IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPUR KHAS

Criminal Revision Application No.S-32 of 2026

(Allah Bachayo & another Versus The State)

Before:

Mr. Justice Nisar Ahmed Bhanbhro

Applicants: 1. Allah Bachayo son of Muhammad Ameen,
2. Jalal son of Darya Khan
Through Mr. Sikander Ali Kolachi Advocate

The State: Through Ghulam Abass Dilwani
Deputy Prosecutor General, Sindh.

Date of hearing: 16.11.2026
Date of order: 16.11.2026

O R D E R

Nisar Ahmed Bhanbhro J.- The applicants Allah Bachayo son of Muhammad Ameen, and Jalal son of Darya Khan are called absent for the reason of death in their near relations as informed by Learned Counsel for the applicants, and seeks condonation of absence, which is accordingly granted being not opposed by Learned Deputy Prosecutor General. Learned Counsel further requested to assist the Court and desired to proceed with the case, order accordingly.

2. This Criminal Revision Application is directed against the judgment dated 02.07.2026 (**2nd impugned judgment)** passed by the learned Additional Sessions Judge, Khipro (**Appellate Court**) in Criminal Appeal No.07/2026 "*Re-Allah Bachayo & another versus The state*" whereby appeal was dismissed and conviction awarded to the applicants by the court of learned Judicial Magistrate, Khipro **(Trial Court)** in Criminal Case No.63/2025 "*Re-State versus Allah Bachayo & another*" vide judgment dated 23.06.2026 **(1st impugned judgment)** was maintained whereby the applicants were convicted for the offence punishable under section 8(i) Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of

Mapuri and Gutka Act, 2019 **(the Act)** and sentenced to suffer simple imprisonment of two years and imposed fine of Rs.200,000/- each, in case of default in payment, they were directed to suffer six months more, with a benefit of section 382-B Cr.P.C.

3. Brief facts germane to the prosecution story as unfolded in F.I.R. are that on 27.12.2024 at about 1000 hours, the police party headed by ASI Ajmal Das of P.S Khahi along with his sub-ordinate staff during patrolling arrested accused Allah Bachayo S/o Muhammad Ameen Samejo from Bridge of Doso Minor, Deh Halaro Taluka Khipro and co-accused namely Jalal S/o Darya Khan got succeed in escaping away from spot while leaving case property there at spot. The police party recovered total 08 white color sacks containing 400 packets of Safina Gutka (total 44000/- sachets) from their possession in presence of police mushirs. Police party prepared such memo of arrest & recovery before official mashirs namely H.C Shaukat Ali & P.C Sajid Ali. The instant FIR was lodged accordingly.

4. After usual investigation, the charge sheet was submitted by the I.O. before Learned Trial Court. In compliance to the provisions of Section 241 - A Cr.P.C. the necessary documents, were supplied to accused persons at Exh.01. A formal charge against the accused persons was framed at Exh.02, and their pleas were recorded respectively at Ex.2/A & 2/B, wherein they did not plead guilty and claimed for trial.

5. To substantiate charge prosecution examined PW-01 Complainant ASI Ajmal Das at Ex.3, who produced the entry no.03 and 07 on one single page at Ex.3/A, the memo of arrest & recovery at Ex.3/B & instant FIR at Ex.3/C, PW-02 namely H.C Shaukat Ali at Exh.04, who produced memo of site inspection at Exh.4/B, and saw the memo of arrest & recovery at Ex.3/B, PW-03 namely P.C Sarfaraz at Exh.05, who saw entry no.16 & 18

at Ex.5/A, the receipt of concerned Laboratory at Ex.5/B and PW-04 (investigation officer of this case) namely SIP Khamiso Khan Ex.06, who produced the entry no.71 of register no.19 at Ex.6/A, the entry no.08, & 11 on one single page at Exh.6/B, the final chemical report of case property at Ex.6/C. He/I.O further saw the memo of site inspection at Ex.4/B, the entry no.16 & 18 at Ex.5/A, the receipt of concerned Laboratory at Ex.5/B. Thereafter, learned Prosecutor the State has submitted the statement of closing evidence of prosecution.

6. The statements of accused persons namely ***Allah Bachayo S/O Muhammad Ameen Samejo & Jalal S/O Darya Khan Samejo*** U/S 342 Cr.P.C were recorded at Exh.08 & 09, wherein they denied the allegations of prosecution, and claimed to be innocents. However, neither they examined themselves on oath nor led any evidence in their defence.

7. After hearing the Learned Counsel for the Prosecution and Defense, Trial Court convicted and sentenced the applicants as aforementioned and learned Appellate Court dismissed the appeal of the applicants, hence this Criminal Revision Application .

8. Learned Counsel for the applicants contended that case of the prosecution is replete with material contradiction; that recovery in fact was not affected but was foisted upon the applicants. He contended that safe custody of the contraband material was not proved and there were material contradictions in statements of the prosecution witnesses. He contended that alleged incident took place during day time and the place of arrest and recovery was buy area but none from public was cited as witness. He contended that entire case property was neither sealed at spot nor sent for chemical analysis and only 05 sachets of Manpuri were sealed and sent to Chemical laboratory for analysis. He next argued that the

sample was sent to the laboratory with a delay of 03 days; hence, the safe custody and transmission of the case property, the prosecution itself has made questionable. He further argued that entry in Register No.19 was also doubtful. He next submitted that as per the evidence of I.O that the case property was kept in malkhana but the incharge of malkhana was not examined. He also pointed out that there were material contradictions between the statements of PWs on the point of paroling, recovery and arrest of the accused. He, therefore, submitted that prosecution case was doubtful, which as per settled law always goes to favor the accused; hence, submits that by granting this criminal revision application, the impugned judgment (s) may be set aside and the applicants may be acquitted of the charge.

9. Per contra, Learned Deputy Prosecutor General appearing for the state opposed the criminal revision application on the ground that all the PWs have remained consistent on each point and minor discrepancies if any in the evidence occurred due to passage of time and cannot be considered fatal to the prosecution case. As far as delay in sending parcel to the laboratory is concerned, learned Deputy Prosecutor General contended that it is fully explained. He contended that there is no ill-will of the complainant to falsely implicate the applicant, therefore, no case for indulgence is made out and by opposing the criminal revision application asserted to maintain the impugned judgments and dismissal the criminal revision application in hand.

10. Heard Learned Counsel for the parties and perused material available on record with their able assistance.

11. Careful examination of material on record and re-appraisal of evidence leads to an inference that the prosecution case is highly doubtful,

replete with material contradictions in evidence and impugned judgments of suffered from misreading and non reading of evidence for the following reasons:

(a) *Scanning the evidence on record reveals that it was daytime incident. The arrest and recovery were made at 1000 hours from Phullahdiyoon-Dolatabad Road, Bridge of Doso Minor, which is a thickly populated area, but no one from public was associated as mashir. Though police officials are as good witnesses as people from public, but provisions of Cr.P.C. apply to the search and seizure in the Act, thus section 103 of the Cr.P.C.e required association of independent witnesses in search and seizure from a place. However, to authenticate the recovery proceedings, if any independent person refused to associate in the search and seizure, then it required the head of the police party to record proceedings against him.*

(b) The complainant PW-01 ASI Ajmal Das and mashir PW-02 Shoukat Ali deposed that one Jimny Jeep was intercepted; however, one person namely Jalal son of Darya Khan escaped and made good his escape and eight packets containing Safina Gutika were recovered and memo of arrest and recovery was prepared at the spot, but per said memo of recovery the alleged contraband was not sealed at the spot. PW 02 Shoukat Ali deposed that the case property was sealed at spot by complainant PW 01 Ajmal Das but as per mashirnama of arrest and recovery property was not sealed at the spot. Per Prosecution Story, in all about 44000 pouches of safina Gutka were recovered from the accused. However, only 05 sachets of Gutka were sealed and sent for Chemical Analysis to Laboratory.

(c) It is quite surprising that evidence of PW 01 Ajmal Das and PW 02 Shoukat Ali as available at page 73 and 85 of the Court file is word to word ditto copy which is not humanly possible. It

appears that depictions of the witnesses were copies and pasted and just the names were changed.

(d) The samples were sent to the Laboratory after Three days and delay in sending the samples remained unexplained. The contraband was recovered on 27.12.2024 and it was sent to Chemical Laboratory on 30.12.2024, the witnesses PW 1 ASI Ajmal Das and PW 4 IO SIP Khamiso failed to demonstrate while recording evidence that in whose possession the custody of recovered contraband remained in the intervening period. The property was deposited in the malkhana but the incharge of the malkhana was not examined before Trial Court. The safe custody and transmission of the contraband material to the Laboratory was compromised, which created dent in the prosecution case and doubt so created ought to be resolved in favor of the accused being a blue-eyed child of the criminal law. Reliance in this regard may be placed on the judgments of Honorable Supreme Court of Pakistan in the case of ***Said Wazir and another Versus The State and others*** *(2023 S C M R 1144),* ***Qaiser Khan v. The State through Advocate General, Khyber Pakhtunkhwa, Peshawar*** *(2021 SCMR 363),* ***Mst. Razia Sultana v. The State and another*** *(2019 SCMR 1300),* ***The State through Regional Director ANF v. Imam Bakhsh and others*** *(2018 SCMR 2039),* ***Ikramullah and others v. The State*** *(2015 SCMR 1002) and* ***Amjad Ali v. The State*** *(2012 SCMR 577) wherein it was held that in a case containing the above mentioned defect on the part of the prosecution, it cannot be held with any degree of certainty that the prosecution had succeeded in establishing its case against an accused person beyond any reasonable doubt.*

(e) The prosecution witnesses have contradicted each other on material points. PW-1 ASI Ajmal Das stated that accused Allah Bachayo was taken into custody by him, whereas PW-02 Shoukat Ali stated that accused Allah Bachayo was taken into custody by him. PW-01 Ajmal Das admitted that the description of the case property, including the crime number and date is mentioned with a black-colour marker, but one digit of number 10 is mentioned with a blue-colour marker. He also admitted that on another bag, the description of the case property, including the crime number and date is mentioned with a black-colour marker, but one digit of number 54 is mentioned with a blue-colour marker.

12. It is settled principle of law that multiple circumstances were not necessary to create dent in prosecution story, a single circumstance creating reasonable doubt in prudent mind is sufficient to discredit prosecution story, and benefit of such doubt has to be resolved in favor of accused not as a matter of grace but as a matter of right. It is always the prosecution burdened to prove its case beyond shadow of doubt and once it fully discharges its burden then it shifts to the defence. Since the impugned judgments suffered from misreading and nonreading of the evidence, therefore, a case for indulgence by this Court to exercise powers conferred under Section 435 Cr.P.C. is made out.

13. For what has been discussed herein above, the prosecution has failed to prove its case against the applicants beyond shadow of reasonable doubt, benefit of which, ought to be given to the accused. Consequently; instant criminal revision application is allowed. The 2nd impugned judgment dated 02.07.2026 passed by the learned Additional Sessions Judge, Khipro in Criminal Appeal No.07/2026 and 1st impugned judgment dated 23.06.2026 passed by learned Judicial Magistrate, Khipro

in Criminal Case No.63/2025 are set aside. The Applicants/ Convicts 1) Allah Bachayo son of Muhammad Ameen and Jalal son of Darya Khan are acquitted of the charge in Criminal Case No.63/2025 "Re The State Versus Allah Bachayo and another" for an offence punishable under section 5-8(i) of Prohibition of Preparation, Manufacturing, Storage, Sell & Use of Gutka and Manpuri Act, 2019, emanating from F.I.R. No. 82 of 2024 of police station Khahi. The applicants are present on bail, their bail bonds stands cancelled and surety discharged.

JUDGE

Approved for reporting

"Chander Kumar "