

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA
Criminal Appeal No. D-11 of 2025
(Irshad versus The State)

Present:

Mr. Justice Adnan Iqbal Chaudhry
Mr. Justice Ali Haider 'Ada'

Appellant: Irshad son of Abdul Hameed Chandio,
Through Mr. Farhat Ali Bugti, Advocate,

The State: *Through Mr. Sardar Ali Solangi, Deputy
Prosecutor General, Sindh.*

Date of hearing: 28-01-2026
Date of decision: 28-01-2026
Date of reasons: 04-02-2026

JUDGMENT

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Ali Haider 'Ada', J.:- Through the present Criminal Appeal, the appellant has assailed the judgment dated 06.03.2025 passed by the learned Additional Sessions Judge-I / Special Judge for the Control of Narcotic Substances Act (MCTC), Kambar, in Special Case No.105 of 2024, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for nine (09) years and to pay a fine of Rs.80,000/-, and in case of default whereof, to further suffer simple imprisonment for two (02) months. The benefit of Section 382-B, Cr.P.C. was extended to the appellant. The impugned judgment arose out of Crime No.138 of 2024 registered at Police Station Nasirabad for an offence punishable under Section 9(3)(c) of the Control of Narcotic Substances Act, 2022.

2. Briefly stated, the prosecution case is that on 28.08.2024, during routine patrolling, a police party of Police Station Nasirabad arrested the present appellant and allegedly recovered 3 kilograms of charas in the form of different slabs, along with three currency notes of Rs.100/- each, from his possession. After completing the codal formalities, the appellant was arrested and the FIR was registered.

3. After registration of the FIR, usual investigation was conducted and the appellant was produced before the learned trial Court. Upon submission of the challan, the learned trial Court took cognizance of the offence, supplied the requisite documents to the appellant as required under law, and on 27.11.2024 framed charge against him for the offence mentioned above. The appellant pleaded not guilty and claimed trial.

4. During trial, the prosecution examined PW-1 Liaquat Ali, who was the complainant as well as the Investigating Officer of the case. He produced the departure entry, memo of arrest and recovery, copy of FIR, and the report of the Chemical Examiner. The second prosecution witness, Imtiaz Ali, who acted as mashir of the case, was also examined. The prosecution further examined Muhammad Saleem, the dispatch rider, who transported the sealed contraband to the Chemical Examiner's Laboratory, Rohri, and produced the road certificate before the Court. Additionally, Riaz Hussain, in charge of the malkhana, was examined and produced a document purported to be Register-19, following which it closed its side.

5. Thenafter, the statement of the appellant was recorded under Section 342, Cr.P.C., wherein he denied all allegations levelled against him and asserted his innocence. He further alleged false implication due to mala fide intentions and stated that he, along with his relatives had been implicated in similar cases on the same day. No evidence in defence was produced. Subsequently, the learned trial Court, passed the impugned judgment of conviction and sentence, which is now under challenge through the present appeal.

6. Learned counsel for the appellant contended that the prosecution case suffers from material contradictions and inconsistencies. He submits that the alleged recovery has been foisted upon the appellant without any independent corroboration. It is further argued that the place of incident is a thickly populated area, yet no independent person from the locality,

nor any seller or purchaser, was associated or cited as a witness, which creates serious doubt about the prosecution's version. Learned counsel further submits that the appellant has been falsely implicated due to political rivalry and ulterior motives. On these grounds, he prayed for acquittal of the appellant.

7. Conversely, the learned Deputy Prosecutor General for the State submitted that the FIR was promptly lodged without any delay. He further argued that the contraband was recovered from the exclusive possession of the appellant and that all material prosecution witnesses were examined during the trial. According to him, minor discrepancies, if any, do not affect the substance of the prosecution's case. He, therefore, prayed for dismissal of the appeal and maintenance of the conviction and sentence awarded by the learned trial Court.

8. Heard learned counsel for the parties and perused the material available on record.

9. In narcotics cases, it is the prime duty of the prosecution to examine and present the evidence with great care and caution. In the present case, the prosecution alleged that multiple pieces of contraband were recovered from the possession of the appellant at the time of his arrest. However, the prosecution has failed to specify the number of pieces, their individual weight, or any distinguishing details of each slab. Such omissions have created material inconsistencies and rendered the alleged recovery doubtful, as the necessary particulars regarding the recovered contraband are conspicuously lacking. This deficiency undermines the credibility of the recovery proceedings and casts serious doubt upon the prosecution case. Reliance in this regard is placed upon *Qalandar Shah v. The State (2021 Y.L.R 2349)* and *Ansar Abbas @ Pakori v. The State and another (2021 P.Cr.L.J 138)*.

10. According to the prosecution evidence, the case property was stated to have been deposited in the malkhana by the In-charge, namely

Riaz Hussain, who also deposed to that effect. However, the documentary record relied upon by the prosecution does not support this assertion, as the name of the depositor mentioned therein is not that of the In-charge malkhana but rather that of the Investigating Officer/complainant. Furthermore, although it is alleged that the case property was later handed over to the dispatch rider through a road certificate for onward transmission to the Chemical Examiner, no corresponding entry has been produced showing when and under whose authority the property was taken out from the malkhana. These material omissions demonstrate a clear break in the chain of custody regarding the transmission and safe handling of the contraband, which seriously undermines the prosecution case. In this context, support is drawn from the judgments of the Honourable Supreme Court in *Muhammad Iqbal v. The State* (2025 SCMR 704), *Abdul Haq v. The State* (2025 SCMR 751), *Asif Ali and another v. The State* (2024 SCMR 1408), *Javed Iqbal v. The State* (2023 SCMR 139), *Qaisar Khan v. The State* (2021 SCMR 363), *Mst. Sakeena Ramzan v. The State* (2021 SCMR 451) and *Zubair Khan v. The State* (2021 SCMR 492), all of which reiterate the indispensability of strict adherence to procedural safeguards in narcotics cases.

11. Furthermore, the record reveals that the entry purportedly made in Register No.19 does not conform to the prescribed proforma as mandated under Rule 22.70 of the Police Rules, 1934. The said rule laid down a requirement regarding the maintenance of the malkhana register and prescribes a specific format to ensure transparency, accountability, and safe custody of case property, particularly in cases involving contraband. In the present case, the Register No.19 entry produced by the prosecution is deficient, as it does not contain the essential particulars required under the prescribed proforma and such omissions strike at the very root of the prosecution case and render the custody and transmission of the alleged contraband highly doubtful. For ready reference, Rule 22.70 of the Police Rules, 1934, together with the prescribed proforma, is reproduced below:

22-70. Register No. XIX:- *This register shall be maintained in Form 22.70 With the exception of articles already included in register No. XVI every article placed in the store-room shall be entered in this register and the removal of any such article shall be noted in the appropriate column.*

FORM No. 22-70

POLICE STATION _____ DISTRICT _____

Register No. XIX. Store - Room Register (Part-I)

1, -- *Serial No.*

2 -- *No. of first information report (if any), from whom taken (if taken from a person), and from what place.*

3. -- *Date of deposit and name of depositor.*

4.-- *Description of property.*

5. -- *Reference to report asking for order regarding disposal of property.*

6. -- *How disposed of and date.*

7.-- *Signature of recipient (including person by whom despatched).*

8. -- *Remarks.*

12. The purported Register No.19 produced in the present case was neither brought on record in its original statutory format nor proved in accordance with law. Instead, only a plain sheet of paper containing a brief description of the alleged case property was placed on record, which by no stretch of imagination can be treated as a valid entry of Register No.19 as contemplated under the Police Rules, 1934. Mere production of an expressive note on plain paper is wholly insufficient to establish compliance with the statutory requirement relating to the safe custody of case property. In this context, reliance is placed upon **Criminal Petition for Leave to Appeal No.219-B of 2023 (Irshad Khan v. The State)**, wherein it was categorically observed by Apex Court that an extract of Register No.19 prepared on plain paper cannot be relied upon as a substitute for the original register and that its admission in evidence was rightly objected to. Further reliance is placed upon **Jeehand v. The State (2025 SCMR 923)**, wherein it was held that:-

5. After hearing the learned counsel for the parties and perusal of the record, we have straightforward observed that the prosecution has failed to prove its case against the petitioner beyond the shadow of doubt for the following reasons:

i) No documentary evidence whatsoever has been brought on record by the prosecution to establish safe custody and transmission. Neither entry of Register No. XIX was tendered in evidence nor Road Certificate as contemplated by rule 22.70, Form 22.70 and Rule 22.72, Form 10.17 of Police Rules, 1934. So, this sole contour of the case creates dent in the case of the prosecution. This Court in the case of *Asif Ali v. State* (2024 SCMR 1408) observed as under:

"Rule 22.70 of the Police Rules, 1934 (the Police Rules¹) mandates that Register No. XIX shall be maintained in Form 22.70 of the Police Rules in the police station wherein, with the exception of articles already included in Register No. XVI, every article placed in the store room (Malkhana) shall be entered and the removal of any such article shall also be noted in the appropriate column."

We have noted that in the instant case, safe custody and safe transmission of the alleged drugs from the spot of recovery till its receipt by the Narcotic Testing Laboratory are not satisfactorily established. The Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when it is produced before the court, remains in safe custody and is not hampered with until that time. A complete mechanism is provided in the Police Rules qua safe custody and safe transmission of the case property to concerned laboratory and then to the Trial Court.

13. Furthermore, the Honourable Apex Court in the supra case has been pleased to hold that *communis observantia non est recedendum*, which connotes that when the law requires a thing to be done in a particular manner, it must be done in that manner alone. If the prescribed procedure is not followed, it shall be presumed that the act has not been performed in accordance with law.

14. From the foregoing findings, it is manifest that the prosecution was under a legal obligation to properly recover and document all pieces of the alleged contraband and to conduct the investigation strictly in

accordance with law. However, in the present case, no memo of inspection of the place of incident was prepared. Rule 25.10 of the Police Rules, 1934, casts a duty upon the Investigating Officer to personally visit the scene of occurrence after the commission of an offence and to prepare a proper inspection memo thereof. Failure to comply with this requirement demonstrates that the investigation was not conducted in the prescribed manner. In the instant case, the absence of any memo of inspection of the place of incident not only reflects non-compliance with Rule 25.10 of the Police Rules, 1934, but also casts serious doubt on the fairness and credibility of the investigation. Such omission further establishes that the prosecution has failed to properly collect, preserve, and present each piece of evidence in accordance with the law, thereby rendering the prosecution's case doubtful. For ready reference, Rule 25.10 of the Police Rules, 1934, is reproduced as under:

25.10. Immediate despatch of an officer to the spot. – *When a report of a cognizable case is recorded and it is decided not to dispense with investigation under section 157(1). Criminal Procedure Code, a police officer shall proceed to the scene immediately. The officer who first proceeds to the spot shall, if he be not competent to complete the investigation, take all possible steps to preserve the scene of the crime from disturbance, to record particulars of and secure the presence of potential witnesses, obtain information relating to the case and arrest the culprit.*

15. From the very outset, it is evident that the prosecution has failed to establish its case against the present appellant. Material discrepancies have surfaced throughout the prosecution evidence, coupled with the absence of complete, consistent, and corroborated material at each link of the prosecution chain. Such deficiencies have created serious doubts regarding the authenticity and reliability of the prosecution's case.

16. In view of the foregoing circumstances, the prosecution has miserably failed to prove its case against the appellant beyond reasonable doubt. It is a settled principle of criminal jurisprudence that if any doubt arises in the prosecution case, the benefit thereof must always go to the accused. This principle is firmly rooted in the well-known maxim *in*

dubio pro reo, which means that when doubt exists, the decision must favour the accused. Reliance in this regard is placed upon the judgment of the Hon'ble Supreme Court in **Qurban v. The State (2025 SCMR 1344)**.

17. For the foregoing reasons, we are inclined to allow this appeal. Consequently, the impugned judgment dated 06.03.2025, passed by the learned trial Court in Special Case No.105 of 2024, is hereby set aside. The accused/appellant is acquitted of the charge leveled against him. The jail authorities are directed to release the appellant forthwith, if he is not required to be detained in connection with any other case. These are the reasons for the short order dated 28.01.2026.

JUDGE

JUDGE

Abdul Salam/P.A