereafter, two samples of 180 ML were drawn from the above said drums. The remaining liquor was measured using another plastic drum and on measuring, it came out to be 259 $\frac{3}{4}$ bottles of illicit liquor in blue plastic drum and while the second plastic drum contained 147 $\frac{3}{4}$ bottles of illicit liquor (total 408 bottles of illicit liquor). The liquor was poured back into the respective drums. Thereafter, both

samples (180 ml each) along with the two plastic drums containing illicit liquor (259 ³/₄ bottles in one drum and 147 ³/₄ bottles in other drum) were sealed by IO with his seal bearing impression "LS". Sample seals were prepared separately and seal after use was handed over to ASI Gurdev Singh. Thereafter, the case property was taken into Police possession. Thereafter, a ruqa was sent through HC Dilbag Singh for the registration of an FIR under Section 61 of the Act. Site plan was prepared at the spot. While returning to the police station, case property was deposited into police malkhana. On 24.08.2022, the samples were forwarded for chemical examination to office of Chemical Examiner, Kharar. Thereafter, on 13.09.2022, ASI Shamsheer Singh received information that the accused in the present case had already been arrested by CIA Staff, Samana in FIR No. 17 dated 14.01.2021 under Section 61 of the Act, Police Station Sadar Samana and was lodged in the lock-up of Police Station Sadar Samana. Acting upon the said information, ASI Shamsheer Singh, along with the police party, reached Police Station Sadar Samana. The person who was in police custody, was asked to disclose his whereabouts. He identified himself as Gurmukh Singh son of Piara Singh, r/o village Marori, Police Station Sadar Samana, District Patiala. The facts of the present case and the allegations against him were explained to the accused, and after informing him of the grounds of arrest, he was formally arrested and his personal search was conducted. The statements of the witnesses were recorded. On 13.09.2022, the accused was produced before the Court of Ld. SDJM, Samana, from where he was sent to judicial custody. Thereafter, on 06.10.2022, the

report of Chemical Examiner was received, according to which both the samples were illicit liquor. During investigation, statements of the witnesses were recorded. After completion of the investigation and other necessary formalities challan was presented before the Court.

On presentation of challan, accused was supplied with the copies of challan and documents appended therewith free of costs and the mandatory compliance of section 207 CrPC was done.

Framing of charge:

3. After hearing Ld. APP for the State as well as Ld. counsel for accused and after perusing the police report and documents appended thereto, this Court was satisfied that a prima facie case was made out against the accused. Accordingly, charge was framed against the accused under sections 61 of the Act.

The contents of the charge were read over and explained to the accused in simple language to which the accused plead 'not guilty' and claimed trial. Thereafter, the case proceeded for prosecution evidence.

Prosecution Evidence:

4. In order to prove its case, the Ld. APP for the state has examined the following witnesses:

(i) **PW-1 is ASI Charanjit Singh.** He is the attesting witness of memos prepared during investigation and has deposed as per the story of the prosecution. He has also proved on record sample seal Ex.P1, recovery memo Ex.P2, ruqa Ex.P3, FIR Ex.P4, endorsement regarding FIR Ex.P5,

rough site plan Ex.P6, identification memo Ex.P7, arrest-cum-intimation memo Ex.P8, personal search memo Ex.P9 and the case property as Ex.MO1 & Ex.MO2 (the two plastic drums containing illicit liquor).

(ii) **PW-2 is retired SI Labh Singh.** He is the Investigating officer in this case and has deposed as per the story of the prosecution. He has also proved on record various documents prepared during investigation i.e. sample seal Ex.P1, recovery memo Ex.P2, ruqa Ex.P3, FIR Ex.P4, endorsement regarding FIR Ex.P5 and the case property as Ex.MO1 & Ex.MO2 (the two plastic drums containing illicit liquor).

(iii) **PW-3 is ASI Nirmal Singh.** He has deposed with regard to handing over the case property to him by IO ASI Labh Singh and depositing of the same by him in the malkhana of the police station after making the relevant entry in the register no.19. Thereafter, on 24.08.2022, he handed over the sample parcels to Ct. Major Singh for depositing the same in the office of chemical examiner, Kharar.

(iv) **PW-4 is ASI Gurdev Singh.** He is the attesting witness of memos prepared during investigation and has also conducted the later investigation of this case. He has deposed as per the story of the prosecution. He has also proved on record sample seal Ex.P1, recovery memo Ex.P2,

ruqa Ex.P3, FIR Ex.P4, endorsement regarding FIR Ex.P5, rough site plan Ex.P6, form no.29 Ex.PW4/A, report of Chemical Examiner Ex.PW4/B and the case property as Ex.MO1 to Ex.MO4 (the two plastic drums containing illicit liquor, plastic pipe and an empty bottle).

(v) **PW-5 is Baldev Singh Numberdar.** He has deposed that house as shown to him by the police belongs to the accused and the same is situated within the lal lakir land of the village.

(vi) **PW-6 is SC Major Singh.** He is the witness who has deposited the sample parcel at Chemical Examination Office, Kharar and has deposed that he has deposited the sample there after the requisite forwarding from the SSP Office, Patiala and has further deposed that neither he nor anyone else has tampered with the same during the time it was in his possession.

(vii) **PW-7 is ASI Shamsher Singh.** He is the witness who has conducted part of the investigation and completed the remaining investigation of this case. He has proved on record identification memo Ex.P7, arrest-cum-intimation memo Ex.P8, personal search memo Ex.P9 and report of Chemical Examiner Ex.PW4/B.

Thereafter, vide separately recorded statement, Ld. APP for the State closed the prosecution evidence.

Section 313 statement and Defence evidence:

5. Thereafter, the statement of the accused under section 313 CrPC was recorded and the entire incriminating material appearing against him were put to him for his explanation. To which, the accused pleaded his innocence and alleged false implication in the case and has stated that he does not want to lead any evidence in his defence.

Points of determination:

6. I have heard the arguments of Ld. counsels for both the parties and have perused the record minutely. After doing so, the following Point of determination is being framed:

(i) *Whether the accused is liable to be convicted for the offence under Section 61 of the Act, on the basis of the evidence brought on record by the prosecution?*

7. That the Ld. Counsel for the State, relying upon the testimonies of the prosecution witnesses and the findings of the investigation, has put forth the case that the police party, acting on credible secret information, conducted a raid at the house of the accused and on seeing the police party, he ran away from the spot but was identified by ASI Charanjit Singh. On search of the house, two plastic drums containing illicit liquor (260 bottles in one drum and 148 bottles in other drum) were found and the same were without any valid permit or licence, thereby attracting the provisions of Section 61 of the Act.

8. The Ld. Counsel has further vehemently contended that the prosecution has succeeded in establishing the guilt of the accused beyond reasonable doubt by leading cogent, consistent, and credible evidence. It has been argued that the recovery of the illicit liquor stands duly proved by the statements of the witnesses and the same have remained

unrebutted and unshaken during cross-examination. Accordingly, the prosecution has prayed for the conviction of the accused for the offence with which he has been charge-sheeted.

9. Though the Ld. Counsel for accused has not adduced any evidence or examined any witness in support of his case, however, has strongly argued that the accused has been falsely implicated in the present case and that he has committed no offence. It is argued that no recovery, as alleged, was ever affected from the possession of the accused, and that the purported recovery has been falsely planted to implicate him in a fabricated case. He further argued that the prosecution story does not inspire any confidence and authenticity as the police officials while effecting recovery failed to join any independent witnesses. Therefore, the case put forth is nothing more than a concocted story. It is argued that the prosecution has miserably failed to discharge its burden of proving the guilt of the accused beyond all reasonable doubt. Therefore, he prays for acquittal of the accused in the present case.

10. After considering the submissions advanced by both the counsels, it emerges that the defence has chosen not to adduce any evidence or examine any witness in support of its case. However, the absence of defence evidence does not absolve the prosecution of its primary burden. Rather, it places greater emphasis on the need for the prosecution to prove its case independently and conclusively. It is general principle of criminal jurisprudence that it is the duty of prosecution to prove the guilt of accused beyond all reasonable doubts.

11. In a criminal trial, one of the essential elements that the prosecution is required to establish in order to secure a conviction is the presence of a “causal link” or “element of causality”. This element involves proving that the specific conduct which resulted in the commission of the offence is directly attributed to the accused. In other words, it must be proved beyond reasonable doubt that it was the actions or omissions of the accused, and not those of any other individual, that caused the offence in question. Establishing this causal connection is fundamental to linking the accused to the offence, as it forms the basis for attributing criminal liability. Without this nexus between the accused’s conduct and the resultant offence, the charge cannot be sustained.

12. In the present case, in order to discharge this burden, that is, in order to prove that the alleged recovery was made from the possession of the accused, the prosecution primarily relies upon the statement of PW1 ASI Charanjit Singh, PW2 retired SI Labh Singh and PW4 ASI Gurdev Singh.

PW-2 retired SI Labh Singh in his statement before this Court has stated that he along with other police officials, was present at Mardaheri road T point village Marori for prevention of drug addiction movement. During the course of patrolling, he received secret information indicating that the accused was habitually involved in distilling and selling illicit liquor. Relying upon this information, he along with the police party conducted a raid at the house of the accused and on seeing the police party, accused fled away from the spot and that

he was followed by ASI Charanjit Singh but could not be apprehended but he was identified the accused as he was already known to him. On search of the house, two plastic drums containing illicit liquor (260 bottles in one drum and 148 bottles in other drum) were found.

PW-1 ASI Charanjit Singh and PW-4 ASI Gurdev Singh deposed in a manner consistent with the testimony of PW-2 retired SI Labh Singh. Their statement not only corroborated but also supported the version of PW-2 on all material particulars, particularly with respect to establishing the causative link. All these witnesses identified the accused while he was present in the Court.

13. At this juncture, as regards establishing the causative link, it is pertinent to note that the alleged recovery was made from the house of the accused, that is situated within lal lakir area of the village and this fact has been duly proved by the testimony of PW 5 (Numberdar of the village)

Merely because of the fact that the alleged illicit liquor is recovered from the house of the accused is not in itself sufficient to prove the fact that it was the accused only and not any other family member residing in the said house who was in possession of the illicit liquor. The fact that the accused was in possession of the illicit liquor needs to be corroborated by other evidences.

14. One such corroboration is joining an independent witness at the time of recovery. Also, as part of the procedure and in order to ensure authenticity of the recovery, it is must that an independent/public witness is joined at the time of alleged recovery. The same has been discussed by

the Hon'ble Punjab and Haryana High Court in the case of **Darshan Singh vs State of Punjab (1998 (4) RCR (Criminal) 164)** and has held as follows:

4. In this case, conviction is resting on the testimony of ASI Harbans Singh and that of Constable Gurdial Singh. There is no corroboration to their testimony by independent evidence. No independent witness was joined in the raid by ASI Harbans Singh though ASI Harbans Singh was proceeding on receipt of secret information which he thought to be reliable. ASI Harbans Singh ought to have joined some independent witness when he was going to raid the house of the accused. Apprehension of Darshan Singh petitioner was not sudden. His apprehension was in pursuance of receipt of some secret information, which was that he was in the habit of distilling illicit liquor and if a timely raid was conducted at his house, illicit liquor could be recovered from his house. Further PWs are discrepant with each other. One PW has stated that the informer accompanied them upto the house of the accused and he pointed out to them the house of the accused while other PW has stated that informer parted them on the way. In my opinion, it would not be safe to convict the accused on the sole testimony of police officials who have not been corroborated by any independent evidence. Police officials as we know, are interested in the success of the case detected by them and to achieve success in the case detected by them, they show sometimes vehemence also.

However, in the present case, no independent witness was joined at the time of alleged raid or recovery. In fact, nowhere in the prosecution story, it is stated that the investigating team has made strenuous efforts to join an independent witness at the time of alleged

recovery. At the time, when secret information was received, the investigating team was present at Mardaheri road T point village Marori for prevention of drug addiction movement, they had sufficient time and opportunity for arranging an independent witness. But, the same was not done and thereby, creating a dent in the prosecution story and further weakening the prosecution story that the illicit liquor was recovered from the possession of the accused.

15. Furthermore, it is the case of the prosecution the accused fled away from the spot after seeing the police party and that he was not apprehended from the spot. Nowhere in the prosecution case, is it established that the alleged recovery of illicit liquor was from the possession of the accused. The case of the prosecution is simply that the illicit liquor was from his house and the same is silent as to the fact that whether the same was in his possession or any other family member who resided in the house.

16. Moving towards certain other connecting facts or links as regards which the prosecution story and the witnesses who were part of alleged recovery are silent, which otherwise would have corroborated the story of the prosecution. It is silent as regards the fact who lead them to the house of the accused or the fact as to who pointed out to them that this is the house of the accused or the fact that they already knew which was the house of the accused. Nothing is mentioned as to how the investigating team reached the house of the accused.

The fact that no witness has deposed in their testimonies as regards these connecting facts or links and that even the chalan presented

before the Court is silent as regards the abovementioned facts further creates a doubt in the prosecution story as to the alleged recovery.

17. Now, moving towards certain shortcomings in the testimonies of PW 3 (MHC, ASI Nirmal Singh) and PW 6 (sample carrier, SC Major Singh), that leads to another doubt in the story of the prosecution. PW 3, the MHC at the relevant point of time, has vide its affidavit stated that he had made all the relevant entries in register no. 19 as regards the depositing of the case property and the samples in the malkhana and as regards the handing over of the samples to the sample carrier. However, neither the copies nor the original register no. 19 has been produced for the perusal of the Court. Neither of the two has been produced before the Court for proving his testimony.

Similarly, PW 6, the sample carrier, to whom the samples were handed over for depositing them for chemical examination at Kharar, which was to be done after the required forwarding from the SSP Office. During his testimony as well, neither the road receipts nor the entries in the register has been placed on record. Both of these documents have not been produced for proving his testimony.

18. Moving ahead, it is well settled principle of law after sealing the case property, the seal vide which the investigating officer seals the case property has to be handed over to an independent person so that the case property is not compromised and tampered with during investigation. However, in the present case, the investigating officer has handed over his seal (LS), vide which he has sealed the case property at the spot, to ASI Gurdev Singh and not to any independent person.

Thereby, leading to another lapse in the procedure followed during alleged recovery.

19. It is well settled principle of criminal jurisprudence that in a criminal trial, the burden of proving the guilt of the accused is on the prosecution and the same has to be proved beyond reasonable doubts by leading cogent and convincing evidence. In criminal law, there are three essential requisites of any offence, viz. mens rea, actus reus and the causative link. In order to convict the accused, in addition to establishing mens rea and actus reus, the prosecution also has the onus to establish the causality element, that is, the prosecution has to prove that it was the act or omission of the accused only that has resulted into the alleged occurrence. The element of causality establishes a live link between the conduct of the accused and the actus reus. In the present case, though the actus reus, i.e. recovery of illicit liquor is an apparent and an undisputed fact, however, the causative link has not been established beyond reasonable doubts. In the present case, the three star witnesses i.e PW1, PW2 and PW4 are police officials and are part of the investigating team and as such no independent witness was joined by the investigating agency at the time of alleged recovery. Due to which, the possession of the accused as regards the illicit liquor cannot be said to have been proved. Moreover, the accused has not been apprehended from the spot. As such, it cannot be said with certainty that it is the accused only who has committed the alleged offence. In absence of such live causative link, taking any contrary view in the backdrop of the facts of this case will be against the principles of fairness and justice. The court cannot take a

view against the established principles of criminal jurisprudence that derives its authenticity from the grundnorm, the Constitution.

19. Moreover, due to other procedural irregularity that is non handing over of sample seal to an independent person, the lack of connecting link as to the fact who lead them to the house of the accused and the non-production of relevant record as regards the case property further weakens the prosecution story and creates a doubt in the version of the prosecution. In light of the same, the Court is of the considered opinion that the prosecution has failed to discharge the burden of proof casted upon them, that is they have failed to prove the guilt of the accused beyond reasonable doubts. Accordingly, the point of determination is decided in favor of the accused and against the prosecution. Resultantly, accused Gurmukh Singh is acquitted of charges framed against him. His earlier bail bonds are kept intact for another 6 months and are treated as bonds under Section 437A CrPC. Case property, if any, be disposed of as per rules after the period of appeal or revision. File be consigned to the Record Room.

Pronounced in open court.

Dated: 14.07.2026

#Gurdhian Singh#

(Dimple Garg)
Judicial Magistrate Ist Class
Samana. UID No. PB00803

ANNEXURE-A

LIST OF PROSECUTION WITNESSES

RANK	NAME	NATURE OF EVIDENCE
PW-1	ASI CHARANJIT SINGH	ATTESTING WITNESS
PW-2	RETIRED SI LABH SINGH	INVESTIGATING OFFICER
PW-3	ASI NIRMAL SINGH	MHC
PW-4	ASI GURDEV SINGH	ATTESTING WITNESS
PW-5	BALDEV SINGH	NUMBERDAR
PW-6	SC MAJOR SINGH	SAMPLE CARRIER
PW-7	ASI SHAMSHER SINGH	ATTESTING WITNESS

ANNEXURE-B

LIST OF DEFENCE WITNESSES

NO EVIDENCE HAS BEEN LED BY THE ACCUSED IN HIS DEFENCE.

ANNEXURE-C

LIST OF PROSECUTION EXHIBITS

Sr. No.	EXHIBIT NO.	DESCRIPTION
1.	Exhibit P-1/PW1	SAMPLE SEAL
2.	Exhibit P-2/PW1	RECOVERY MEMO
3.	Exhibit P-3/PW1	RUQA
4.	Exhibit P-4/PW1	FIR
5.	Exhibit P-5/PW1	ENDORSEMENT
6.	Exhibit P-6/PW1	ROUGH SITE PLAN
7.	Exhibit P-7/PW1	IDENTIFICATION MEMO
8.	Exhibit P-8/PW1	ARREST MEMO
9.	Exhibit P-9/PW1	PERSONAL SEARCH MEMO
10.	Exhibit PW-4/A/PW4	FORM NO.29
11.	Exhibit PW-4/B/PW4	CHEMICAL EXAMINER REPORT

ANNEXURE-D

LIST OF DEFENCE EXHIBITS

NO DOCUMENT HAS BEEN EXHIBITED BY THE ACCUSED.

ANNEXURE-E

LIST OF MATERIAL OBJECTS

Sr. No.	EXHIBIT NO.	DESCRIPTION
1	EXHIBIT MO-1 TO EX.MO4/PW4	CASE PROPERTY I.E. TWO PLASTIC DRUMS CONTAINING ILLICIT

		LIQUOR, PLASTIC PIPE AND EMPTY BOTTLE
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(Dimple Garg),
Judicial Magistrate Ist Class,
Samana.UID No.PB0803

Present: Sh. Harjot Singh, Ld. APP for the State.
Accused Gurmukh Singh on bail.
Sh. K.K Murari, Advocate, counsel for accused.

Section 313 CrPC statement recorded, wherein he has denied all the allegations against himself and has pleaded to be innocent. He has further stated that he does not wish to lead any evidence in his defence.

Arguments heard. Vide my separate detailed judgment of even date, accused Gurmukh Singh is acquitted of charges framed against him. His earlier bail bonds and surety bonds are kept intact for another six months and be treated s bonds under Section 437-A CrPC as prayed for, by the accused. Case property, if any, be disposed of as per rules after the period of appeal or revision. File be consigned to the Record Room.

Pronounced in open court.

Dated: 14.07.2026

#Gurdhian Singh#

(Dimple Garg)
Judicial Magistrate Ist Class
Samana. UID No. PB0080