

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-
Mr. Justice Shamsuddin Abbasi
Mr. Justice Miran Muhammad Shah

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Criminal Appeal No.241 of 2025

Appellant	Mudassir Shah son of Mushkar Mian through Mr. Abdullah Khalil Brohi, Advocate.
Respondent	The State through Mr. Habib Ahmed, Special Prosecutor A.N.F.
Date of Hearing	<u>12.10.2026</u>
Date of Judgment	<u>15.10.2026</u>

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J U D G M E N T

Shamsuddin Abbasi, J.- Mudassir Shah son of Mushkar Mian, appellant, has called into question the validity of the judgment dated 07.03.2025, penned down by the learned Special Court No.I (Control of Narcotic Substances), Karachi, in Special Case No.73 of 2024 (FIR No.12 of 2024) registered at Police Station ANF-Gulshan-e-Iqbal, Karachi, for offence under Section 6 read with Section 9(1) Clause 3(c) of the Control of Narcotic Substances Act, 1997 as amended by the Act of 2022 through which he was convicted and sentenced to suffer rigorous imprisonment for twelve (12) years and to pay a fine of Rs.200,000/- and to suffer simple imprisonment for a further period of six (06) months in lieu of fine. The benefit in terms of Section 382-B, Cr.P.C. was, however, extended to the appellant.

2. Briefly stated, the prosecution case, as set forth in the FIR is that on 21.04.2024 SIP Rana Abu Bakar was present on duty at Police Station ANF-Gulshan-e-Iqbal, Karachi, when a special informer acting through high-ups conveyed information that a drug peddler, namely Mudassir Shah son of Mushkar Mian accompanied by his son Hanif Shah would arrive near Hascol Petrol Pump, Service Road, Al-Asif Square, Sohrab Goth, Karachi, to deliver substantial quantity of charas to their intended customers. The informer further disclosed that an immediate raid at the identified location could lead to the recovery of narcotics and the apprehension of the suspects. Acting upon the said information and pursuant to the directions of the senior officers a raiding party comprising HC Moin Sabir, PC Inayatullah, Constable Zameer Ahmed, LPC Fiza Batool and PC Driver Khalid Zaman was constituted under the supervision of SIP Rana Abu Bakar, armed with official weapons. The

police party departed from P.S. in an official mobile at 0710 hours vide departure entry No.12 and reached the indicated place at 0730 hours whereupon secret surveillance was commenced in the vicinity of Hascol Petrol Pump. During surveillance the police party noticed a man standing by the roadside in a suspicious manner holding a white plastic sack in his right hand and apparently waiting for someone. The special informer pointed towards him and identified him as Mudassir Shah. The complainant with the assistance of the accompanying police personnel apprehended the said person and requested the bystanders to act as witnesses to the search, however, they declined, therefore, PC Inayatullah and PC Driver Khalid Zaman were associated as mashirs of the arrest and recovery proceedings. Upon inquiry the apprehended person disclosed his identity as Mudassir Shah son of Mushkar Mian, resident of Baldia Town, Karachi. When questioned about the narcotic, the accused initially resisted but subsequently admitted that he possessed charas and himself opened the sack and handed over five multicoloured tins bearing mark "Chamcham" to complainant. Upon opening the same in presence of the mashirs, the complainant found charas wrapped in plastic shoppers. The contents of each packet were weighed electronically and found to weigh 550 grams making the aggregate quantity 2,750 grams (2.75 kilograms). For identification, the complainant assigned serial Nos.1 to 5 to the five tins and then separated 10 grams of charas from each packet as a sample for chemical analysis, placed the five samples in separate transparent packets, marked them serially from 1 to 5 and sealed them with wax. The sample packets were thereafter placed in a separate white cloth bag, which was sealed and marked as parcel No.1. The remaining charas was placed back into the respective tins, which were secured inside the plastic sack and sealed as parcel No.2. During personal search of accused, the complainant recovered Rs.750/- in cash, original CNIC and a Nokia mobile phone, Model 1174 bearing SIM No.0343-2266796 from the right pocket of his shirt. The complainant arrested the accused and prepared mashirnama of arrest and recovery at the spot in presence of mashirs and thereafter brought the accused and the recovered property at P.S. where complainant lodged FIR on behalf of the State for offence under Section 6 read with Section 9(1), Clause 3(c), of the Control of Narcotic Substances Act, 1997 as amended by the Act of 2022.

3. During investigation, the sample parcel was forwarded to chemical examiner for analysis whereupon a report was issued confirming that the

submitted substance was charas. Upon completion of the investigation, the police submitted challan before the Court of competent jurisdiction under the aforesaid provisions of law whereby the appellant was sent up to face the trial.

4. Upon indictment, the appellant pleaded not guilty to the charged offence and claimed a trial. At trial, the prosecution has examined four witnesses namely, complainant SIP Rana Abu Bakar as PW.1 at Ex.7, HC Riaz Ali Pahi as PW.2 at Ex.8, ASI Asif Shah (Malkhana Moharrir) as PW.3 at Ex.9 and PC Inayatullah (mashir of memo of arrest and recovery) as PW.4 at Ex.10. Thereafter, the prosecution closed its side vide statement at Ex.11. In his statement under Section 342, Cr.P.C. the appellant has denied the allegations levelled against him by the prosecution, professed his innocence and pleaded his false implication. He neither opted to make a statement on oath under Section 340(2), Cr.P.C. nor produced any witness in his defence.

5. The learned trial Court after hearing the parties' respective counsel and upon appraisal and evaluation of the evidence available on record, vide impugned judgment dated 07.03.2025, convicted and sentenced the appellant as detailed in para-1 (supra), which necessitated the filing of the listed appeal.

6. It is contended on behalf of the appellant that he is innocent and has been falsely implicated in this case with mala fide intention and ulterior motives despite having no connection with the alleged offence and has been made victim of circumstances. It is next submitted that the prosecution has miserably failed to establish the safe custody and unimpeached transmission of the alleged narcotic substance to the chemical examiner. It is also submitted that mere production of Register No.XIX and the Road Certificate without satisfactory proof of the relevant links in the chain of custody is insufficient to establish that the representative sample remained intact with its seals unaltered throughout the period of custody and until its receipt at the laboratory. He has pointed out that the Road Certificate, available at Ex.8/C, does not disclose the time at which the representative sample was taken out from the Malkhana or the time at which it was received at the office of the chemical examiner thereby leaving an unexplained gap in the prosecution's account of transmission of the representative sample. He maintains that these deficiencies coupled with material contradictions in the prosecution

evidence render the safe custody and secure transmission of the sample doubtful and cast serious doubt upon the evidentiary worth of the chemical examiner's report. The prosecution has failed to satisfactorily establish that the substance analyzed was the very same substance allegedly recovered from the appellant. He, therefore, contends that the defect strikes at the root of the prosecution case and entitles the appellant to acquittal by extending him the benefit of doubt. In support of his submissions, the learned counsel has relied upon the cases of *Yousaf Khan v The State* (2026 SCMR 686), *Farman Ali and another v The State* (2025 SCMR 1730), *Rasheed Ahmad alias Sheeda v The State* (2026 SCMR 798), *Laiq Shah v The State* (2026 SCMR 257), *Imran v The State* (2026 SCMR 47), *Muhammad Siddique and another v The State and others* (2026 SCMR 783), *Qurban Ali v The State* (2025 SCMR 1344), *Shahzaib alias Wadero Feroze v The State* (2024 YLR 1298), *Muhammad Aslam v The State* (2024 YLR 2498), *Shakeel Ahmad v The State* (2024 YLR 766), *Abdul Zahir v Khuda e Dad* (2016 YLR 188) and *Najaf Khan and others v The State and others* (2016 P.Cr.L.J. 380)

7. Conversely, the learned Special Prosecutor ANF has contended that the prosecution has satisfactorily established the safe custody and secure transmission of the narcotic substance to the office of chemical examiner. It is next submitted that the recovered property was deposited in the Malkhana of P.S. on 21.04.2024 under Entry No.441 of Register No. XIX and that on the following day i.e. 22.04.2024 the sealed representative sample was taken out from the Malkhana and handed over to HC Riaz Ali Pahi, who transmitted the same to the office of the chemical examiner on the same day. It is also submitted that the prosecution witnesses through their respective evidence have corroborated the prosecution's account regarding the deposit, retrieval and transmission of the sample while the relevant documentary evidence and the positive report of chemical examiner lent further support to the prosecution case. He, therefore, maintained that the prosecution has established an unbroken chain of custody and safe transmission of the representative sample and prayed for dismissal of appeal for want of merit.

8. We have heard the learned counsel for the appellant and the learned Special Prosecutor, ANF and have carefully examined the evidence available on record with their able assistance.

9. The principal contention advanced on behalf of the appellant relates to the alleged failure of the prosecution to establish the safe custody and

unimpeached transmission of the representative sample to the office of the chemical examiner. We have considered this said contention in the light of the oral as well as documentary evidence available on record. The evidence of PW.1 complainant SIP Rana Abu Bakar, the carrier HC Riaz Ali Pahi, who appeared as PW.2 and PW.3 Malkhana Moharrir ASI Asif Shah consistently establishes that the recovered narcotic substance including the sealed sample parcel was deposited in the Malkhana of P.S. on 21.04.2024 (day of recovery) under Entry No.441 of Register No. XIX and that on the following day the sealed representative sample was retrieved from the Malkhana and handed over to HC Riaz Ali Pahi for transmission to the chemical examiner. The carrier has categorically testified that he has deposited the sample at the laboratory on the same day and upon returning to P.S. handed over the laboratory receipt to the complainant. The relevant documentary record including the Malkhana entry, the road certificate and the laboratory receipt lends corroboration to their respective testimonies. The chemical examiner's report further confirms that the laboratory received a sealed white cloth parcel containing five transparent thelis serially numbered 1 to 5 each containing a dark brown substance weighing 10 grams, which upon analysis was found to be charas.

10. We are conscious of the objection raised by the learned counsel for the appellant that the road certificate, available at Ex.8/C, does not specifically indicate the time at which the representative sample was taken out from the Malkhana or the time at which it was received at the office of the chemical examiner, however, the evidentiary value of the said document must be assessed along with the consistent oral testimony of the concerned officials and the other documentary evidence on record rather than in isolation. The omission to record the precise times of retrieval and receipt by itself does not establish that the sample was tampered with, its seals were compromised or its identity was otherwise rendered doubtful. The material consideration is whether the prosecution evidence when examined cumulatively satisfactorily establishes the safe custody and secure transmission of the sample from the time of its deposit until its receipt at the laboratory. In the case in hand, the Malkhana Moharrir has categorically testified to the deposit and subsequent dispatch of the sealed sample while the carrier has corroborated its receipt from the Malkhana and delivery to the chemical examiner on the same day. No material discrepancy has been brought to our notice which would render their testimony inherently unreliable

or demonstrate any intervening opportunity for tampering with the sample. The omission pointed out by the defence, therefore, does not constitute a material break in the chain of custody so as to discredit the chemical examiner's report. We, therefore, find that the prosecution has satisfactorily established the safe custody and safe transmission of the representative sample to the laboratory and the objection raised on this score does not create a reasonable doubt warranting interference with the appellant's conviction.

11. So far as the merits of the prosecution case are concerned, the evidence of the complainant regarding the apprehension of the appellant and recovery of five tin containers containing charas from his possession finds material corroboration from the testimony of PW.4 PC Inayatullah, who was associated as a mashir of the arrest and recovery proceedings. The mashirnama of arrest and recovery, available at Ex.7/C, further supports the prosecution account. The chemical examiner's positive report establishes the nature of the recovered substance while the evidence relating to its safe custody and transmission has been found satisfactory for the reasons discussed hereinabove. The defence has failed to identify any material contradiction or infirmity of such significance as could undermine the prosecution case as a whole. Mere denial of the allegations and a plea of false implication without any substantive material capable of discrediting the prosecution evidence are insufficient to displace the consistent and confidence inspiring evidence available on record. Upon an independent appraisal of the evidence, we are satisfied that the prosecution has proved the charge against the appellant beyond reasonable doubt. Consequently, the conviction recorded by the learned trial Court calls for no interference.

12. This brings us to the question of the quantum of sentence. The learned trial Court convicted the appellant for possessing 2,750 grams (2.75 kilograms) of charas and sentenced him to suffer rigorous imprisonment for twelve (12) years with fine of Rs.200,000/- and in default of payment of fine to undergo a further six (06) months' simple imprisonment. The applicable provision is Section 9(1), Table, Serial No.3(c), of the Control of Narcotic Substances Act, 1997 as amended by the Control of Narcotic Substances (Amendment) Act, 2022. Under the said provision, possession of charas weighing from 1,000 grams to 4,999 grams is punishable with imprisonment for a term which may extend to fourteen (14) years but shall not be less than

nine (09) years together with a fine which may extend to Rs.400,000/- but shall not be less than Rs.80,000/-. Thus, the statute prescribes a sentencing range within which the Court is required to exercise its judicial discretion subject to the mandatory minimum and maximum limits laid down by law. Since the quantity of charas recovered from the appellant falls within the aforesaid category, the minimum term of imprisonment prescribed for the offence is nine (09) years. It is a settled principle of sentencing that the punishment must be proportionate to the nature and gravity of the offence and that judicial discretion must be exercised judiciously keeping in view the relevant circumstances of the particular case. Where the law prescribes a range of punishment, the Court is required to determine an appropriate sentence within the statutory limits after considering the circumstances of the offence and the offender rather than imposing a sentence towards the higher end of the prescribed range without adequate justification. In this behalf guidance may be drawn from the judgment of the Honourable Supreme Court in *State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v. Mujahid Naseem Lodhi* (PLD 2017 SC 671), which underscores the importance of a judicious and reasoned approach to sentencing in light of the circumstances of each case. The said principle, however, does not empower the Court to disregard a mandatory statutory minimum rather it requires the Court to exercise its discretion within the limits prescribed by the applicable law and to record appropriate reasons for the sentence imposed.

13. We have considered the judgments cited by the learned counsel for the appellant in support of his submissions, however, the said precedents are distinguishable on their facts and circumstances from the case in hand and, therefore, do not advance the appellant's case or furnish any sufficient basis for interference with the finding of guilt recorded by the learned trial Court. In the case in hand, the prosecution has successfully established the charge against the appellant and no material has been brought on record to warrant interference by this Court. Nevertheless, while determining the appropriate quantum of sentence, we have considered the mitigating circumstances urged on his behalf particularly his plea of having no previous conviction and the possibility of his rehabilitation. Having regard to these circumstances, considered cumulatively, we are of the view that the ends of justice would be adequately served by reducing the substantive sentence to the statutory minimum of nine (09) years' rigorous imprisonment. Such reduction is

warranted on the particular facts of the case and does not detract from the seriousness of the offence or the legislative policy underlying the narcotics law. Consequently, the appeal is partly allowed to the extent of sentence. The conviction of the appellant under Section 6 read with Section 9(1), Table, Serial No.3(c), of the Control of Narcotic Substances Act, 1997 as amended by the Control of Narcotic Substances (Amendment) Act, 2022, is maintained, however, his substantive sentence of twelve (12) years' rigorous imprisonment is reduced to nine (09) years' rigorous imprisonment. The sentence of fine is reduced from Rs.200,000/- to Rs.80,000/- and in case of default in payment of fine amount, he shall suffer six (06) months' simple imprisonment. The appellant shall also retain the benefit of Section 382-B, Cr.P.C. in accordance with law.

JUDGE

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