

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial
Mr. Shamsuddin Abbasi

Criminal Appeal No.450 of 2024

Appellants : Naseebullah and Mst. Bakhtawar
through Mr. Nadeem Ahmed Azar,
advocate

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

Date of hearing: 13.04.2026

Date of Judgment: 23.04.2026

JUDGMENT

Omar Sial J. On 31.05.2022, a police party of the Mochko police station led by A.S.I. Muhammad Ayoub Merani, while conducting snap checking, stopped a rickshaw. A man, identified as Naseebullah, was driving the rickshaw while a woman, identified as his wife Bakhtawar, was sitting on the rear seat. There were two black sacks lying in the rickshaw, which, when checked by the police, revealed 15 packets of charas in each sack; the aggregate weight of the charas was 18400 grams. Both individuals were arrested, and F.I.R. No. 222 of 2022 was registered against them under sections 6 and 9(c) of the CNS Act, 1997.

2. Both individuals pleaded not guilty and requested a trial. At the trial, the prosecution examined PW-1 A.S.I. Muhammad Ayub Merani (the arresting and seizing officer as well as the complainant); PW-2 L.P.C. Zehra Naz (witness to the arrest and recovery); PW-3 S.I. Mumtaz Tanoli (the investigating officer); PW-4 A.S.I. Muhammad Kamran (witness to the arrest and recovery); PW-5 Abdul Naeem (maalkhana in charge). The

accused professed innocence in their respective Section 342 Cr.P.C. statements but offered no substantial defense.

3. The learned 1st Additional Sessions Judge, Karachi West, on 31.05.2024, convicted both accused and sentenced them to life imprisonment under section 6 of the Control of Narcotics (Sindh Amendment) Act, 2021. It is this judgment that has been challenged through this appeal.

4. The appellants' learned counsel put his arguments on paper, and as they form part of the record, we are not reproducing them here. The arguments filed are repetitive; some run counter to established principles of law, and others are completely meaningless and irrelevant. This court, already inundated with high volumes of appeals, has had everything under the sun thrown at it in the shape of written arguments. No case law has been cited, and the arguments appear to be AI-generated. Such a practice is not appreciated.

5. We have listened to the appellants' counsel and the Additional Prosecutor General and have reappraised the evidence.

6. We find no misreading or non-reading of evidence. The couple was arrested in possession of a sizeable quantity of charas. They had no defense to give; they could not show any malafide nor claimed any, on the part of the police to foist nearly 37 kilograms of charas on them and register a false case; safe custody was satisfactorily proved. There is a typographical error in column 3 of the F.I.R.; however, the correct weight is given in the body of the F.I.R. and the memo of seizure; the typographical error is not sufficient to upset the conviction awarded. The argument that the FSL report does not mention the quantity of the sample taken is completely misconceived, as the report does include such details. We find no reason to warrant interference with the judgment of the trial court as far as the accused Naseebullah is concerned.

7. An area of the case we have looked at closely is whether it can be said that Bakhtawar was in conscious possession of the narcotics. The charas was recovered from two sacks in a rickshaw being driven by Naseebullah. There is a strong possibility that his wife, who is a simple, conservative, rural lady, was not aware that her husband was transporting narcotics and using her as a shield against police checking. In **Ghazi Khan Pathan and another v. The State (2025 SCMR 1351)**. The Supreme Court observed that:

“Furthermore, the intercepted truck was under the control and custody of the driver. Petitioner Ghazi Khan, which legally amounts to his constructive possession of the narcotics recovered from the vehicle. To further elucidate the role of drivers under the doctrine of constructive possession, it is significant to note that in other jurisdictions such as the United States, the Court in State v. Wallace [372 Md. 137, 812 A.2d 291 (2002)] opined that drivers of vehicles are perceived to have heightened control over the contents of their vehicles supporting the idea of presumption of knowledge or constructive possession. It is therefore a settled principle of law that in such circumstances, the driver is deemed responsible for the contraband found in the vehicle under his charge, and it is presumed that he had knowledge of its presence. Reliance in this regard is placed on Kashif Ameer v. The State (PLD 2010 SC 1052) in which this Court held that:

"It is well settled principle that a person who is on driving seat of the vehicle, shall be held responsible for transportation of the narcotics having knowledge of the same as no condition or qualification has been made in section 9(b) of CNSA that the possession should be an exclusive one and can be joint one with two or more persons. Further, when a person is driving the vehicle, he is incharge of the same and it would be under his control and possession, hence, whatever articles lying in it would he under his control and possession."

8. The Court went on to observe that:

“To the extent of Marzak Khan, it is important to note that he was sitting in the front seat at the time of interception. As such, attributing the illicit narcotics found in the vehicle to him cannot be justified in the absence of any evidence linking him to the possession or control of the vehicle, as the prosecution failed to provide evidence that he was aware of the narcotics in the vehicle. Since he lacked a possessory right in, or control over, the vehicle. It cannot

be inferred that he had knowledge of the narcotics. We have found that the Petitioner, Marzak Khan, was neither conscious nor aware of the narcotics present in the vehicle. Thus, we find no reasonable grounds to uphold his conviction. Reliance in this regard is placed upon case of Shahzada v. State (2010 SCMR 841) in which it was held:

"We have heard the learned counsel for the parties and have perused the record of this case very carefully. As regards the appellants, who were simply sitting in the car, their case is distinguishable from the case of the Driver and for involvement of such persons the prosecution is required to lead some evidence to show that they had knowledge of the property lying in the car or they had abetted or conspired with the Driver in the commission of the crime. No such evidence has been led by the prosecution to prove the above aspects of the case so as to make the appellants responsible for the commission of the crime along with the Driver. If the property would have been lying open within the view of the appellants or they knew the placement of the property then the situation would have been different. In such a situation, the appellants were required to explain their position, as required under Article 122 of Qanun-e-Shahadat Order, 1984 and without such explanation their involvement in the case would have been proved. As the property was not within their view and they had no knowledge of the placement of the property, therefore, they cannot be held responsible and in joint possession of the property with the Driver. As such the case of the prosecution against the appellants is highly doubtful."

9. In the present case, attributing the illicit narcotics found in the rickshaw to Bakhtawar cannot be justified in the absence of any evidence linking her to the possession or control of the vehicle, as the prosecution failed to provide evidence that she was aware of the narcotics in the vehicle. Since she lacked a possessory right in, or control over, the vehicle. It cannot be inferred that she had knowledge of the narcotics. Bakhtawar also has a minor child who has been confined in jail with her. The damage to the child if he grows up in prison will be far greater than keeping Bakhtawar imprisoned.

10. Given the above, the conviction and sentence given to Naseebullah by the trial court is maintained. However, Bakhtawar is acquitted of the charge. She may be released forthwith if not required in any other custody case.

JUDGE

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