

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 369 of 2025

Present:

Justice Zafar Ahmed Rajput (CJ)

Justice Jan Ali Junejo

The Appellants : (1) Shakeel Ahmed (2) Attaullah and (3) Khalid Nawaz, through Mr. Mallag Assa Dashti, Advocate

The Respondent : The State, through: Mr. Habib Ahmed, Special Prosecutor, ANF

Date of hearing : 29.05.2026

Date of Judgment : 09.07.2026

JUDGMENT

Jan Ali Junejo, J: - The above-named appellants have preferred this CrI. Appeal under Section 48 of the Control of Narcotic Substances Act, 1997 (the "Act") read with Section 410, CrPC, assailing the judgment, dated 29.04.2025 ("*Impugned Judgment*"), passed by the Special Court-III (CNS), Karachi ("*Trial Court*") in Special Case No. 05 of 2024 (*Old Case No. 14 of 2024*), arising out of FIR No.7 of 2024 registered at P.S. ANF Clifton, Karachi, whereby the appellants were convicted for the offence under Section 6 of the Act, punishable under Section 9(2)(9) read with Sections 14 and 15 of the Act, as amended by the Control of Narcotic Substances (Amendment) Act, 2022, and sentenced to suffer imprisonment for life with fine of Rs.2,000,000/- each, or in default thereof, they should undergo simple imprisonment for six months each. The benefit of Section 382-B, CrPC was extended to them.

2. Briefly stated, the prosecution case as narrated in the FIR and reflected from the evidence on record is that, on 08.02.2024 at about 1600 hours, Inspector Shafique Ahmed Khan of P.S. ANF Clifton, Karachi,

received spy information through high-ups that the appellants, namely, Shakeel Ahmed and Attaullah would arrive near Agha Khan Jamaat Khana, Kharadar, Karachi in a white Proton car bearing registration No.BVX-347 to deliver narcotics to their clients. Acting upon such information, a raiding party was formed comprising Inspector Shafique Ahmed Khan, ASI Razaf Akhtar, PC Fareedullah and other ANF officials, that apprehended the said appellants at the pointed place and recovered seven packets of Ice (*Methamphetamine*), weighing one kilogram each, totaling seven kilograms, concealed in a bedsheet lying in the trunk of the vehicle. Samples were separated and sealed at the spot. During investigation, accused Khalid Nawaz was also implicated being owner of the said vehicle and alleged facilitator of transportation of narcotics. Consequently, FIR was registered.

3. After completion of the investigation, ANF submitted the report under Section 173, CrPC. Having been supplied the copies of statements and documents as required under Section 265-C, CrPC, the Trial Court framed the formal charge, as Exh.3, against the appellants for the alleged offence, to which they pleaded not guilty and claimed trial. At the trial, in order to substantiate the charge, the prosecution examined **PW-1** Inspector Shafique Ahmed Khan, the complainant and Investigating Officer, at Ex.4, who produced the FIR, mashirnama of arrest and recovery, chemical examiner's report, roznamcha entries and other documentary evidence; **PW-2** ASI Razaf Akhtar, the mashir of arrest and recovery, at Ex.5; **PW-3** ASI Muhammad Shah Fahad, depositor of samples to the Chemical Examiner, at Ex.6; **PW-4** ASI Muhammad Azharuddin, Malkhana

Incharge, at Ex.7, who produced entries regarding safe custody and dispatch of case property; **PW-5** Inspector Shahnaz Fatima, who arrested appellant Khalid Nawaz, at Ex.8 and **PW-6** PC Dawood Furqan, the mashir of arrest at Ex.9.

4. Statements of the appellants, under Section 342, CrPC were recorded at Exh.11, Exh.12 and Exh.13 respectively, wherein they denied the prosecution's allegations and professed innocence. They also opted to record their statements on oath under Section 340(2), CrPC as at Exh.14, Exh.15 and Exh.16 respectively. In defence, they examined DW-1 Ms. Amina Azim, who produced certain documents pertaining to Cargo Engine Courier Company, DW-2 Maaz Jawed and DW-3 Habib Sultan in support of the plea that the appellant Khalid Nawaz was owner of a courier company and that the appellants Shakeel Ahmed and Attaullah, being employees of the said company, had merely gone to collect a parcel from an unknown person for onward shipment and they had no knowledge about the concealment of narcotics in the vehicle.

5. The learned Trial Court, after hearing both the sides and appraising the evidence on record, held that the recovery of seven kg of Ice from the possession of the appellants Shakeel Ahmed and Attaullah stood established through trustworthy evidence of the PWs, while appellant Khalid Nawaz was connected with the offence being owner of the vehicle and facilitator of transportation of narcotics, and consequently, convicted all the appellants and sentenced them vide Impugned Judgment.

6. Learned counsel for the appellants has contended that the Impugned Judgment is contrary to law and facts of the case; that the Trial Court failed to appreciate the evidence in its true perspective; that the entire case of prosecution rests on the testimonies of official witnesses without any independent corroboration; that no sincere efforts were made by the prosecution for associating private mashirs to witness recovery proceedings; that the prosecution failed to establish safe custody and safe transmission of the narcotics to the office of the Chemical Examiner; that there were material contradictions in the prosecution's evidence regarding date and manner of arrest; that the prosecution failed to produce CCTV footage or call data record to substantiate its allegations; that appellants Shakeel Ahmed and Attaullah were employees of a courier company and they had unknowingly received a parcel from an unidentified person for onward shipment; that the prosecution failed to prove its case beyond reasonable doubt, hence, the Impugned Judgment is liable to be set aside.

7. Conversely, learned Special Prosecutor for ANF has supported the Impugned Judgment by maintaining that the prosecution has produced confidence inspiring, cogent, and trustworthy evidence, which remained unshaken during cross-examination of PWs; that the recovery of Ice in huge quantity from the conscious possession of two appellants stood proved through reliable ocular as well as documentary evidence; that the defence version was inherently improbable and appeared to be an afterthought, as the appellants failed to disclose the identity or particulars of the person who had allegedly handed over the parcel to them; that mere non-association of private mashirs is not fatal to the prosecution case,

mostly in narcotics matters where members of the public ordinarily avoid becoming witnesses; that the prosecution has successfully established the chain of custody of the recovered Ice and no material contradiction or discrepancy beneficial to the appellants could be pointed out.

8. We have considered the arguments advanced by the learned counsel for the appellants as well as the learned Special Prosecutor for the ANF and have examined the entire evidence available on record with their able assistance. The prosecution case against appellants Shakeel Ahmed and Attaullah rests upon the recovery of seven kilograms of Ice from the vehicle in their possession at the relevant time. PW-1 Inspector Shafiq Ahmed Khan and PW-2 ASI Razaf Akhtar consistently deposed regarding receipt of spy information, constitution of the raiding party, interception of the vehicle and recovery of seven packets of narcotics from the trunk of the vehicle occupied by the said appellants. Their evidence remained consistent on all material particulars and could not be shaken during lengthy cross-examination. The recovered substance was subsequently examined by the Chemical Examiner and was found to be Ice, thereby fully corroborating the prosecution version.

9. The contention of the learned counsel for the appellants regarding non-association of private mashirs does not persuade us to discard the confidence-inspiring evidence of the PWs. It is by now well-settled that testimony of police officials cannot be discarded merely on the ground of their official status if the same inspires confidence and is otherwise trustworthy. In the instant case, there is nothing on record to suggest any motive on the part of the ANF officials to implicate the appellants falsely

in a case involving such huge quantity of narcotics. Non-association of private persons, therefore, is not sufficient to vitiate the prosecution case.

10. We have also considered the objections raised regarding the chain of custody and transmission of samples to the Chemical Examiner. Although certain omissions appear in the Road Certificate and acknowledgment column, yet the prosecution has examined the Malkhana Incharge as well as the official who transmitted the samples to the Chemical Laboratory. The Chemical Examiner received the sealed samples and reported that the seals were intact. No suggestion of tampering, substitution or manipulation of the samples was established during trial. The alleged procedural irregularities pointed out by the defence do not appear to have caused any prejudice nor are they of such magnitude as would destroy the entire prosecution case, particularly when the report of the Chemical Examiner remained unchallenged.

11. The substance of the matter remains that the representative samples drawn from the recovered Ice were transmitted to the Chemical Laboratory and the same tested positive. No material has been brought on record to establish that the samples analyzed by the Chemical Examiner were different from those secured during recovery proceedings.

12. The defence plea that appellants Shakeel Ahmed and Attaullah were merely employees of a courier company and unknowingly received a parcel from an unidentified person is wholly unconvincing. The said appellants failed to disclose the identity, address, contact particulars or any other information regarding the alleged person who purportedly

handed over the parcel to them. No documentary record of any courier booking, shipment receipt or delivery order was produced. The defence version, therefore, appears to be a mere afterthought and does not probabalize their innocence.

13. The prosecution evidence establishes that both appellants Shakeel Ahmed and Attaullah were jointly travelling in the vehicle carrying seven kilograms of Ice concealed therein. The quantity involved is enormous and not consistent with personal consumption. The surrounding circumstances clearly establish joint conscious possession and common intention on the part of both the said appellants. In the instant matter the recovery was affected from a private vehicle under the direct control and possession of the said appellants.

14. The other discrepancies highlighted by the defence regarding election day, mobile phone forensics, CCTV footage and certain entries in official documents do not strike at the root of the prosecution case. Such omissions are at best investigative lapses and cannot outweigh the direct and positive evidence of recovery supported by the report of the Chemical Examiner. It is settled law that every irregularity in the investigation does not necessarily enure to the benefit of the accused unless it is shown that prejudice has been caused thereby. In similar circumstances, the Honourable Supreme Court of Pakistan, in the case of Hasrat Khan v. The State (PLD 2024 SC 911), observed that: *"We note that the safe custody and safe transmission of the sample of the recovered substance from the local Police Station to the Laboratory has been proved by the prosecution before the trial court. Subsequently, a report received from the Laboratory in that respect was*

in the positive. The witnesses of the recovery were public servants who had made consistent statements against the Petitioner, and they had no background of ill-will against the Petitioner, to falsely implicate him. Both the courts below had undertaken an exhaustive analysis of the evidence available on the record and had then concurred in their conclusion regarding guilt of the Petitioner having been proved to the hilt and upon our own independent evaluation of the evidence we have not been able to take a view of the matter different from that concurrently taken by the courts below”.

15. The case of appellant Khalid Nawaz, however, stands on an entirely different footing. Admittedly, he was not present at the place of occurrence at the time of alleged recovery. No narcotics was recovered from his domain. The secret information did not mention his name. The prosecution witnesses candidly admitted that his implication was primarily based upon his ownership of the vehicle and the disclosure statements of co-accused/appellants. Such disclosure statements are inadmissible under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984.

16. It is also significant that no independent evidence was collected during investigation to establish that appellant Khalid Nawaz had knowledge of, or connection with the transportation of recovered narcotics. No bank record, mobile phone data, call detail record, shipment record, business record or any other incriminating material was produced to demonstrate his nexus with the offence. Mere ownership of the vehicle, without proof of conscious possession, knowledge or facilitation, is insufficient to sustain conviction under the Act. In these circumstances, the

prosecution has failed to establish the charge against appellant Khalid Nawaz beyond reasonable doubt and he is entitled to benefit of doubt.

17. As a result, the prosecution has successfully established its case against appellants Shakeel Ahmed and Attaullah beyond reasonable doubt through trustworthy ocular evidence duly corroborated by documentary evidence and the report of the Chemical Examiner; therefore, their conviction and sentence recorded by the Trial Court call for no interference. However, the prosecution has failed to prove the guilt of appellant Khalid Nawaz beyond reasonable doubt. In analogous circumstances, the Apex Court of Pakistan, in the case of *Haji Nawaz v. The State* (2020 SCMR 687), held that *“the appellant might be the owner of the relevant vehicle but at the relevant time his conscious possession of the narcotic substance had to be established by the prosecution, particularly when the vehicle was in control of the driver who had escaped, but the prosecution had completely failed on that score.”*

18. Resultantly, this CrI. Appeal is partly allowed. The conviction and sentence awarded to appellants Shakeel Ahmed and Attaullah through Impugned Judgment are maintained by dismissing their appeal; however, the conviction and sentence awarded to appellant Khalid Nawaz are set aside and he is acquitted of the charge by extending him the benefit of doubt. He shall be released forthwith if not required to be detained in any other case/offence.

JUDGE

CHIEF JUSTICE