

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

**Criminal Revision Application No.S-24 of 2025**

**Applicants:** 1. Muhammad Umar S/o Allah Dino,  
2. Allah Dino S/o Photo Lund,  
Through Mr. Mir Pervaiz Akhtar Talpur, Advocate.

**Respondent:** The State.  
Through Mr. Shahzado Saleem, A.P.G Sindh.

**Date of hearing:** 16.09.2025.

**Date of Order:** 16.09.2025.

**ORDER**

**Amjad Ali Sahito, J:** Through this Criminal Revision Application, the applicants have challenged the judgment dated 12.05.2025 passed by the learned Sessions Judge, Tharparkar at Mithi in Criminal Appeal No.07/2025, whereby dismissed the appeal and judgment dated 14.04.2025 passed in CrI. Case No.76/2024, arising out of Crime No.27/2024 for offence under section 8 S.P.P.M.S (4) of Mainpuri Gutka Act, 2019 of PS Kaloi, by learned Civil Judge and Judicial Magistrate, Diplo, whereby he convicted the applicants and sentenced them to suffer S.I for three years with fine of Rs.2,00,000/- each was maintained.

2. Facts of the prosecution case are that on 24-08-2024 at about 4:00 a.m., Inspector Mubarak Ali Rajar reported at Police Station Kaloi that he, along with ASI Qadir Bux, PC Allah Jurio, PC Hotu, PC Zahid Ali, and driver DPC Muhammad Arbab, left the station at 12:30 a.m. in government vehicle No. 277 with arms and ammunition for patrolling vide Roznamcha entry No. 18 of the same date and after patrolling at different places, when police reached Wango Mor on the Badin–Mithi road at about 1:15 a.m, they received secret information that Muhammad Umer of village Darya Khan Lund had sacks (kattas) of Safina Gutka. Acting quickly, the police went to the spot and reached Muhammad Umer’s katcha landhi (otag) around 1:30 a.m and with the help of the vehicle’s headlights, the police saw two men sitting on a cot (khat) and 11 white sacks lying nearby. On checking, 9 sacks were filled with Safina Gutka. Due to non-availability of public mashirs,

ASI Qadir Bux and PC Allah Jurio acted as mashirs. The accused persons identified themselves as Muhammad Umer son of Allah Dino Lund and Allah Dino son of Photo Lund, both residents of village Darya Khan Lund, Taluka Kaloi, District Tharparkar at Mithi. Nothing was recovered from their possession. The 9 Safina sacks, each marked "555 Safina" in black marker, contained 50 packets per sack, and each packet had 110 sachets, totaling 49,500 sachets of Safina Gutka. The remaining 2 sacks contained Habib Gutka, each with 50 packets of 100 sachets, totaling 10,000 sachets. From the recovered goods, 2 sachets were taken from each Safina sack (18 total) and 2 sachets from each Habib sack (4 total) for chemical analysis, and all remaining sacks were sealed separately. Muhammad Umer admitted that he bought Safina and Habib Gutka from Anwer Nohri of Umerkot for sale in Kaloi and nearby areas. Such memo of arrest and recovery was prepared in presence of Mashir, ASI Qadir Bux and PC Allah Jurio. Thereafter brought the accused persons with recovered case property and memo of arrest and recovery at PS, where complainant lodged present FIR against above named accused persons on behalf of the state.

3. After completion of the usual investigation, the investigation officer submitted a report under section 173 Cr.P.C before the competent Court of law and thereafter the case papers were supplied to the accused under receipt.

4. The charge against applicants was framed at Exh.4, to which they pleaded not guilty and claimed trial vide their plea recorded at Exh.4/A and Ex.4/B respectively.

5. In order to establish the accusation against the presents applicant/accused, the prosecution examined PW-01 Complainant Mubarak Ali Rajar at Ex.05, who produced departure entry, memo of arrest & recovery and copy of FIR at Ex.5/A to Ex.5/C. PW-02 Mashir ASI Qadir Bux Nohri was examined at Ex.06, who produced memo of place of incident at Ex.6/A. PW-03 PC Muhammad Ramzan Bajeer was examined at Ex.7, who produced departure, arrival entries of sending property for chemical, letter of chemical examiner, receipt of examiner at Ex.7/A to Ex.7/D. PW-04 first investigating officer SIP Sukhji was examined at

Ex.08, who produced entry No.19 for lodging FIR at Ex.8/A. PW-05, WHC Muhammad Ramzan was examined at Ex.9, who produced Malkhana register entry No.19 at serial No.60 of 2024 at Ex.9/A. PW-06 Second investigation officer SIP Qadir Bux Behrani was examined at Ex.10, who produced entry No.12 and 13 departure arrival entries for inspection place of incident, chemical examiner report at Ex.10/A to Ex.10/C. Thereafter, prosecution closed its case after examining the above witnesses, as stated in Ex.11.

6. The statements of the applicants U/S 342 Cr.P.C were recorded at Ex.12 and 13 respectively and they had denied all the allegations leveled against them by the prosecution and claimed their innocence. However, they did not examine themselves on oath nor led any evidence in their defence.

7. The learned trial court on evaluation of the evidence and after hearing the counsel for the parties, convicted and sentenced the applicants vide Judgment dated 14.04.2025.

8. Learned counsel for the applicants contended that both courts below misread and ignored material evidence; that the entire case rests on interested police witnesses without any independent witness though the place of incident is populated area; that there are material contradictions between PW-01 and PW-02 regarding the place of recovery, preparation and sealing of case property and the time consumed at the spot; that the safe custody and chain of dispatch of samples to the chemical laboratory is missing; and that the defence plea of political enmity has been ignored. Lastly he prayed for the acquittal of the applicants.

9. On the other hand, learned Additional Prosecutor General, Sindh has half heartedly supported impugned judgment.

10. I have heard the learned counsel for the respective parties and perused the material available on record.

11. From perusal of the record, it reflects that the entire prosecution case hinges upon the testimony of police officials without association of single independent witness despite the admitted availability of shops and petrol pumps at Wango Morr

and a two hours stay at the place of incident. PW-01 Inspector Mubarak Ali and PW-02 ASI Qadir Bux Nohri materially contradicted each other with regard to the location of sealing, number of seals and preparation of cloth parcels. PW-01 claimed two separate parcels were prepared and sealed, whereas PW-02 admitted he could not remember if cloth parcels were pre-prepared and each katta was sealed in its own bag. The PW-06 I.O Qadir Bux admitted that he has not produced departure or arrival entry for dispatch of sample nor produced the envelope through which the chemical report was received. These unexplained gaps in the chain of custody create serious doubt whether the same parcels allegedly seized were those actually analyzed, which is fatal to the prosecution. Moreover, the defence plea of false implication on account of political rivalry with MPA Arbab Lutafullah, though denied by witnesses, could not be ruled out when prosecution failed to produce independent witnesses.

12. More so, the foremost requirement to prove such like case is the chain of the safe custody of the sample and the case property at the Malkhana of the PS and then its transit to the laboratory which unfortunately is missing in this case. Recovery though recovery effected as per F.I.R on 24.08.2024 and it was received at the laboratory on 27.08.2024 after the delay of 03 days where the sample remained during this period and what caused delay went unexplained on the part of the prosecution. In the case of **PERVEZ alias GIRDARI versus The State** reported in 2013 P.Cr.L.J 635 KARACHI-HIGH-COURT-SINDH, it was held that Delay of six (6) days in dispatch of samples to chemical Analyzer---Although R.4(2) of Control of Narcotic Substances (Government Analysts) Rules, 2001, regarding dispatch of samples for analysis by not later than 72 hours of their seizure, was not mandatory but samples should be dispatched as early as possible unless for reasons to be recorded. Evidence of person (police official) who had the samples in his possession for six (6) days should have been recorded by the prosecution to show whether the samples were in safe custody or not-Similarly in the case of **WASAL KHAN and others v. THE STATE**, 1994, Federal Shariat Court 37 it was held that No evidence was available on the record to show that the sample parcels were kept in the safe

custody and were not interfered with during all the time before they were sent to the chemical examiner's office with delay of three days in sending the parcels to the office of chemical examiner has raised a doubt about the recovery of any narcotics from the possession of the accused.

13. In view of above discussion, the impugned judgment dated 12.05.2025 passed by learned Sessions Judge, Tharparkar at Mithi in Criminal Appeal No.07/2025 and judgment dated 14.04.2025 passed by Civil Judge & Judicial Magistrate, Diplo in Criminal Case No.76/2024 are set aside. Applicants Muhammad Umar S/o Allah Dino Lund and Allah Dino S/o Photo Lund are acquitted of the charge under Section 8 SPPMSS (4) of Mainpuri Gutka Act, 2019 by extending them benefit of doubt. Applicants are present on bail, their bail bonds stand cancelled and sureties stand discharged. Office is directed to return the surety papers to the surety after due verification and identification.

**JUDGE**

***\*Faisal\****