

State Vs. Sampan Sharma 1

IN THE COURT OF Ms. KAVITA GARG, PCS, JUDICIAL
MAGISTRATE IST CLASS, LUDHIANA. (UID No. PB0816)

CIS Case No.	CHA/06/2023
CNR No.	PBLD030003332023
Date of Institution	04.01.2023
Date of Order	03.10.2025

State

Versus

1. Sampan Sharma @ Atul sonof Prem Prakash, R/o
#1230, Street No.1, Mohalla Field Ganj, Ludhiana.
.....Accused

FIR No. 03 Dated 06.01.2022

U/S 61/1/14 Excise Act

PS Division No.1, Ludhiana.

Present:

Sh. Jasmeet Singh Bhogal, Ld. APP for the State.

Accused Sampan Sharma on bail represented by Ld.

Counsel.

JUDGMENT

1. The above named accused has been forwarded by SHO Police Station Division no.1, Ludhiana to stand trial in FIR No.03 Dated 06.01.2022, U/S 61 Excise Act, Police Station Division no.1, Ludhiana.

PROSECUTION STORY

2. In nutshell, the prosecution story is that on 06.01.2022 SI Maninder Kaur along with police party with regard to search and checking of bad elements and vehicles was present at Ghanta ghar chowk where secret informer came and told that Swapan Sharma @Atul who is carried on the work of selling illicit liquor and was coming on Activa

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bearing No. PB-10-HJ-0801 along with huge quantity of liquor from Jagraon pull side towards Lakkad pull Ludhiana. If naqa bandi be done he can be apprehended. Believing the information is correct IO scribed ruqa and sent it through Ct. Harjinder Singh for the registration of the FIR. On the basis of ruqa was registered by ASI Satnam Singh. Then IO along with police party went to the place as disclosed by secret informer and naqa bandi was done at Lakkad pull, during checking from Jagraon pull side one person was seen coming on an activa, who on seeing the police party got frightened and tried to turn back. IO with the help of police party apprehended that person and inquired about his whereabouts who disclosed his name as Sapan Sharma @ Atul S/o Prem Parkash R/o # 1230 St No.1 Fieldganj Ludhiana. He has kept one plastic bag in front of the activa bearing No. PB-10-HJ-0801. IO in the presence of police party checked the plastic bag from which 24 bottles of liquor make Royal Stag 750/750 ml was recovered. Arrangement was made for measuring the same sand all the liquor in the bottles were put in a tub by breaking the seals of the bottles and one sample of 180 ml was drawn and which was sealed by her with her seal impression MK. The remaining liquor came out to be 23-3/4 bottles and the same was put in the plastic cane and were sealed by her with her seal impression MK. The empty 24 bottles were also taken into the police possession by putting the same in the plastic bag and sealing the same with her seal impression MK. Sample seals were prepared, form no.29 M was completed at the spot. The seal after use was handed over to HC Kiran Kumar. All the said case property along with

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activa was taken into police possession. IO prepared site plan of place of recovery. The accused was arrested and his personal search was conducted. Accused also produced the photocopy of RC which was taken into police possession. FSL report was obtained. Statements of witnesses were recorded. The case property was deposited with MHC. After the completion of the investigation the challan was prepared and presented by SHO Sulakhan Singh.

3. On appearance of accused in the Court, copies of documents relied upon by prosecution were supplied to accused free of costs as envisaged under Section 207 Cr.P.C/230 BNSS.

CHARGE SHEET

4. Finding a prima-facie case, charge under Section 61/1/14 of Excise Act was framed against accused. The contents of the same were read over and explained to the accused. The accused pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

5. In order to prove its case, prosecution got examined PW-1 SI Maninder Kaur, PW-2 SI HC Kiran Kumar, PW-3 SC Harjinder Singh, PW-4 SC Gurdeep Singh and PW-5 Mohd. Shabir. The prosecution tendered in evidence following documents:-

Sr. No.	Exhibits	Documents
1.	Ex.P1	Ruqa
2.	Ex.P2	FIR
3.	Ex.P3	Endorsement

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4.	Ex.P4	Recovery memo of activa
5.	Ex.P5	Site Plan
6.	Ex.P6	Arrest-cum-intimation memo
7.	Ex.P7	Personal search memo
8.	Ex.P8	Recovery memo of RC
9.	Ex.P9	Sample seal chit
10.	Ex.P10	Form no.29M
11.	Mark A	RC
12.	Ex.MO1 and Ex.MO2	Case property
13.	Ex.PW5/1	Record of activa
14.	Ex.PW5/2	Certificate u/s 63 of BSA

Thereafter, the evidence of prosecution was closed by order.

STATEMENT OF ACCUSED UNDER SECTION 313 Cr.P.C.

6. The statement of accused under Section 313 Cr.P.C. was recorded in which the entire incriminating evidence of the prosecution was put to him. The accused denied the same. It is stated by the accused that he is innocent and he has been falsely implicated in the present case. The accused opted to lead any evidence in defense.

ARGUMENTS

7. The learned APP for the State argued that the material witnesses of the prosecution have been examined. It is argued that the prosecution has managed to prove the guilt of the accused beyond reasonable doubt. There is sufficient evidence on record to prove the fact that the accused was found in possession of 24 bottles of liquor 750 ML

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each make Royal Stag, without any permit or license. Therefore, it is argued that the accused be accordingly convicted and sentenced for having committed such a serious offence.

8. On the other hand, learned counsel for the accused argued that the prosecution has failed to prove the guilt of the accused beyond any shadow of doubt. It is argued that the accused have been falsely implicated in the present case. There are material discrepancies in the statement of prosecution witnesses. The place of recovery is thickly populated area, but there is no independent evidence on record against the accused. There are no signatures of accused on the recovery memo. Moreover, in the present case, Excise Inspector should be the complainant which is not the case in present FIR. Vehicle has also not been produced in the present case. Therefore, it was prayed that the accused be acquitted in the present case. Ld. Counsel for accused has also relied upon following citations: 1984(2) RCR (Criminal) 514, 2003(1) RCR (Criminal), 1997(4) RCR (Criminal) 400, 1991(2) RCR (Criminal) 361, 1998(3) RCR (Criminal) 274, 2019(4) RCR (Criminal) 741 and case titled as Gurjant Singh @ Janta Vs. State of Punjab pronounced on 21.03.2024 by Hon'ble Punjab and Haryana High Court.

9. I have heard the arguments of learned APP for the State and learned defence counsel, and I have gone through the case file minutely.

POINT OF CONSIDERATION

10. The following points of consideration arise in order to determine the culpability of the accused:-

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1. Whether on 06.01.2022 in the area of PS Division no.1, Ludhiana accused was found in possession of 24 bottles of liquor 750 ML each make Royal Stag without any permit or license? OPP
2. Whether the prosecution has managed to prove the guilt of the accused beyond any shadow of doubt? OPP

TESTIMONY OF WITNESSES

11. In order to prove the guilt of the accused the prosecution got examined PW-1 SI Maninder Kaur, Investigating Officer. In her examination in chief he reiterated the incident that allegedly took place on 06.01.2022 and deposed as per the version of prosecution.

Witness was cross examined at length by counsel for accused. During her cross examination, witness stated that they were three police officials standing at Ghanta Dhar Chowk. Informer came to her at about 12:30 pm on foot from Mata Rani Chowk. Informer is known to her and used to provide information to her. He was wearing a turban (parna) and she cannot tell whether his hair was cut or not. He remained with her for 15 minutes. He gave her information alone and not in the presence of other officials. She scribed ruqa at the place of receiving information. The distance between place of naqa and the place of receiving information is about 300-400 meters. She had not informed the Excise Inspector after receiving the information. Informer told her the name of the accused and activa number. They checked 10-15 persons at the place of naqa but she had not prepared any checklist of those persons. Accused was apprehended by herself and HC Kiran Kumar. Except the liquor nothing was recovered from the accused. The liquor was of Royal Stage brand.

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The filling of the bottle may be of Rajasthan but was for sale in Punjab but does not remember the name of the distillery. The case property was sealed at the place of recovery. One seal was affixed on the plastic cane and one over the sample drawn. The empty bottles were put in the plastic bags and was not sealed. The seal after use was handed over to HC Kiran Kumar. He returned the seal when the next FIR was lodged in the police station but she does not remember the date, month and time when the FIR was registered. Form No.29 M was duly completed at the place of recovery. Recovery memo was not got signed from the accused. During the personal search of the accused nothing was recovered. The information of the arrest was given to the friend of the accused but she does not remember the name of that person. That friend of the accused came at the police station who was called by her. The ruqa messenger came back at spot at about 2:30 pm along with copy of the FIR. Before reaching of the ruqa messenger the accused was not arrested in the present case. The place of naqa bandi is a thoroughfare and various persons passes thereby. She did not join any independent person in the investigation. She tried to join but no one agreed for the same. No action was taken against the persons who refused to join the investigation. She recorded the statement of HC Kiran Kumar and Ct. Harjinder Singh at the spot. They returned to police station at about 5:30/6 pm. The case property and the accused was not produced before the SHO on returning to police station. The case property was deposited with MHC Harjinder Singh by her. She recorded the statement of MHC Harjinder Singh at the

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police station on the same day.

12. Prosecution further got examined HC Kiran Kumar as PW-2 who deposed in his examination in chief that on 06.01.2022 he along with police party under the supervision of SI Maninder Kaur with regard to search and checking of bad elements and vehicles was present at Ghanta ghar chowk where secret informer came and told IO that Swapan Sharma @Atul who is carried on the work of selling illicit liquor and was coming on Activa bearing No. PB-10-HJ-0801 along with huge quantity of liquor from Jagraon pull side towards Lakkad pull Ludhiana. If naqa bandi be done he can be apprehended. Believing the information is correct IO scribed ruqa and sent it through Ct. Harjinder Singh for the registration of the FIR. On the basis of ruqa was registered by ASI Satnam Singh. Then IO along with police party went to the place as disclosed by secret informer and naqa bandi was done at Lakkad pull, during checking from Jagraon pull side one person was seen coming on an activa, who on seeing the police party got frightened and tried to turn back. IO with the help of police party apprehended that person and inquired about his whereabouts who disclosed his name as Sapan Sharma @ Atul S/o Prem Parkash R/o # 1230 St No.1 Fieldganj Ludhiana. He has kept one plastic bag in front of the activa bearing No. PB-10-HJ-0801. IO in the presence of police party checked the plastic bag from which 24 bottles of liquor make Royal Stag 750/750 ml was recovered. Arrangement was made for measuring the same sand all the liquor in the bottles were put in a tub by breaking the seals of the bottles and one sample of 180 ml was drawn and

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which was sealed by her with her seal impression MK. The remaining liquor came out to be 23-3/4 bottles and the same was put in the plastic cane and were sealed by her with her seal impression MK. The empty 24 bottles were also taken into the police possession by putting the same in the plastic bag and sealing the same with her seal impression MK. Sample seals were prepared, form no.29 M was completed at the spot. The seal after use was handed over to me. All the said case property along with activa was taken into police possession. IO prepared site plan of place of recovery. The accused was arrested and his personal search was conducted. Accused also produced the photocopy of RC which was taken into police possession. His statement was recorded.

Witness was cross examined at length by counsel for accused. In his cross examination, witness stated that there were three police officials standing at Ghanta Dhar Chowk. Entry regarding departure have been duly registered in daily register. He does not remember from which side informer came. Informer was not known to him and he cannot tell to which of the police personnel he knew. He was a Hindu gentlemen and was having parna on his head. He gave information in his presence. The distance between place of naqa and the place of receiving information is about 1000 sq. yards. IO has not informed the Excise Inspector after receiving the information. IO did not call any Excise Inspector at the place of occurrence. Ct. Harjinder Singh went on foot after taking the ruqa. They checked 15-20 persons at the place of naqa but had not prepared any checklist of those persons. Accused was

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apprehended by the IO and him. Except the liquor nothing was recovered from the accused. The liquor was of Royal Stage brand. I do not remember the distillery of the said liquor. Three seals were affixed i.e. on sample bulk parcel and form No.29M. The empty bottles were put in the plastic bags and was not sealed. The seal after use was handed over to him. He returned the seal on the next day. Recovery memo was not signed from the accused. During the personal search of the accused nothing was recovered. The information of the arrest was given to the friend of the accused but he does not remember the name of the that person. That friend of the accused came at the police station who was called by IO. Accused has not provided the number of any family member and provided the number of his friend. Before reaching of the ruqa messenger the accused was not arrested in the present case. The place of naqa bandi is a thoroughfare and various persons passes thereby. IO did not join any independent person in the investigation. They returned to police station at about 5:30/6 pm. The case property and the accused was not produced before the SHO on returning to police station. The case property was deposited with MHC Harjinder Singh by IO.

13. Prosecution further got examined SC Harjinder Singh as PW-3 who deposed in his examination in chief that on 06.01.2022 he along with police party headed by ASI Satnam Singh, SI- Maninder Kaur was present near Ghanta Ghar Chownk regarding checking of Vehicles and bad elements where IO received secret information that one person namely Sapan Sharma @ Attul S/o Prem Prakash is habitual is selling

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illegal liquor. On that as well he is coming on his Aactiva bearing no. PB10HJ0801 gray in color along with huge quantity of liquor and he is coming from the site of Jagraon flyover towards Lakad Flyover Ludhiana. If Nakabandi is conducted at Lakad flyover Ludhiana, the above mentioned accused person could be caught red handed along with illegal liquor. As a information was reliable IO scribe ruqa and handed over to him for the registration of FIR. On the basis of which FIR was registered. The time during which copy of FIR and ruqa remained with him, neither he tampered with it nor he allowed anyone else to the tamper with the same. After that IO arrested accused Sapan Sharma @ Attul and also conducted personal search. His statement was recorded by the IO this regard.

Witness was cross examined at length by counsel for accused. In his cross examination, witness stated that on 06.01.2022, they started from PS Division no.1 at about 12 noon. They were 3 police officials. Secret information was received by the IO at Clock Tower Chownk. The place is recovery is at distance 3-4 Km from Clock Tower. Again said 2-3 km from Clock Tower. Secret information received by the IO in his presence on a bike. He does not remember the registration and make of the bike. He does not remember whether he was Hindu gentleman or Sikh gentleman. The informer remained for about 5 minutes. The ruqa was scribed by SI Maninder Kaur. He does not know if IO called the Excise Inspector and the place of recovery or not. He does not know at what time ruqa was scribed at Clock Tower. The distance

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between Clock Tower and place of receiving secret information is at the distance of 2 minutes. He went to the police station on foot. He does not remember when he reached the place of recovery after taking the copy of FIR. When he reached along with copy of FIR the accused was already arrested by the IO. He does know the name of distillery of the recovered liquor. No sample was drawn in his presence. No sealing was done in his presence.

14. Prosecution further got examined SC Gurdeep Singh as PW-4 who deposed in his examination in chief that on 12.01.2022, MHC HC Harjinder Singh handed over to him case property i.e. sample parcel measuring 180ml of liquor make Royal Stage sealed with seal bearing impression MK along with sample seal and form no.29 M and instructed him to get the docket issued from the office of ADPC-I and take it vide Road no.4/21 and deposit the same in the office of Chemical Examiner Kharar Mohali. As per his instructions he got the docket issued from the office of ADPC-I and took the above-mentioned case property vide Road no. 4/21 and deposited the same in the office Chemical Examiner Kharar Mohali and afterwards obtained the receipt. On returned to the police station he handed over to MHC who attached the same to the record. The time during which the above-mentioned case property remained in his possession, neither he tampered with it nor he allowed anyone else to tamper with the same.

Witness was cross examined at length by counsel for accused. In his cross examination, witness stated that on 12.01.2022, SHO

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Harjit Singh was regular SHO of PS Div no.1. He took the case property from MHC Harjinder Singh at about 9:30AM. He has not signed registration no. 19 while taking in case property from MHC. Sample parcel bearing a seal impression of MK and was round in shape. There was only one seal impression on the parcel. There was might be three seal impression of MK on the sample seal chit and form no.29 M. Form no.29 M was completely filled when same was handed over to him by MHC Harjinder Singh. He got recorded my statement recorded under Section 161 CrPC. He got issued the said docket from the office of ADCP-I at about 10:30AM. Form no.29 M and sample seal chit was signed only Maninder Kaur. He deposited in sample parcel with Kharar Chemical Examiner at about 5:25 PM. He does not know about was in the parcel. He has not seen case property in the court. Rod no. is not mentioned on Form no.29 and sample seal chit. There is no date is mentioned all form no.29 and sample seal chit when same were prepared.

15. Further, prosecution got examined Mohd. Shabir, RTO Office, Ludhiana as PW-5. In his examination in chief he brought on record the record pertaining to Activa bearing no.PB-10HJ-0801 which was in the name of Sapan Sharma son of Prem Prakash along with certificate under Section 63 of BSA.

Witness was cross examined by counsel for accused and he stated that he has no personal knowledge regarding the present case. The registration certificate was not prepared in his presence.

APPRAISAL OF FACTS AND EVIDENCE:

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16. This court is of the considered opinion that the prosecution has duly proved the guilt of the accused beyond any shadow of doubt. In support of its case the prosecution has examined PW-1 SI Maninder Kaur, PW-2 SI HC Kiran Kumar, PW-3 SC Harjinder Singh, PW-4 SC Gurdeep Singh and PW-5 Mohd. Shabir. The prosecution witness has supported the version of prosecution. PW-1 SI Maninder Kaur, PW-2 SI HC Kiran Kumar, PW-3 SC Harjinder Singh and PW-4 SC Gurdeep Singh have deposed about the manner and mode of recovery and proceeding conducted at the spot. The recovery of 24 bottles of liquor of 750 ML make Royal Stag has also been proved. The arrest of the accused is duly proved on the record. The place of occurrence/recovery is proved vide site plan Ex.P5. The accused has failed to lead any evidence in his defence. The accused has not established the plea of alibi and it is not the case of the accused that the accused could not have been present at the place and time of occurrence. The testimony of the police officials is reliable and the conviction of the accused can be based on the sole testimony of the police witnesses. There is no requirement of any independent witness in the present case. No doubt is made out on the perusal of the testimony of the police witnesses. Reliance can be placed upon case law cited as “Masalti versus State of UP, 1965 AIR 202”, in which the Hon’ble Apex Court held that “*there is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the Court as*

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genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan can not be accepted as correct". 14.

Further reliance can be placed upon case law cited as “Tahir versus State (Delhi), AIR 1996 Supreme Court 3079”, wherein Hon’ble Supreme Court has held that “*In our opinion no infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction can not be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence*”. It is proved as per report that the recovered case property resembles Royal Stag Liquor. Therefore, it is proved without any shadow of doubt that the accused committed an offence punishable under Section 61 of Excise Act. Hence, points of consideration are decided in favour of prosecution and against the accused.

17. As to the signatures of accused on recovery memo, there is no requirement of signatures of the accused on recovery memo. As the arguments are advanced by counsel for accused that vehicel has not been produced before this court, a separte statement to that effect has been recorded vide order dated 03.01.2025 in which accused has stated that he

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will not dispute the identity of vehicle as the same is in his name. Further, as to the arguments of counsel for accused that Excise Inspector should be complainant in the present case as held in the case of **1984(2) RCR (Criminal) 514**, this case has been overruled by the authority of **Hon'ble Punjab and Haryana High Court cited as 1986(2) RCR (Criminal) 327**. Other authorities put forward by counsel for accused does not apply to the facts of the present case.

In the prosecution evidence, PW Kiran and IO of this case have stated in their examination in chief that empty bottles were also sealed but in their cross examination, witnesses have stated that empty bottles were not sealed. This is not a material contradiction as the main samples were sealed and were found intact.

CONCLUSION

18. Accordingly, on the basis of findings given above, the accused Sampan Sharma is convicted for having committed an offence punishable under Section 61 of Excise Act. Accused is taken in custody. Let, he be heard on the question of sentence.

Note: Certified that the order has been dictated by the undersigned directly on computer.

**Pronounced in open court.
Dated:03.10.2025**

**(Kavita Garg) PCS,
Judicial Magistrate Ist Class,
Ludhiana,(UID No.PB0816)**

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QUESTION OF SENTENCE:

Present: Sh. Jasmeet Singh Bhogal Ld. APP for the State.
Convict Sampan Sharma on bail represented by Ld. Counsel.

18. It is argued by learned APP for the State that maximum punishment may be given to accused as he has committed a serious offence.

19. On the other hand, it is argued by the Learned counsel for the accused that the accused may be released on probation.

20. After hearing the learned Counsel for the accused and learned APP for the State and after going through the facts and circumstances of the case, I am of the considered opinion that the accused can be released on probation. As per case law cited as “**Buta Singh Vs. State of Punjab 2004(4) Criminal CC 58**”, it is held that the condition imposing minimum sentence would not apply in case the accused is to be given the benefit of Probation of Offenders Act. There is nothing on record to show that the accused is a habitual offender. Accordingly, he is ordered to be released on probation subject to his execution of probation bonds in the sum of ₹ 10,000/- with one surety in the like amount for one year to keep good behavior, failing which he will produce himself before Court for receiving sentence when called upon during said period. He is also held liable to make the payment of ₹3,000/- as litigation expenses. No disqualification be attributed to the accused.

Bail bonds and surety bonds of accused are kept intact for another six months in compliance with Section 437-A of Cr.P.C. in order to ensure the presence of accused in appeal or revisional Court as the case

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may be, in case any appeal or revision is preferred by the State. It is clarified here that on the expiry of six months from the date of this judgment, those bonds shall stand automatically discharged.

Case property, if any, be dealt with as per rules after the expiry of period of limitation prescribed for filing the appeal or revision, if any. Copy of Judgment be supplied to the convict free of cost. File complete in all respect be consigned to the Record Room, Ludhiana, as per rules.

*Note: Certified that the order has been
dictated by the undersigned directly
on computer.*

**Pronounced in open court.
Dated: 03.10.2025**

**(Kavita Garg) PCS,
Judicial Magistrate Ist Class,
Ludhiana,(UID No.PB0816)**

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Present: Sh. Jasmeet Singh Bhogal Ld. APP for the State.
Convict Sampan Sharma on bail represented by Ld. Counsel.

Accused closed his defence evidence.

Arguments heard. Vide my separate and detailed judgment of even date, accused Sampan Sharma has been convicted.

The accused is ordered to be released on probation subject to his execution of probation bonds in the sum of ₹ 10,000/- with one surety in the like amount for one year to keep good behavior, failing which he shall produce himself before Court for receiving sentence when called upon during said period. He is also held liable to make the payment of ₹3000/- as litigation expenses. Litigation expenses are paid. No disqualification be attributed to the accused.

Bail bonds and surety bonds of accused are kept intact for another six months in compliance with Section 437-A of Cr.P.C. in order to ensure the presence of accused in appeal or revisional Court as the case may be, in case any appeal or revision is preferred by the State. It is clarified here that on the expiry of six months from the date of this judgment, those bonds shall stand automatically discharged.

Probation bonds furnished, which are accepted and attested and found to be correct. Case property, if any, be dealt with as per rules after the expiry of period of limitation prescribed for filing the appeal or revision, if any. Copy of Judgment be supplied to the convict free of cost. File complete in all respect be consigned to the Record Room, Ludhiana, as per rules.

*Note: Certified that the order has been
dictated by the undersigned directly
on computer.*

**Pronounced in open court.
Dated:03.10.2025**

**(Kavita Garg) PCS,
Judicial Magistrate Ist Class,
Ludhiana,(UID No.PB0816)**

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