

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

**Criminal Appeal No.S-84 of 2024**

**Appellant:** Naseeb son of Abdul Rehman,  
Through Mr. Mian Taj Muhammad Keerio,  
Advocate.

**Respondent:** The State.  
Through Mr. Dhani Bakhsh Mari, Assistant P.G.

**Date of Hearing:** 30.09.2025.

**Date of Order:** 30.09.2025.

**J U D G M E N T**

**Amjad Ali Sahito, J:** Through this Criminal Appeal, the appellant has challenged the judgment dated 18.04.2022 passed by the learned Sessions Judge, Umerkot in Sessions Case No.159 of 2021, whereby convicted the appellant and sentenced him to suffer R.I for two years with fine of Rs.2,00,000/-. However, the benefit of Section 382-B Cr.P.C was awarded to the appellant.

2. Facts of the prosecution case are that on 29.06.2021 at about 11:30 p.m., complainant ASI Pinyal Khan of Police Station Ghulam Nabi Shah lodged FIR alleging that at about 9:10 p.m. he, along with his staff, left the station for patrolling. At about 10:15 p.m., when they reached Naeem Nohri link road, they saw one person carrying a white sack on his shoulder who, on seeing police, tried to flee but was apprehended. On inquiry, he disclosed his name as Naseeb s/o Abdul Rehman Junejo. In absence of private witnesses, PC Muhammad Azhar and PC Gul Hassan acted as mashirs. On checking, the sack was found containing 47 packets of JND Gutka, each packet consisting of 110 sachets (total 5,170 sachets). Two currency notes of Rs.100/- each were also recovered. Five sachets from each packet were separated for chemical analysis, while the remaining property was sealed. Memo of arrest and recovery was prepared in presence of mashirs and thereafter FIR was lodged 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.2, to which he pleaded not guilty and claimed trial vide his plea recorded at Exh.2/A.

5. In order to establish the accusation against the present appellant, the prosecution examined PW-1 Complainant ASI Pinyal Khan at Exh.3, he produced entries, memo of arrest and recovery, and FIR at Exh.3-A to 3-C. PW2 mashir PC Azharuddin at Exh.04, he produced memo of inspection at Exh.4-A and entries as Exh.4-B, PW-3 I.O/Inspector Tufail Ahmed was examined at Exh.5, he produced entry of Malkhana register-19, departure and arrival entries of PC Azharuddin, receipt and chemical report at Exh.5-A to 5-D respectively. Thereafter, prosecution closed its side vide statement as Exh.6.

6. The statement of the appellant U/S 342 Cr.P.C was recorded at Ex.07 and he had denied all the allegations leveled against him by the prosecution and claimed his innocence. However, he did not examine himself on oath nor led any evidence in his defence.

7. The learned trial court on evaluation of the evidence and after hearing the counsel for the parties, convicted and sentenced the appellant vide Judgment dated 18.04.2022.

8. Learned counsel for the appellant contended that the trial court has 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 the prosecution witnesses. Lastly he prayed for the acquittal of the applicants.

9. On the other hand, learned A.P.G Sindh has supported impugned judgment.

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

11. From a perusal of the record, it emerges that the entire prosecution case rests exclusively upon the testimony of police officials, without any independent witness being associated at the

time of the alleged recovery, despite the incident having purportedly occurred on a public road where the police admittedly remained present for a considerable duration. Such omission casts serious doubt upon the fairness and transparency of the proceedings. Moreover, material contradictions are apparent in the testimony of PW-01 ASI Pinyal Khan and PW-02 PC Azharuddin regarding the preparation and sealing of the parcels. While one witness deposed that cloth parcels were separately prepared, the other expressed uncertainty as to whether such parcels were even prepared at the spot.

12. The complainant, ASI Pinyal Khan (PW-1), deposed that while on patrol duty at approximately 2215 hours, they observed an individual carrying a white-colored sack on his shoulder. Upon interception, the sack was checked and was found to contain *Gutka*. On inquiry, the accused allegedly disclosed that he had purchased the *Gutka* from Khipro town for the purpose of selling. It is, however, an admitted position that Khipro town is situated at a distance of approximately 20 kilometers from the place of incident, and it is claimed that the accused traversed such distance on foot. This version, when juxtaposed with the fact that only Rs.200/- was recovered from the accused at the time of his apprehension, and he could easily travel on the commercial vehicle, such act does not appeal to reason or comport with the conduct of a prudent man.

13. Furthermore, the complainant (PW-1) candidly admitted during cross-examination that he himself counted the case property, whereas PW-2 PC Azharuddin conceded that he, along with PC Gul Hassan, had counted the case property. This contradiction regarding the handling and counting of the recovered material creates doubt upon the veracity of the prosecution case.

14. Furthermore, the report of the Chemical Examiner reflects that the samples allegedly recovered on 29.06.2021 were received at the laboratory only on 07.07.2021, indicating an unexplained delay of seven days. No plausible explanation has been offered by the prosecution regarding the whereabouts of the samples during this period. It is further noted with concern that the prosecution failed to examine the Moharrar of the police station, who was responsible for

maintaining the Malkhana. This omission constitutes a significant lapse, as the safe custody of the case property and the establishment of an unbroken chain of custody are indispensable requirements of law. It is well settled that the evidentiary value of the Chemical Examiner's Report is contingent upon the integrity of the chain of custody, which must be proven beyond any shadow of doubt. Under the Control of Narcotic Substances Act, 1997, it is the duty of the prosecution to demonstrate that the recovered substance remained in safe, secure, and uninterrupted custody until its receipt at the laboratory.

Most importantly, the foremost requirement in cases of this nature is the establishment of the safe custody of the recovered samples and case property at the police station (Malkhana), followed by their safe transit to the laboratory. In the present case, such essential requirement is conspicuously missing. Although the recovery was allegedly effected on 29.06.2021 in terms of the FIR, the samples were received at the laboratory only on 07.07.2021, after an unexplained delay of seven days. The prosecution has failed to clarify where the samples remained during this period and what occasioned the delay. A careful scrutiny of the record reveals that the prosecution did not prove that the recovered sample parcels were kept in secure custody at the police station, nor did it examine the Moharrar responsible for maintaining the Malkhana. Such failure constitutes a fatal lacuna in the prosecution case, rendering the chain of custody doubtful and the recovery proceedings unsafe to rely upon.

15. In view of above discussion, the impugned judgment dated 18.04.2022 passed by learned Sessions Judge, Umerkot in Sessions Case No.159/2021, Crime No.12/2021 for offence under section 4, 5, 8 S.P Preparation, Manufacturing, Storage, Sell and Use of Gutka Mainpuri Act, 2019 is set aside. Appellant Naseeb S/o Abdul Rehman is acquitted of the charge by extending him benefit of doubt. Applicant is present on bail, his bail bond stands cancelled and surety stands discharged. Office is directed to return the surety papers to the surety after due verification and identification.

**JUDGE**