JUDGMENT SHEET

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Cr. Jail Appeal No.D-02 of 2025.

Loung Khan v. The State.

Present:-

Mr. Justice Miran Muhammad Shah.

Mr. Justice Muhammad Hasan (Akber)

Appellant	:	Loung Khan s/o Muhammad Hassan Through Mian Taj Muhammad, Advocate.
Respondent	:	The State through Mr. Ghulam Abbas Dalwani, Deputy. P.G.
Date of hearing	:	24.02.2026.
Date of Decision	:	05.03.2026.

J U D G M E N T

Miran Muhammad Shah, J:- Through this Criminal Jail Appeal, appellant Loung Khan s/o Muhammad Hassan has called in question the Judgment dated 28.10.2024 passed by the learned Additional Sessions Judge-I/(Special Judge for CNS Cases/Judge MCTC, Sanghar in Special Case No.141 of 2023 (Re: The State v. Loung Khan & Others) arising out of crime / F.I.R No.26 of 2023, registered at P.S Darya Khan Rind @ Maqsoodo Rind for an offence under Section 9(i) 3-(d) of CNS Act-1997(Amendments of years 2022/2023, whereby he was convicted U/s 265-H(ii) Cr.P.C and sentenced to suffer R.I for fifteen (15) years and to pay fine to the tune of Rs.500,000/- (Rupees Five Hundred

Thousand only), in case of failure to pay fine he shall suffer S.I for eight months. The benefit of Section 382-B Cr.P.C was extended to accused.

2. The facts as incorporated in the FIR are that on 03.10.2023, a police party of P.S. Darya Khan Rind @ Maqsoodo Rind, headed by SHO Rao Wajid Ali Rajput, left the police station for patrolling vide Roznamcha Entry No.19 at 1730 hours. On directions from the SSP Office Sanghar, they conducted snap checking from 1830 to 2030 hours at Hashim Shah Check Post. At about 1930 hours, a silver Corolla car (No. BGT-550) coming from Shahdadpur Road was signaled to stop. Two persons were in the car. The driver produced his CNIC showing the name Altaf Hussain. During verification, both persons attempted to flee. One accused, later identified as Loung Khan S/o Muhammad Hassan Brohi, was apprehended, while the other, Altaf Hussain S/o Ghulam Rasool Brohi, escaped in the darkness. Upon search of the arrested accused, Rs.200, one OPPO mobile phone, and a copy of CNIC were recovered. Search of the vehicle led to recovery of nine packets of charas from a polythene shopper placed on the rear seat. Each packet weighed 1020 grams, totaling 9180 grams. The case property was sealed at the spot, and a memo of arrest and recovery was prepared. Thereafter, FIR No.26/2023 under Section 9(i)(3)(d) of the CNS Act (Amendment 2022) was registered against the accused.

3. On completion of usual investigation, the police submitted final report under Section 173 Cr.P.C against the accused/appellant. The charge against present appellant/accused was framed to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution to prove its case, examined in all five (05) witnesses, who had produced numerous documents and then learned Prosecutor closed the prosecution side by filing such statement. Thereafter, statement of the appellant/ accused under section 342

Cr.P.C was recorded wherein he denied the allegations being false and claimed his innocence. Further, he did not examine himself on oath as required u/s 340(2) Cr.P.C, nor led evidence in his defense.

5. After hearing the learned State counsel, learned counsel for appellant as well as assessment of evidence available, the learned trial Court passed the Judgment dated 28.10.2024, convicted and sentenced the appellant as stated above. Hence, the appellant preferred instant appeal against the impugned Judgment.

6. The facts of the case have been succinctly stated above, and the evidence presented before the trial court is comprehensively detailed in the impugned Judgment. To avoid repetition, we will refrain from reiterating them here. Instead, we will address the relevant aspects in our findings.

7. The learned counsel for appellant has mainly argued that there are major contradictions in the evidence of prosecution witnesses, which have been ignored by the learned trial Court while deciding the impugned Judgment; that all the prosecution witnesses are interested, set up and officials; that all the material witnesses and complainant itself contradicted their version regarding the information about the incident; that there are major contradictions in the evidence of the prosecution witnesses, but the same were totally ignored by the learned trial Court. Notwithstanding violation of Section 103 Cr.P.C the investigating officer also failed to record statements of a single person to confirm as to whether the appellant was involved in this crime from any locality. Learned counsel further argued that there is no any previous criminal record against accused, the SIM number and description of currency notes are not mentioned in memo of recovery, I.O and other witnesses have not produced supported, corroborative and reliable evidence on all the material points, and the material contradictory evidence of complainant and mashir shows that they both were not present at the time of

arrest/recovery, and their presence at the place of incident is very doubtful. This case involves a life of an innocent person, who is being victimized due to political enmity and labelled as a supplier of narcotics. The absence of any private mashir in such a critical matter raises questions especially when the prosecution fails to produce neutral witnesses. He prayed that the impugned Judgment may be set-aside and the appellant/accused may be acquitted from the charge.

8. While, refuting the above contentions, the learned Deputy Prosecutor General opposed the appeal on the ground that huge quantity of narcotics were recovered from the possession of the accused. He further contended that the case at hand is a crime against society and is increasing day by day. Lastly, it is argued that though there are minor contradictions in the evidence of prosecution witnesses but the same are not fatal to the case of prosecution. He prayed for dismissal of the appeal.

9. We have carefully heard learned counsel for the parties and scanned the entire evidence as well as the record.

10. The case of the prosecution is that the police party was on patrolling and checking when they spotted a Corolla car, which was signaled to stop. Upon stopping the vehicle, the accused alighted therefrom and attempted to escape, but the police party apprehended him. On inquiry, he disclosed his name as Loung Khan S/o Muhammad Hassan, caste Brohi, resident of Village Abdul Haleem Brohi, Taluka Shahdadpur, and further disclosed the name of the escaped person as Altaf Hussain S/o Ghulam Rasool Brohi, resident of Bhugra Bagh. HC Piyar Ali conducted the body search of the arrested accused Loung Khan and recovered two currency notes of Rs.100/- each (total Rs.200/-), one OPPO mobile phone, and one copy of CNIC from his side pocket. The complainant party then searched the vehicle and found one black-colored polythene shopper lying on the rear seat behind the driver's seat. Upon checking the said shopper with the assistance of HC Muhammad Khan, they

allegedly recovered nine packets of charas wrapped in green and black plastic sheets bearing the words “CARTE-NOIRE” on a white portion thereof. On further checking, the packets were found wrapped inside plastic bearing the words “Chandio No.1 2022-2023.” Each packet was weighed on a computerized scale and found to be 1020 grams, making a total weight of 9180 grams. The prosecution case, however, suffers from several material lacunas which create serious doubt regarding the veracity of the alleged recovery. Firstly, the entire proceedings of snap checking, arrest, and recovery were conducted exclusively by police officials, and no independent private mashir from the locality or passing public was associated, despite the alleged recovery having been effected at a public check post during evening hours. The non-association of independent witnesses, without plausible explanation, renders the recovery proceedings doubtful. Secondly, although it is alleged that both accused persons attempted to flee, the FIR is silent regarding the specific role of each accused in relation to the contraband, particularly as to who was in conscious possession of the charas recovered from the rear seat. Mere presence in a vehicle does not establish conscious possession unless supported by cogent and convincing evidence. Thirdly, the prosecution has neither clarified the ownership of the vehicle nor placed on record any documentary proof connecting the arrested accused with the said vehicle, thereby creating doubt regarding exclusive control or knowledge of the narcotics. Furthermore, the alleged escape of one accused in the presence of a fully armed police party during snap checking raises serious questions about the conduct and preparedness of the police officials. No details have been provided regarding efforts made for his immediate pursuit, arrest, or subsequent identification. The recovery memo was allegedly prepared under torch and bulb light, which may cast doubt on the transparency and accuracy of the proceedings. Additionally, although it is stated that the charas was weighed on a computerized scale, there is no mention of its source, calibration, or certification, which is a material omission in narcotics cases where the

quantity determines the gravity of the offence. The prosecution version also fails to clarify the safe custody of the case property, the chain of possession, and the prompt dispatch of samples to the chemical examiner, which are mandatory safeguards under narcotics law. These omissions collectively create reasonable doubt and weaken the prosecution case, entitling the accused to the benefit of doubt in accordance with settled principles of criminal jurisprudence.

11. With regard to the alleged recovery of narcotics from the possession of the accused, it was incumbent upon the complainant to associate a private person from the locality to act as a mashir in order to ensure transparency and credibility in the recovery proceedings. The failure to associate any independent witness, particularly when the alleged recovery was effected at a public check post during evening hours, raises serious doubts about the authenticity of the recovery and the truthfulness of the prosecution's version. The prosecution cannot safely rely solely upon the testimony of police officials without corroboration from an independent source, especially in narcotics cases where strict procedural safeguards are required to be observed. Nothing has been brought on record to demonstrate that the police made any sincere effort to associate a private person in the recovery proceedings. The contention of the learned A.P.G., Sindh, that members of the public are generally reluctant to act as mashirs due to apprehension of inconvenience or risk, does not absolve the police of their legal obligation to make genuine and earnest efforts to secure independent witnesses. It is the duty of the law enforcement agency to ensure transparency and impartiality so as to inspire confidence in the recovery process. It is settled law that police officials are competent witnesses and their testimony cannot be discarded merely on the ground of their official status; a conviction can be based upon their evidence alone, provided that such evidence is reliable, trustworthy, confidence-inspiring, and free from material contradictions. However, where these qualities are lacking, or where circumstances create doubt regarding the fairness of the

recovery proceedings, it would be unsafe to record a conviction solely on the basis of police testimony. Record shows that the alleged charas was recovered from possession of appellant/accused and was kept in Malkhana and the same was sent to Chemical Examiner after the delay of two days, hence it had not been proved that it was a safe transit case. In a case of Ikramullah and others v. The State (2015 SCMR 1002), the Honourable Supreme Court of Pakistan had observed as under;

> *"5.* ***In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of the Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of the police official who had taken the samples to the office of the Chemical Examiner and admittedly no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit."***

12. Resultantly, in our considered view, prosecution has failed to prove that the charas/property was in safe custody for the aforementioned period. Even positive report of the chemical examiner would not prove the case of prosecution. There are also several circumstances which created doubt in the prosecution case. It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused

will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In this regard, reliance can be placed upon case of **"Tariq Parvez v. The State"** [1995 SCMR 1345] wherein it has been held by Honourable Supreme Court of Pakistan that;

> ***"...For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."***

13. In light of these serious deficiencies and the failure to investigate crucial aspects of the case, it is clear that the prosecution has not met the required standard of proof beyond a reasonable doubt and in such a case the defense plea should be given careful consideration. There is no dearth of citizens of strong views and character who would come out to support such like cases provided they were taken into confidence, given due respect and were ensured that full protection would be given to them as held in the case of ***Iltaf Hussain versus The State (1996 SCMR 167).*** Relevant portion is reproduced as under:

> ***"The argument that public witnesses do not come forward to support such like recoveries because of risk to their life and liberty, nonetheless could not absolve the Police of their heavy responsibility to produce witnesses from public. There is no dearth of citizens of strong views and character who would come out to support such like cases provided they were taken into confidence, given due respect and were ensured that full protection would be given to them, in case, they aided the law-enforcers to curb the crimes in the best interest of the society as a whole. There may be cases where public witnesses could not be produced because of their non-availability due to odd hours of the night or the day or where the, recovery was effected from a deserted place or during the dead of night. The position in this case was just the reverse because,***

> ***admittedly, recovery was effected from a populated area where several other people who saw the recovery of kalashnikov were present but no efforts were made to join them to witness the occurrence. We, accordingly, hold that evidence of Police witnesses who are, in a way, the complainant could not solely be accepted to be relied upon to convict the appellant, especially, when the aforesaid public witness was abandoned without any rhyme or reason. The possibility that the appellant was implicated with some ulterior motive could not be ruled out. For all these reasons, we have no alternative but to acquit the appellant by setting aside his conviction and sentence by giving him benefit of doubt. He is on bail and as such, shall be discharged from the liability of his bail bond. The appeal succeeds and is allowed."***

14. In this case, we found deficiencies in the investigation, the lack of transparency in the recovery process and the absence of consideration for critical defense claims, which manifestly create a cloud of doubt over the prosecution case. In light of these significant faults, the prosecution has failed to establish the case beyond a reasonable doubt and the accused is entitled to the benefit of this doubt. It is a known principle of appreciation of evidence that the benefit of all favourable circumstances in the prosecution evidence must go to the accused regardless of whether he has taken any such plea or not. Reliance is placed on the case of ***Muhammad Nawaz and another v. The State and others (PLD 2005 Supreme Court 40).***

15. We further place our reliance on the case of **Abdul Ghafoor v. The State & another** reported as 2022 SCMR 819, wherein the Honourable Supreme Court of Pakistan had observed as under;

> ***"3. Heinousness of the charge and huge quantity of the alleged contraband, notwithstanding, the prosecution was under a bounden responsibility to drive home the charge by proving each limb of its case that essentially included production of the witness, tasked with the responsibility of transmitting the samples to the office of Chemical Examiner. Failure is devastatingly appalling with***

> ***unredeemable consequences that cast away the entire case. Petition is converted into appeal and allowed; the impugned judgment is set aside; the appellant shall be released forthwith if not required to be detained in any other case."***

16. In light of the above discussion, we have thoroughly examined the evidence brought on record along with the various infirmities and inconsistencies as highlighted above and after careful consideration, we have come to the firm conclusion that the prosecution has failed to prove its case against the appellant beyond any shadow of doubt. The prosecution has not been able to establish the guilt of the accused with the necessary level of confidence required for a conviction and several critical aspects of the case have raised reasonable doubt including the failure to investigate key defense claims and the lack of independent verification of crucial evidence. In such circumstances, we find that the conviction and sentence awarded to the appellant by the Trial Court through the impugned Judgment are not sustainable.

17. Consequently, the conviction and sentence awarded to the appellant, **Loung Khan S/o Muhammad Hassan**, vide impugned judgment dated 28.10.2024 passed by the learned Additional Sessions Judge-I/Special Judge for CNS Cases/Judge MCTC, Sanghar, in Special Case No.141 of 2023 (Re: The State v. Loung Khan & Others), arising out of Crime/FIR No.26 of 2023 registered at P.S. Darya Khan Rind @ Maqsoodo Rind for the offence under Section 9(i)(3)(d) of the CNS Act, 1997 (as amended in 2022/2023) is hereby **set aside**. As a consequence thereof, the appellant is **acquitted** of the charge. He shall be released forthwith if not required in any other custody case. The instant Criminal Jail Appeal stands **allowed.**

JUDGE

JUDGE

Adnan Ashraf Nizamani.