

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial
Justice Ms. Tasneem Sultana

Criminal Appeal No.221 of 2023

Appellant : *Haji Mohsin son of Haji Abdul Hayee*
through Mr. Qaim Ali Memon, advocate

The State : Through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General, Sindh

Date of hearing: 08.04.2026

Date of Judgment: 29.04.2026

JUDGMENT

Omar Sial, J.: On the night of **03.09.2021**, S.H.O. Nadeem Ahmad, along with HC-27753 Gulzar, PC-3259 Rafiq, and D/PC-33633 Haroon Rasheed, were on patrol duty for crime suppression. At approximately **0010 hours**, they intercepted a suspicious rickshaw (**Reg. No. D-21-05305, Sazgaar make**) traveling from Hub Chowki. The occupants of the rickshaw were identified as:

- **Arif (s/o Noor Muhammad)**: Driver.
- **Haji Mohsin (s/o Haji Abdul Hai)**: Passenger.
- **Nisar Ahmed (s/o Khaista Khan)**: Passenger.
- **Imran (s/o Ubaidullah)**: Passenger.

2. Due to the absence of private witnesses at the hour, HC-27753 Gulzar and D/PC-33633 Haroon Rasheed were appointed as official witnesses. A physical search yielded the following:

Suspect	Item Description	Substance	Total Weight
Haji Mohsin	10 plastic boxes in a white blanket	Ice (Meth)	10 kg (1 kg per box)
Nisar Ahmed	05 packets in a white plastic sack	Chars	2,500 g (500 g per packet)

Suspect	Item Description	Substance	Total Weight
Imran	04 packets in a blue plastic bag	Chars	2,000 g (500 g per packet)

No illegal substances were recovered from the driver, Arif.

3. During on-site interrogation, **Haji Mohsin** provided a statement in Pashto (translated by PC Haroon Rasheed). He disclosed that the narcotics belonged to a Dr. Baloch, the goods were delivered at a checkpoint by Asrarullah Baloch, **and that** the "Ice" was to be sold in Karachi to **Mulla Jan**. Haji Mohsin, Nisar Ahmed, and Imran were arrested under Section 6/9-C of the Control of Narcotics Substances Act, 1997. Arif was detained under **Section 54 Cr.P.C.** for further investigation. All recovered narcotics and the Haji Mohsin's smartphone were sealed on-site for chemical/forensic examination. Upon returning to the station, F.I.R. No. 362 of 2021 was registered against the apprehended and un-arrested accused.

4. The arrested accused, i.e. Haji Mohsin, Nisar Ahmed, and Imran pleaded not guilty and claimed to be tried. At the trial, the prosecution examined PW-1 SIP Nadeem Ahmed, who is complainant, he produced memo of arrest and copy of FIR. PW-2 HC Gul Faraz and PW-3 PC Haroon Rasheed are mashirs memo of arrest of recovery as well as memo of inspection of place of incident. PW-4 HC Abdul Naeem is Head Mohrar who received the custody of accused, sealed case property and rikshaw at police station from complainant. PW-5 SIP Rashid Mehmood is the Investigating Officer who produced criminal record of the accused persons and various reports/letters as well as report of chemical examiner, thereafter prosecution closed its side.

5. In their respective section 342 Cr.P.C. statements, all three accused professed innocence and denied wrongdoing. Haji Mohsin also said that he was arrested from his home and the police demanded a bribe, but when he didn't pay, a false case was registered against him. All three accused also examined themselves on oath under section 340(2) Cr.P.C. Haji Mohsin said

that he was picked up by the police on the pretext that he was a Taliban commander, and he was asked for a Rs. One million bribe, but when he didn't pay, the case was registered against him. Nisar Ahmed said that he was picked up from his house, asked about Haji Mohsin, and then booked in this case. Imran said that he had been picked up by the police, who took the Rs. 26,620 he had, and when he asked them for the money, they registered a case against them.

6. On 28.03.2023, the learned 8th Additional Sessions Judge, Karachi West, convicted and sentenced the accused as follows:

1. Accused Haji Mohsin was sentenced to life imprisonment with a fine of Rs.500,000 and in default in payment he would remain in prison for another one year. The benefit of Section 382-B Cr.PC extended to him.

2. Accused Nisar Ahmed and Imran were sentenced to imprisonment for 05 years each with a fine of Rs.200,000 each and in default in payment of fine they would remain in prison for another 05 months. The benefit of Section 382-B Cr.P.C was extended to them.

7. This appeal has been filed by Haji Mohsin, only for himself. The appellant's counsel has informed us that no appeal has been filed to date by the other accused.

8. We have listened to the appellant's learned counsel and the learned Additional Prosecutor General and have also re-appraised the evidence. The appellant's counsel has stressed on safe custody and transmission while the learned Additional Prosecutor General has passionately supported the impugned judgment. Our observations and findings are as follows.

9. The record shows that the PW-1, S.I. Nadeem Ahmed, seized the narcotics between 0055 hours and 0120 hours. The entire seizure was sealed on the spot. The narcotics were taken to the police station, where, according to S.I. Nadeem's testimony, he handed over the narcotics to the Head Mohrar of the police station. The Head Mohrar (Abdul Naeem) was examined as a

prosecution witness, who corroborated that S.I. Nadeem handed over the sealed parcels to him upon his return to the police station on 04.09.2021. It is after the initial deposit that the prosecution's story of safe custody becomes murky. We observe as follows:

- (i) Abdul Naeem did say at trial that the property was in the maalkhana till 06.09.2021. He admitted, however, that neither his testimony nor his section 161 Cr.P.C. statement recorded earlier revealed who he had handed over the narcotics to on 06.09.2021. He admitted that Register XIX required the signature of the person who took out the narcotics, and that the Register he produced has no signature. He admitted that the entry in the Register XIX does not, as a matter of fact, show the time or the name of the depositor on 04.09.2021. The original Register XIX was admittedly not produced at trial.
- (ii) The memo of seizure records that the narcotics were sealed separately. S.I. Nadeem Ahmed testified that when the accused were searched on the spot, Haji Mohsin also had a one mobile phone, one passport, and one original CNIC. The latter three items, however, were not sealed. The seizure memo also does not record the sealing. The chemical laboratory also recorded that the packet contained narcotics. Most surprisingly, when the packet was unsealed in court, the mobile phone, the passport, and the CNIC, along with the narcotics, emerged from the same parcel, ostensibly sent by the laboratory after examination. The prosecution has no explanation of how this could have happened. Obviously, the packets had been tampered with.
- (iii) The rickshaw driver was not made a witness. This gentleman was the best witness for the prosecution. He was driving the rickshaw with the somewhat four healthy men sitting in his rickshaw, each with a reasonable quantity of narcotics. He was the person who was stopped, and then he, his rickshaw, and his passengers

were checked. This person was not made a witness by the prosecution, and his absence was explained at trial by the investigating officer, who stated that he would "have turned hostile". Hardly a satisfactory reason. The investigating officer, at the same time, acknowledged that when he had recorded the section 161 Cr.P.C. statement of the rickshaw driver, the rickshaw driver had told him that *"It is incorrect to suggest that all the three accused present in Court were arriving with me on the date of recovery voluntarily says that only accused Nisar was with me. I had not seen any recovery from my rikshaw or from the accused by police. It is correct to suggest that I stated in my statement before the I.O before releasing that I went at the request of accused Nisar for bringing his two guests from Hub chowki. It is incorrect to suggest that in my statement to I.O, I stated that police intercepted us and recovery was made from my rikshaw. I have no any driving license I used to drive rikshaw after intimation to my father and on the date of incident I did not intimate to him as he was sleeping. It is correct to suggest that police had not recorded my any other statement (161 CrPC) except the statement recorded before my release. It is correct to suggest that police lock up to me with all the three accused persons on the date of arrest and recovery at PS."* Sufficient doubt is caused in the prosecution's case by its not producing its best witness. The evidence reflects that the rickshaw driver would not have supported the prosecution's case if he had testified.

10. The alleged notorious Taliban commander does not have a criminal record. Unusual for a commander to say the least. The Road Certificates produced at trial are undated and seem to have been prepared as an afterthought. The quality of evidence produced at this trial was extremely poor and at times seems to also be tainted by malafide.

11. The prosecution was unable to prove an unbroken chain of safe custody and transmission. It is well settled that if safe custody and transmission is not proved, a conviction cannot be sustained. Accordingly, the appeal is allowed and the appellant acquitted of the charge. He may be released if not required in any other custody case.

JUDGE

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