

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

Criminal Jail Appeal No.S-08 of 2025

Appellant	: Abdul Basit s/o Ali Akbar by caste Choliyani, Through Mr. Noorullah G. Rind, Advocate.
The State	:Through Mr. Nazeer Ahmed Bangwar, Deputy Prosecutor General, Sindh.
Date of Hearing	: 10.08.2026.
Date of Decision	: 10.08.2026.
Date of Reasons	: 17.08.2026.

JUDGMENT

Ali Haider 'Ada' J:-Through the instant Criminal Jail Appeal, the appellant has assailed the judgment dated 03.03.2025, passed by the learned 1st Additional Sessions Judge/MCTC, Kamber, in Sessions Case No.73 of 2022, arising out of FIR No.99 of 2021, registered at Police Station Waggan (P.P. Lalu Raunk) for an offence punishable under Section 24 of the Sindh Arms Act, 2013. By the impugned judgment, the appellant was convicted and sentenced to undergo rigorous imprisonment for ten (10) years with a fine of Rs.30,000/-, and in default thereof, to suffer simple imprisonment for three (03) months. The benefit of Section 382-B, Cr.P.C. was, however, extended to him.

2. Briefly stated, the prosecution case is that on 08.12.2021, the complainant SIP Zulfiqar Ali Jatoi, along with HC Asghar Ali Korkani, PC Muhammad Ali Khoso, PC Muhammad Peeral Mugheri, PC Abdul Karim Kehri and driver PC Javed Ahmed Bahlem, left Police Station Waggan under Roznamcha Entry No.12 at about 1:00 p.m. for investigation of Crime No.95 of 2021. During the course of investigation, they allegedly received spy information that three accused, namely Sikandar Ali Arejo, Abdul Basit

Choliyani Chandio and Asadullah alias Labaik Choliyani Chandio, who were wanted in the said crime, were present near Boohar Wah situated on the link road leading to Village Jamak Chandio. Acting upon the said information, the police party proceeded to the pointed place and apprehended the three accused. During personal search, one 30-bore pistol along with live rounds was allegedly recovered from the possession of the present appellant, whereas pistols and hand-grenades were allegedly recovered from the remaining accused. The accused allegedly disclosed that the recovered weapons had been used in the commission of Crime No.95 of 2021 and that they possessed the same without any valid licence. The recovered weapons were sealed at the spot, mashirnama of arrest and recovery was prepared, and thereafter separate FIRs under Section 24 of the Sindh Arms Act, 2013, besides other offences, were registered against the accused.

3. Upon completion of the investigation, the Investigating Officer submitted the challan before the Competent Court. The learned trial Court supplied copies of the relevant documents to the appellant in compliance with Section 265-C, Cr.P.C, and framed charge against him on 12.03.2022, to which he pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined SIP Zulfiqar Ali Jatoi as PW-1, who was the complainant as well as the Investigating Officer and produced the mashirnama of arrest and recovery, copy of the FIR and FSL report. HC Asghar Ali Korkani was examined as PW-2, while PC Muhammad Ali Khoso, the mashir and dispatcher, appeared as PW-3 and produced the Road Certificate. The prosecution also examined WHC Aslam Ali Wadho, Malkhana Incharge, as PW-4, who produced the relevant Malkhana Register entry. Thereafter, the prosecution closed its side.

5. The statement of the appellant under Section 342, Cr.P.C. was recorded, wherein he denied the allegations, professed his innocence

and claimed false implication. However, he neither examined himself on oath under Section 340(2), Cr.P.C. nor produced any evidence in defence.

6. After hearing the parties, the learned trial Court convicted and sentenced the appellant through the impugned judgment, which has been assailed before this Court by way of the instant Criminal Jail Appeal.

7. Learned counsel for the appellant contended that the prosecution has failed to establish the alleged recovery beyond reasonable doubt. He argued that no independent witness was associated with the recovery proceedings despite their availability, rendering the prosecution version doubtful. He further submitted that there was an unexplained delay in sending the recovered weapon to the Forensic Science Laboratory, which created a serious possibility of tampering with the case property. According to him, the prosecution evidence suffers from material infirmities and is insufficient to sustain the conviction. He, therefore, prayed for the acquittal of the appellant.

8. Conversely, learned State Counsel supported the impugned judgment and argued that the recovery was affected from the exclusive possession of the appellant and stood duly proved through the consistent testimony of the prosecution witnesses. He further submitted that no enmity or ulterior motive on the part of the police officials had been alleged or established to infer false implication of the appellant. He, therefore, prayed for dismissal of the appeal.

9. Heard the learned counsel for the parties and have carefully examined the evidence and other material available on the record.

10. The prosecution case reveals that the appellant was allegedly arrested in possession of a 30-bore TT pistol, which was claimed to be the crime weapon used in the main case, i.e., FIR No.95 of 2021.

Simultaneously, a hand grenade was also allegedly recovered from his possession. It is an admitted position on record that, in the connected case arising out of the alleged recovery of the hand grenade, the appellant was acquitted by the learned Special Judge, Anti-Terrorism Court, Larkana. Significantly, the said judgment of acquittal has attained finality, as the prosecution did not challenge it before the competent forum. Although the acquittal in the explosives case is not by itself conclusive for the present proceedings, yet it is a relevant circumstance which casts a shadow of doubt upon the alleged recovery proceedings, particularly when both the pistol and the hand grenade were allegedly recovered from the appellant at the same time, place and through the same recovery memo. The prosecution's failure to assail the acquittal further weakens the credibility of the recovery proceedings.

11. Furthermore, the prosecution secured ten crime empties from the place of occurrence on 27.11.2021; however, instead of dispatching them promptly to the Forensic Science Laboratory, the investigating agency retained them in its custody and forwarded them only on 13.12.2021, along with the pistols allegedly recovered from the appellants. The unexplained delay of more than fifteen days in transmitting the crime empties to the forensic laboratory creates a serious possibility of manipulation and strongly suggests that the investigating agency waited for the alleged recovery of the pistols before sending the exhibits for forensic examination. Such an unexplained delay substantially diminishes the evidentiary value of the forensic report, as the possibility of tampering or fabrication cannot safely be excluded. In this regard, reliance may safely be placed upon the cases of *Muhammad Siddique and another v. The State and others* (2026 SCMR 783) and *Muhammad Abras v. The State* (2025 SCMR 1145).

12. Another circumstance which further dents the prosecution case is that the complainant, during his cross-examination, candidly

admitted that the alleged spy information was received in a populated locality where hotels and members of the public were present. Despite the admitted availability of independent persons, no effort whatsoever was made by the investigating officer to associate any private person as mashir of the arrest and recovery proceedings. The entire recovery rests upon the testimony of police officials alone. Although there is no legal bar to placing reliance upon official witnesses, yet where independent witnesses are readily available but are deliberately withheld without any plausible explanation, the evidence of official witnesses is required to be scrutinized with greater caution. The preparation of a mashirnama is not an empty formality; rather, its object is to ensure transparency and eliminate the possibility of unfair dealing or false implication. In this regard, guidance may be sought from the case of *Mehrab alias Mehro v. The State* (2022 YLR 2460).

13. For the foregoing reasons and discussion, the prosecution failed to prove its case against the appellant beyond reasonable doubt. Consequently, by our short order dated **10.08.2026**, the instant Criminal Jail Appeal was allowed, the appellant was acquitted of the charge, the impugned judgment of conviction and sentence passed by the learned trial Court was set aside, and the jail authorities were directed to release the appellant forthwith, if not required in any other custody case. These are the detailed reasons in support of the said short order.

JUDGE