

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Criminal Jail Appeal No.D-01 of 2023

Before:

Mr. Justice Shamsuddin Abbasi.

Mr. Justice Ali Haider 'Ada'.

Appellant	:	Sajjad @ Sajjoo S/o Sajjan @ Danglo @ Dango Buriro, <i>through</i> Mr. Habibullah G.Ghouri, Advocate.
The State	:	<i>through</i> Mr. Nazir Ahmed Bhangwar, Deputy Prosecutor General, Sindh
Date of Hearing	:	17.09.2025.
Date of Decision	:	17.09.2025.
Date of Reason	:	01.10.2025.

JUDGMENT

Ali Haider 'Ada'.J:- Through the instant Criminal Jail Appeal, the appellant has assailed the judgment dated 05.01.2023, passed by the learned Additional Sessions Judge-I, Jacobabad, in Special Case No. 78 of 2021, arising out of FIR No. 115 of 2021, registered at Police Station Thul, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. Through the impugned judgment, the appellant was convicted and sentenced to rigorous imprisonment for life, and was further directed to pay a fine of Rs. 500,000/-, and in case of default in payment, to suffer further rigorous imprisonment for one year. However, the benefit of Section 382-B, Cr.P.C. was extended to him.

2. The brief facts of the prosecution case, as set forth in the FIR, are that on 29.08.2021, at about 1900 hours, near the Grid Station, Kandhkot Road, situated at Deh Bulaki, the appellant/accused was arrested on the basis of spy information received by the complainant party while on patrolling duty. Acting upon such information, the police party proceeded towards the indicated location and, upon reaching at pointed place, apprehended the appellant. Upon conducting a search, the police recovered thirteen (13) packets of charas, each weighing one kilogram, totaling thirteen (13) kilograms, which were found lying in a sack carried by the appellant. After

completing the required codal formalities, the police registered FIR No.115 of 2021 under Section 9(c) of the Control of Narcotic Substances Act, 1997.

3. After the usual investigation, the challan was submitted before the trial Court. The trial Court, after supplying the requisite copies of documents to the appellant as mandated under Section 265-C, Cr.P.C, proceeded to frame the charge on 21.12.2021, to which the appellant pleaded not guilty and claimed to be tried. Thereafter, the trial Court allowed the prosecution to lead its evidence in support of the charge.

4. In pursuance thereof, SIP Muhammad Azam, being the complainant, was examined, who produced and exhibited the memo of arrest and recovery, copy of FIR, arrival and departure entries of Roznamcha, along with other relevant movement entries. Thereafter, the prosecution examined PC Mukhtiar Ali, who acted as mashir of arrest and recovery, and produced the memo of place of occurrence. The prosecution next examined PC Sikandar Ali, the dispatch rider, who produced the road certificate and the relevant Roznamcha entries. Subsequently, Inspector Saeed Ahmed, the Investigating Officer, was examined; he produced the entry from Register No.19 and the letter of the S.S.P. addressed to the Chemical Examiner for analysis of the case property. Thereafter, the learned State Counsel submitted a statement dated 13.12.2022, along with the report of the Chemical Examiner, and on the same day, closed the prosecution side through a formal statement.

5. After completion of the prosecution evidence, the statement of the appellant/accused was recorded under Section 342, Cr.P.C, wherein he professed his innocence and denied the allegations leveled against him. He neither examined himself on oath nor produced any witness in his defence, however, prayed for his acquittal and justice. Upon conclusion of the trial, the learned trial Court passed the impugned judgment, which has been assailed through the instant appeal.

6. Learned counsel for the appellant contended that the prosecution has utterly failed to prove its case against the appellant beyond the shadow of doubt. It is argued that material discrepancies and contradictions exist in the prosecution evidence, particularly regarding the safe custody and safe transmission of the recovered narcotics. The learned counsel further submits that the Incharge Malkhana was not examined, and even the chemical examiner's report was not properly exhibited through a competent witness,

which renders such document inadmissible in evidence. He adds that once a document is not lawfully brought on record, no reliance can be placed upon it. In these circumstances, the learned counsel prays for the acquittal of the appellant.

7. Conversely, the learned Deputy Prosecutor General appearing for the State has supported the impugned judgment, arguing that the prosecution successfully established the charge against the appellant. He submitted that a huge quantity of 13 kilograms of Charas was recovered from the possession of the appellant, and there appears to be no motive for false implication. It is further argued that the prosecution duly proved the case through both oral and documentary evidence, and therefore, the conviction recorded by the learned trial Court calls for no interference. As such, he prays for dismissal of the appeal and affirmation of the impugned judgment.

8. Heard the learned counsel for the parties and perused the record with their able assistance.

9. According to the prosecution, the case originated from spy information received by the complainant party at Darya Khan Chowk, upon which the police proceeded to the pointed place near Grid Station, Thul. It is, however, noteworthy admitted by the prosecution witnesses that the said area is thickly populated and busy, and even employees of the Grid Station were present at the time of alleged recovery. Despite such availability, no independent witness was associated to corroborate the version of the prosecution. This omission creates a serious dent in the credibility of the prosecution witnesses and casts doubt upon the fairness and transparency of the alleged recovery proceedings. Reliance is placed upon the decision of this Court in **Arshad Ali and another vs. The State (2024 PCr.LJ 1183) [Sindh-DB]**, similarly, in the case of **Shahzaib alias Wadero Feroze vs. The State (2024 YLR 1298) [Sindh-DB]**, this Court held that:

"....It has come in evidence that the accused was arrested from Tarazo Chowk which is a thickly populated area and the complainant SIP Sarfraz Ali Qureshi had sufficient time to call the independent persons of locality to witness the recovery proceedings but it was not done by him for the reasons best known to him and only the police officials who are subordinates to the complainant were made as mashirs of arrest and recovery proceedings. It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of Section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has

happened in this case) and the peoples were available there, omission to secure independent mashirs, particularly, in the police case cannot be brushed aside lightly by this court. Prime object of Section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. After all, preparation of mashirnama is not a formality but it's object is to prevent unfair dealings. There is also no explanation on record why the independent witness has not been associated in the recovery proceedings. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses. But here in this case, we have also noted number of contradictions in between the evidence of prosecution witnesses which cannot be easily brushed aside. Above conduct shows that investigation has been carried out in a casual and stereotype manner without making an effort to discover the actual facts/truth.

Guidance can be sought from the judgment of the Division Bench of this Court in the case of **Danish v. The State (2025 YLR 1355)**, wherein it was held that:

11. Also to note is that, the incident took place at Mureed Goth, near Qureshi colony gate Lyari Expressway surrounded by population, but no independent witness has been associated for arrest and recovery which is clear violation of the provisions of Section 103 Cr.P.C. It appears that investigating officer has failed to discharge his duties in the manner as provided under the law. It is noteworthy that investigating officer was well aware of the fact that no independent and private person was associated by the complainant to act as mashir of arrest and recovery, therefore, he was under obligation to make positive efforts and arrange an independent witness while visiting the place of incident, but no such indication is available on record.

Further guidance is available from the judgment of this Court in the case of **Mir Muhammad and others v. The State (2024 PCr.LJ 370)**, wherein a Division Bench of this Court has held that:

"...It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case), omission to secure independent mashirs, particularly, in police case cannot be brushed aside lightly by this court. Prime object of section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. There is also no explanation on record why no any independent person either from the place where they received spy information or from the place of incident has been joined to witness the recovery proceedings though it was a day time incident. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses."

10. Furthermore, the prosecution case rests upon the allegation that the recovered Charas was wrapped in yellow-coloured tape; however, this assertion does not find support in the chemical examiner's report. According to the said report, the contraband was, in fact, wrapped in khaki plastic tape. Further, the prosecution contends that the sack (Bachika) in which the contraband was recovered was white in color and had some green-colored markings, as deposed by the complainant. However, this assertion finds no corroboration from any other piece of evidence on record, thereby raising doubts about the accuracy and reliability of the prosecution's version. This material inconsistency regarding the description of the recovered substance creates a significant doubt about the identity and integrity of the case property, thereby weakening the prosecution's version. In this context, reliance is placed upon the cases of **Bahawal Shaikh v. The State (2025 MLD 840)**, **Muhammad Arif v. The State (2023 YLR 2369)**, and **Ahsan Meerani v. The State (2022 YLR Note 5)**.

Further, reliance is placed on the recent judgment of this Court in **Najeeb Ullah and another vs. The State (2025 YLR 1170)**, held that:

He in examination-in-chief stated that the colour of the recovered car was blue, whereas complainant Abdul Qadir RL (PW-1) in his murasila (Ex.P/1-A) and FIR(Ex.P/6-A) has mentioned the colour of said car as golden. In view of the above, the statements of both the above witnesses have been found to be contradictory, creating doubt in the recovery.

11. According to the prosecution, after registration of the FIR, the investigation was entrusted to Inspector Saeed Ahmed, who took over custody of the accused, the case property, the copy of the FIR, and other relevant documents. The said Investigating Officer deposed that he had caused an entry to be made in Register No.19 for depositing the case property in the Malkhana through WHC Jameel or Mashooq. However, his statement reveals uncertainty as to who was actually in charge of the Malkhana at the relevant time, as he mentioned two possible names without clarity. The entry in Register No.19, produced during trial, does not reflect the name of either WHC Jameel or Mashooq in the column of depositor; rather, even the name of Inspector Saeed Ahmed himself does not appear therein. Strikingly, the entry shows the complainant Muhammad Azam as the depositor of the case property, a fact neither affirmed by the complainant nor by the Investigating Officer. This glaring contradiction renders the chain of safe custody of the case property highly doubtful, thereby vitiating the sanctity of the prosecution

case. Reliance is placed on the judgment in **Zaheer v. The State (2023 YLR 276)** Additional support is drawn from the decisions of the Honourable Supreme Court in **Muhammad Iqbal v. The State (2025 SCMR 704)**, **Abdul Haq v. The State (2025 SCMR 751)**, **Asif Ali and another v. The State (2024 SCMR 1408)**, **Javed Iqbal v. The State (2023 SCMR 139)**, **Qaiser Khan v. The State (2021 SCMR 363)**, **Mst. Sakina Ramzan v. The State (2021 SCMR 451)**, and **Zubair Khan v. The State (2021 SCMR 492)**,

12. According to the prosecution, the S.S.P., Jacobabad, wrote a letter to the Chemical Examiner on 30.08.2021, stating that a copy of the FIR, the memo of place of occurrence, and the recovered samples were enclosed for examination. However, this statement is inconsistent with the road certificate, which indicates that the property was sent to the Chemical Examiner on 21.08.2021. Such discrepancies cast serious doubt on the version of the prosecution, as the S.S.P.'s letter suggests handover on 30.08.2021, whereas the road certificate reflects that the property was dispatched on 31.08.2021. The fact that the Incharge of the Malkhana, whether WHC Jameel or Mashooq, was not examined further undermines the credibility of the prosecution case and raises serious doubts regarding the safe transmission and custody of the recovered property. Support is drawn from the case of **Muhammad Aslam vs The State 2024 YLR 2498**, wherein it had been held that:

9. *The investigation officer in his cross-examination deposed that on 17.06.2020 he collected case property i.e. charas from Head Moharar at the police station under entry No.5 at 0900 hours but he has not examined the Head Moharar nor the said Head Moharar was produced before the trial court to prove the safe custody of charas. Even the prosecution has failed to establish that at the relevant time who was the incharge of the Malkhana. It is the prime duty of the prosecution to ensure safe custody of the recovered charas from the time of recovery till its arrival at the office of the Chemical Examiner and its failure to do so would cast doubt on and impair the reliability of the chemical report. We have scrutinized the record and find that the prosecution has not produced strong evidence to prove the safe custody of charas. Therefore, by failing to prove the safe custody of the recovered contraband the same could not be used against the appellant in this regard and the chemical report is of no legal value. The Honourable Supreme Court in the case of Qaiser and another v. The State (2022 SCMR 1641), has observed that "In absence of establishing the safe custody and safe transmission the element of tampering cannot be excluded in this case. The chain of custody of sample parcels begins from the recovery of the narcotics by the police including the separation of representative samples of the recovered narcotics, their dispatch to the Malkhana and further dispatch to the testing laboratory. The said chain of custody and transmission was pivotal as the entire construct of the Act 1997 and the Control of Narcotic Substances (Government Analysts) Rules 2001 (Rules 2001), rests upon the report of the analyst. It is prosecutions boundend duty that such chain of custody must be safe and secure because the report of chemical examiner enjoined critical importance under the Act 1997, and the chain of custody ensure the reaching of correct representative samples to the office of chemical examiner. Any break in the chain of custody i.e. the safe custody or safe transmission of the representative samples, makes the*

report of chemical examiner worthless and un-reliable for justifying conviction of the accused. Such lapse on the part of the prosecution would cast doubt and would vitiate the conclusiveness and reliability of the report of chemical examiner. Reliance can be made upon the judgments rendered by three members benches of this court i.e. Ikramulah v. The State (2015 SCMR 1002), The State v. Imam Bakhsh (2018 SCMR 2039), Abdul Ghani v. The State (2019 SCMR 608), Kamran Shah v. The State (2019 SCMR 1217), Mst. Razia Sultana v. The State (2019 SCMR 1300), Faizan Ali v. The State (2019 SCMR 1649), Zahir Shah alias Shat v. State through AG KPK (2019 SCMR 2004), Haji Nawaz v. The State (2020 SCMR 687); Qaiser Khan v. The State (2021 SCMR 363), Mst. Sakina Ramzan v. The State (2021 SCMR 451), Zubair Khan v. The State (2021 SCMR 492) and Gulzar v. The State (2021 SCMR 380)."

13. It is a settled principle of law that a document which is not exhibited during evidence cannot be relied upon, as it is the duty of the prosecution to produce every document in a manner that allows for its cross-examination. In the present case, the prosecution has failed to establish its case through the documentary evidence, as the Chemical Examiner's report, which forms the core of the prosecution evidence, was not properly exhibited. It is essential that any document produced in evidence must be open to scrutiny and cross-examination, and in the absence thereof, no reliance can be placed upon it. Reliance in this regard is placed upon the decisions in **Muhammad Faisal v. The State (2025 YLR 878)** and **Shaukat Ali v. The State (2025 YLR 1694)**.

14. It is noteworthy that the entry in Register No.19 is not recorded in the prescribed proforma; rather, it appears on plain paper and does not comply with the procedural mechanism established under the Police Rules, 1934. In view of this irregularity, the said entry cannot be relied upon as a credible record for establishing the safe custody or transmission of the case property. For ready reference, **Rule 22.70 of the Police Rules, 1934** provides:

22-70. Register No. XIX:- This register shall be maintained in Form 22.70 With the exception of articles already included in register No. XVI every article placed in the store-room shall be entered in this register and the removal of any such article shall be noted in the appropriate column.

FORM No. 22-70

POLICE STATION _____ DISTRICT _____

Register No. XIX. Store - Room Register (Part-I)

Column 1, -- Serial No.

2 -- No. of first information report (if any), from whom taken (if taken from a person), and from what place.

3. -- Date of deposit and name of depositor.

4.-- Description of property.

5. -- Reference to report asking for order regarding disposal of property.
6. -- How disposed of and date.
- 7.-- Signature of recipient (including person by whom despatched).
8. -- Remarks.

The Honourable Supreme Court in case of **Jeehand v. The State (2025 SCMR 923)**, had held that:

We have noted that in the instant case, safe custody and safe transmission of the alleged drugs from the spot of recovery till it's receipt by the Narcotic Testing Laboratory are not satisfactorily established. The Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when it is produced before the court, remains in safe custody and is not hampered with until that time. A complete mechanism is provided in the Police Rules qua safe custody and safe transmission of the case property to concerned laboratory and then to the Trial Court.

When Register No. 19 was not produced in its original form, and only a plain white paper containing a description of the property was brought on record, the same cannot be treated as a lawful entry of Register No.19. Mere description on plain paper is insufficient to establish compliance with the statutory requirement. Reliance is placed on the recent judgment of the Honourable Supreme Court in **Criminal Petition for Leave to Appeal No. 219-P of 2023, titled Irshad Khan v. The State**, wherein it was observed that an extract of Register No. 19 prepared on plain paper cannot be relied upon as a substitute for the original register, and its exhibition was rightly objected to

15. Moreover, the Honourable Apex Court in the case cited *supra* has been pleased to hold that..."**Communi observantia non set recedendum**---When law requires a thing to be done in a particular manner, the same must be done accordingly and if prescribed procedure is not followed, it would be presumed that the same had not been done in accordance with law.

16. It is a well-settled principle of Criminal jurisprudence that if a single circumstance creates a reasonable doubt in the prosecution's case, the accused is entitled to the benefit of such doubt. This principle is deeply rooted in the maxim "*in dubio pro reo*", meaning that *when in doubt, the decision should favor the accused*. In the instant matter, as has been demonstrated through the

various inconsistencies, discrepancies, and procedural lapses in the prosecution's case, even a single doubt regarding the safe custody, transmission, or recovery of the contraband must be resolved in favor of the appellant. Reliance is placed upon the case of **Qurban Ali vs. The State (2025 SCMR 1344)**.

17. In view of the foregoing reasons and discussions, it is evident that the prosecution has failed to establish its case against the appellant. Accordingly, the benefit of doubt must be extended to the accused, as per the settled principles of law. Keeping in mind the facts and circumstances of the case, the prosecution has not succeeded in proving the charge against the appellant. Therefore, this Criminal Jail Appeal is hereby allowed, the impugned judgment of the learned trial Court is set aside, and the jail authorities are directed to release the appellant forthwith, as he is not required to be detained in any other custody case. These are the reasons for the short order dated 17.09.2025.

JUDGE

JUDGE