

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Criminal Jail Appeal No.D-12 of 2026

Before:
Mr. Justice Amjad Ali Bohio;
Mr. Justice Ali Haider 'Ada'.

Appellant : Allah Bux son of Magh @ Marakh
Sabzoi, *through* Mr. Habibullah
G. Ghouri, Advocate.

VERSUS

The State : *Through* Mr. Aitbar Ali Bullo,
Deputy Prosecutor General Sindh.

Date of Hearing : 08.10.2026.
Date of Judgment : 08.10.2026.

J U D G M E N T

ALI HAIDER 'ADA', J.- The appellant has assailed the judgment dated 14.04.2026, passed by the learned Special Judge for CNS/Sessions Judge, Kashmore at Kandhkot, in Special Case No.31/2025, arising out of F.I.R No. 10 of 2025, registered at Police Station Bhattai Colony for an offence punishable under Section 9(i)(3)(c) of the Sindh Control of Narcotic Substances (Amended) Act, 2024. Through the impugned judgment, the appellant was convicted and sentenced to rigorous imprisonment for a period of ten years, along with a fine of Rs.300,000/-, and in default thereof, to suffer further simple imprisonment for one month. The benefit of Section 382-B Cr.P.C. was also extended to him.

2. The prosecution case, in brief, is that on 24.08.2025 at about 04:00 p.m., near Toujo Curve, the present appellant was allegedly apprehended while in possession of contraband, 1,000 grams

(01 kilogram) of Charas, along with cash amounting to Rs.200/-. After completion of the necessary formalities, the F.I.R. was registered on the same day at about 05:00 p.m.

3. After completion of the investigation, the challan was submitted before the learned trial Court and the appellant was sent up to face trial. After supply of the requisite documents, the learned trial Court framed the charge against the appellant on 27.01.2026, to which he pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined complainant Qamaruddin, who produced the relevant Roznamcha entries, memo of arrest and recovery, and copy of the F.I.R. The Investigating Officer was examined as PW-2, who also produced the relevant Roznamcha entries, memo of site inspection and memo of video recording. He further produced the letter of SSP, Kashmore at Kandhkot, copy of Register No.19, road certificate and chemical examiner's report. Thereafter, the prosecution examined the mashir and Malkhana Incharge and, upon completion of the evidence, closed its side.

5. The statement of the appellant was thereafter recorded under the relevant provisions of law. During his statement, the appellant produced an application under Section 491 Cr.P.C., moved by his brother before the learned Sessions Judge, Kashmore at Kandhkot, on 23.08.2025, as well as the order dated 25.08.2025 passed thereon by the learned Sessions Judge, Kashmore at Kandhkot. After hearing the learned counsel for the parties, the learned Trial Court ultimately passed the impugned judgment.

6. Learned counsel for the appellant mainly and principally contended that although the F.I.R. was registered on 24.08.2025, the brother of the appellant had already moved an application under Section 491 Cr.P.C. on 23.08.2025, i.e. one day prior to registration of the F.I.R. He submitted that the said application was entertained;

however, as the appellant was not found available at the police lock-up, the same was disposed of by the learned Sessions Judge, Kashmore at Kandhkot. According to learned counsel, the filing and entertainment of the said application one day prior to registration of the F.I.R. constitutes a strong and material circumstance indicating that the appellant had already been detained by the police and was not freely moving prior to the alleged date and time of his arrest. It is further contended that this material circumstance was not properly considered by the learned Trial Court. Learned counsel further submitted that the prosecution case suffers from material contradictions and serious flaws, which create reasonable doubt regarding the prosecution version and, therefore, the appellant is entitled to acquittal.

7. Conversely, learned State Counsel opposed the appeal and submitted that one kilogram of Charas was duly recovered from the possession of the appellant and that the prosecution had successfully established its case through reliable evidence. He, therefore, prayed for dismissal of the appeal and maintenance of the impugned judgment.

8. Heard and perused the record.

9. Upon perusal of the entire record, it is apparent that the prosecution has failed to establish its case beyond reasonable doubt and the prosecution story is clouded with serious doubt. According to the deposition of the prosecution witnesses, video clips of the recovery proceedings were recorded; however, during cross-examination, it was admitted that the said video clips were only 15-20 seconds, whereas the recovery proceedings allegedly continued for about 30 minutes. Thus, reliance upon a video clip of merely 15-20 seconds, which does not cover the recovery proceedings in their entirety, cannot safely be made to corroborate the prosecution version.

10. The prosecution further relied upon the assertion that the recovered Charas had been wrapped in yellow tape. However, when the case property was de-sealed during the course of trial, it was found wrapped in a white-coloured shopper, rather than the blue-coloured shopper produced before the trial Court. Moreover, there was no mark or indication of yellow-coloured wrapping on the case property. Reliance in this regard may be placed upon **Habib-ur-Rahman v. The State (2025 YLR 392)**.

11. It is further observed that the alleged recovery was effected from the area of Bhattai Colony, which is admittedly a populated area. Despite the availability of private persons at the place of recovery, the police made no effort to associate any independent witness with the recovery proceedings. Although the provisions of Section 103 Cr.P.C. may not be applicable in *stricto sensu* to every recovery, once it has come on record that independent witnesses were available, the failure of the police to associate them, coupled with the absence of any plausible explanation for their non-association, constitutes a material circumstance creating doubt in the prosecution case. Reliance in this regard may be placed upon **Mir Muhammad v. The State (2024 P.Cr.L.J. 370)**.

12. Furthermore, the prosecution case also suffers from serious infirmity with regard to the safe custody and safe transmission of the case property. The Investigating Officer deposed that, after receiving the case property, he handed it over to the Malkhana Incharge for its deposit in the Malkhana, and that the Malkhana Incharge accordingly deposited the same. However, the documentary record presents a different picture. The Register No.19, produced during the evidence, reflects that the Investigating Officer himself was shown as the depositor of the case property, whereas the Malkhana Incharge, in his deposition, stated that he had received and kept the property for deposit in the Malkhana. Thus, there is a material discrepancy as to whether the case property

remained with the Investigating Officer or was actually handed over to and deposited by the Malkhana Incharge. This contradiction creates reasonable doubt regarding the safe custody of the case property. 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)**, wherein the indispensability of strict compliance with procedural safeguards in narcotics cases has been reiterated.

13. So far as the plea regarding the application under Section 491 Cr.P.C. is concerned, the record reflects that the said application was moved much prior to the registration of the F.I.R. This circumstance also assumes significance and prima facie lends support to the appellant's plea of false involvement. Such an application, having been moved before the registration of the F.I.R., cannot simply be ignored, particularly when it relates to the alleged illegal detention of the appellant prior to the date and time of his formal arrest. Reliance in this regard may be placed upon **Ali Jan v. The State (2019 YLR Note 35)**, **Rizwan Ali v. The State (2016 P.Cr.L.J. 735)** and **Ghulam Mustafa v. The State (2013 P.Cr.L.J. 07)**.

14. In view of the foregoing facts and circumstances, coupled with the material discrepancies and infirmities discussed above, the prosecution has failed to prove its case against the appellant beyond reasonable doubt. Accordingly, vide short order dated today viz: 8.10.2026, this Criminal Jail Appeal was allowed, the impugned judgment passed by the learned trial Court was set aside, and the appellant was acquitted of the charge. The jail authorities were directed to release the appellant forthwith, if he was not required to

be detained in any other case. These are the detailed reasons in support of the short order passed earlier.

JUDGE

JUDGE