

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

**Criminal Jail Appeal No.D-98 of 2023
Criminal Appeal No.D-100 of 2023**

Before:

Mr. Justice Jawad Akbar Sarwana.

Mr. Justice Dr. Syed Fiaz ul Hassan Shah.

Appellant: Sajjad Tanveer son of Muhammad Khursheed Awan and Mst. Beenish Gull w/o Sajjad Tanveer, Through M/s. Raja Jawad Ali Saahar and Zulqarnain Talpur, Advocates.

The State: Mr. Altaf Hussain Khokhar, Deputy P.G.

Date of hearing: 22.04.2026

Date of decision: 29.04.2026

JUDGMENT

Syed Fiaz ul Hassan Shah, J: Through above captioned both appeals arising out of same crime No.102 of 2022, the appellants have challenged the judgment dated 08.08.2023, passed by learned Additional Sessions Judge-1/Model Criminal Trial Court Matiari, in Special Case No.55 of 2022, Re: State vs. Sajjad Tanveer & another, bearing U/ss 9(1), 3(d) CNS (Amendment) Act 2022 PS Matiari, whereby the learned trial court after full-dressed trial convicted and sentenced the appellanta to suffer R.I for fourteen (14) years along with fine rupees four hundred thousand each. In case of default in payment of fine the accused shall undergo S.I for six months more. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. The facts in brief necessary for disposal of instant Criminal Appeal are that on 09.11.2022 a police party headed by ASI Anwar Ali left the PS for patrol duty in the area. During patrolling the accused were arrested from the National Highway running between Sukkur to Karachi near Al-Noor Fuel station, as the charas weighing 9900 grams was secured from the car bearing registration No. APZ-739 which was being driven by accused Sajjad Tanveer. According to the prosecution, after due formality including sealing the property and

preparation of mashirnama at the spot, the ASI named above lodged the FIR against the accused for the above said offence.

3. After procedural formalities, copies of documents were supplied to the accused vide Ex.1 in compliance of section 265-C Cr.P.C, and charge was framed against the accused vide Ex.2 in compliance of section 265-D Cr.P.C, to which accused pleaded not guilty and claimed to be tried vide their plea at Ex.2/A and 2/B in compliance of section 265-E Cr.P.C.

4. At the trial, the evidence of prosecution recorded in compliance of section 265-F Cr.P.C, wherein prosecution examined P.W No.1 ASI Anwar Ali, being the complainant at Ex-3. He produced departure entry, mashirnama of arrest/recovery, arrival entry and FIR at Ex-3/A to 3/D. PC Imam Bux (mashir) as PW-2 at Ex-4. He produced mashirnama of place of incident at Ex-4, LPC Rozina (one of the members of the police party) as PW-3 at Ex-5. PC Irfan Ali (property dispatcher) as PW-4 at Ex-6 He produced his departure/arrival entries at Ex-6/A & 6/B. WHC Israr Ahmed (Malkhana Incharge) as PW-5 at Ex-7. He produced entry of register No 19 at Ex-7/A. SIP Noor Muhammad (L.O.) as PW-6 at Ex-8. He produced relevant roznamcha entries, sketch of place of incident, receipt issued by the office of chemical examiner, letter addressed to chemical examiner and chemical report at Ex-8/A to 8/E. Thereafter, the

5. The statements of accused Under S. 342 of Cr.P.C were recorded vide Ex.10 & 11. They denied the allegations of the prosecution case and pleaded their innocence. They stated that they were booked in a false case by the police by foisting the charas at the instance of ex-husband of Mst. Beenish Gull namely Zawar Ali. They further stated that on 08.11.2022 they alongwith two children namely Sumaya and Sufiyan after free will marriage at Hyderabad Sessions Court were returning back to their home town, and on the way near Al-Faisal Hotel at about 06.00 p.m. police arrested them and booked them after getting huge bribe from ex-husband of Mst. Beenish Gull. They further stated that the police with mala fide intention did not show the children alongwith them at the time of arrest. Accused Sajjad Tanveer produced original free will affidavit and Nikahnama at Ex-10/A

7 10/B. However, the accused did neither examine them on oath, nor desired to produce witness in their defense.

6. Learned counsel for the appellant in Cr. Appeal No.D-100 of 2023 argued that the appellant/accused is innocent and has falsely been implicated in this case; that the time for registration of FIR in arrival of the police party through arrival entry is the same; that PW-5 Israr Ahmed Malkhana incharge produced Ex.7/A is a copy of Register-XIX, which is visibly interpolation, no signatures of any of the officer are available as to who has deposited the case property after recovery under the Memorandum of recovery when it was taken out for sending chemical laboratory or thereafter when it was re-deposited in the Malkhana until final production before the trial Court; that neither eight columns of the said entry consisted nor heading required under Police Rules 2270 is available and photo copy was exhibited even without signatures of Gazette officer i.e. SDPO or S.P. of the District; that such entry for the deposit of Malkhana was made with delay of 30 minutes and there is no explanation as to where the case property was kept for half an hour; that it is the case of the prosecution that recovery was effected from Digi of the vehicle and it has not been recovered from the personal search of the appellant and the investigation officer has admitted that the engine number and chesses number of the vehicle seized by the police is different to the one which was released by the trial Court on the application made by an owner of the vehicle under Section 516-A Cr.P.C yet the I.O has not joined the owner of the vehicle either an accused or a prosecution witness infact he was not examined therefore, a link is apparently missing between the appellants and the case property; that the entries made in the register No.2 and the oral testimonies are in conflict while no date was given on the letter under which the case property was sent for chemical examination and even the chemical, Lab certificate do not have reference of number of issues; that no private witnesses have been associated as Mashir in this case; therefore, there is violation of section 103 Cr.P.C. He lastly argued that there are several contradictions, lacunas, and legal infirmities in the evidence of prosecution witnesses but the learned trial Court did not consider the

same hence, he prayed for that the impugned judgment may be set-aside and the appellant may be acquitted.

7. Learned counsel for the appellant appearing on behalf of the appellant in Cr. Jail Appeal No.D-98 of 2023 has adopted the same arguments as agitated by the counsel for appellant in Cr. Appeal No.D-100 of 2023.

8. On the other hand, learned D.P.G for the State supported the impugned judgment stated that the case property retained into the malkhana under a proper entry and even the receipt of chemical Lab proved that the case property was sent from the malkhana and returned to the malkhana despite the fact such entry was not available in the register No.XIX. He further contended that PC Irfan Ali has taken the case property to the chemical Lab and produced the departure and arrival entries and therefore, there is no any infirmity in the impugned judgment.

9. We have heard the counsel for the parties and perused the record.

10. It is observed that, in cases involving recovery of narcotics, the foundational document is the memorandum of recovery and arrest, prepared by the Raiding party or the Seizing Officer at the spot contemporaneously with the recovery and sealing of the alleged contraband. Such contrabands narcotics, once recovered and sealed, the case property is mandatorily required strictly to protect and to be deposited timely with the *Malkhana* Incharge under proper entries in the relevant registers, strictly in accordance with the Police Rules, 1934. This stage constitutes what is legally recognized as “**safe custody.**” Thereafter, the Investigating Officer is under a statutory obligation to conduct a proper investigation, which includes the transmission of the case property, either in whole or by way of representative samples, as the case may be, to the Chemical Laboratory for analysis. The object of such analysis is to conclusively determine whether the recovered substance qualifies as a narcotic drug or psychotropic substance so as to attract the penal provisions of the Control of Narcotic Substances Act, 1997 in order to convince the Court to award conviction and sentence the guilty person. The process

of dispatching the case property from the *Malkhana* to the Chemical Laboratory—whether undertaken by the Investigating Officer himself or through an authorized official, accompanied by a duly issued road certificate—is legally termed as “**safe transmission.**”

11. The prosecution is under a bounden duty to establish, through cogent and confidence-inspiring evidence, both the safe custody and safe transmission of the case property. Any break, omission, or failure in proving this continuous chain of custody renders the evidentiary value of the recovered substance doubtful, and consequently, conviction and sentence under the *ibid* Act cannot be sustained. In narcotics cases, stricter standards apply. It is by now well-settled that the prosecution, in cases involving narcotics, must successfully pass a twofold test with regard to the case property. Firstly, it must establish the lawful recovery, seizure, and incorporation of the case property in the challan, coupled with unimpeachable proof of its safe custody. This requires preparation of contemporaneous documents free from doubt, reflecting accurate description, proper sealing, and deposit of the case property in the *Malkhana* under duly maintained record. Secondly, the prosecution must affirmatively prove the safe transmission of the case property, i.e., its movement from safe custody to the Chemical Laboratory, and thereafter its return and production before the Court as admissible evidence. Each stage of this process must be supported by reliable documentary and oral evidence, ensuring an unbroken chain of custody.

12. The Appellants have mainly strike conviction and sentence on the basis that the trial court relied upon Ex-7/A was produced was in fact a photocopy of Register No. XIX instead of the original record, further alleged that there is visible interpolation in the date and entry with different ink, absence of official signatures, name of official as depositor or taken out for delivery to Chemical laboratory, invisibility of the printed heading, and omission of 08 prescribed columns as required under Rule 22.70 of the Police Rules, 1934 and such prescribed Performa available in the *ibid* Rules. On the other hand evaluation of prosecution encumberment it maintained that photocopies are generally produced due to practical difficulties in carrying original registers on each date of hearing and to preserve

continuity of entries during ongoing search, raid, and recovery operations, we find that the sanctity of the chain of custody is inextricably linked with meticulous maintenance of Register No. XIX, as mandated under Rule 22.70 of the Police Rules, 1934, and judicially settled by the Hon'ble Supreme Court in **State vs. Zulfiqar (2022 SCMR 1529)**, wherein it was held that any missing link between safe custody at the police station (Malkhana/Storeroom) and safe transmission to the chemical laboratory, or discrepancies in the Malkhana Register, vitiates the evidentiary value of the Chemical Examiner's report. In the present case, the objections raised by the Appellants strike at the root of the prosecution's case and cannot be adjudicated without production of the original Register No. XIX and its careful examination about certain objections raised by the learned Counsel for the Appellant before us including the aspect of interpolation. Its difficult for us to give any finding as original record was not produced and there is no findings of the trial Court that can be re-appraised by us at this Appellate stage. Consequently, the conviction and sentence awarded on the basis of such evidence cannot be sustained, therefore, the impugned judgment is set aside, and the case is remanded to the trial court with directions to record the evidence of PW-5 (Malkhana Incharge) afresh along with the original Register No. XIX, afford full opportunity of cross-examination to the defence, and thereafter to render a fresh judgment strictly in accordance with law.

13. Before parting with this judgment, we have observed that in most narcotics cases, the prosecution tends to produce Photostat or handmade copies of Register No. XIX without adhering to the requirements of Rule 22.70 of the Police Rules, 1934 and prescribed proforma attached thereto. The law permits acceptance of secondary evidence only where it is satisfactorily established that the original has been lost, misplaced, or cannot be produced for bona fide reasons such as it requires for other official correspondence on day-to-day affairs. When even the prosecution seeks to rely upon a certified copy, a photocopy made through mechanical process, or even a handmade copy with attestation, prior permission under Article 76 of the Qanun-e-Shahdat Order, 1984 requires, however, when original

produced and seen and examined by counsel and Presiding Officer, while photocopy is kept on record and exhibited then there is no need to move such application. We, therefore, direct the Director General, Anti-Narcotics Force, Rawalpindi and the Inspector General of Police, Sindh, Police Headquarters, Karachi to examine this matter and convene a meeting of the concerned officers to formulate a policy and implement strictly for the narcotics cases.

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