THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

BEFORE:
Justice Arbab Ali Hakro
Justice Muhammad Osman Ali Hadi

Criminal Appeal No. D-30 of 2026

Appellant	**:**	Through Mr. Habibullah G. Ghouri, Advocate
The State	**:**	Through Mr. Sardar Ali Solangi, Deputy Prosecutor General, Sindh along with AETO Gul Muhammad Bhutto
Date of Hearing	**:**	**19-11-2026**
Date of Judgment	**:**	**26-11-2026**

J U D G M E N T

ARBAB ALI HAKRO, J- Through this appeal, filed under Section 32 of the Sindh Control of Narcotic Substances Act, 2024 (hereinafter referred to as "**the Act of 2024**"), Sabir son of Allah Ditta Bhand ("**the appellant**") has called in question the judgment dated 18.06.2026 ("**the impugned judgment**") passed by the learned Sessions Judge/Special Judge (CNS), Jacobabad ("**the trial court**") in Special Narcotics Case No.11 of 2026, arising out of Crime No.01 of 2026 of Excise Police Station, Jacobabad. By that judgment the appellant was convicted for an offence punishable under section 9(1), Serial No.3(d) of the Act of 2024 and sentenced to suffer rigorous imprisonment for fourteen years and to pay a fine of Rs.500,000/-, or in default to undergo simple imprisonment for five months more. The benefit of section 382-B of the Code of Criminal Procedure, 1898 ("**Cr.P.C.**") was extended to him.

2. The prosecution case, as set out in the FIR, is that the complainant, AETO Gul Muhammad Bhutto, left Excise Police Station, Jacobabad, with HC Ghulam Sarwar, EC Mir Jiand and EC Qudratullah under roznamcha entry No. 01 at 10:00 p.m. on 21.01.2026, and began checking vehicles at the Excise check-post on Shikarpur Road. At about 12:15 a.m., a passenger bus bearing

registration No. LZJ-2955 was stopped. The appellant was found in seat No. 13 with a black bag in his lap. He was taken off the bus. From the bag, beneath a pair of clothes, twelve slabs of charas were recovered, each weighing 500 grams, six kilograms in total, and Rs. 3,250/- were secured from the pocket of his shirt. Six slabs weighing three kilograms were sealed in one parcel for chemical examination; the remaining six, with the bag and the clothes, were sealed in another. A memo of arrest and recovery was prepared on the spot in the presence of the mashirs, EC Mir Jiand and EC Qudratullah. The party returned to the police station at 02:00 a.m., where the complainant lodged the FIR on behalf of the State and took up the investigation himself.

3. The charge was framed on 20.02.2026. The appellant pleaded not guilty. The prosecution examined two witnesses. PW-1, the complainant and also the investigating officer, produced the roznamcha entries for departure and arrival, the memo of arrest and recovery, the FIR, the letter addressed to the Chemical Examiner with the laboratory's receipt, the entries showing the movements of EC Mir Jiand, and the report of the Chemical Examiner dated 30.01.2026 (Ex.03/A to Ex.03/H). PW-2, EC Mir Jiand, deposed as mashir and as the official who carried the sample to the laboratory at Rohri. The prosecution then closed its case and did not call the remaining witnesses.

4. In his statement under section 342 Cr.P.C., the appellant denied the recovery. He stated that he was taken off the bus, that money was demanded from him, and that the charas was foisted upon him when he refused. He did not examine himself on oath and led no evidence in defence. The trial court believed the two witnesses and recorded the conviction noted above.

5. Mr. Habibullah G. Ghouri, learned counsel for the appellant, submitted that the official in charge of the malkhana was not examined and that no entry in Register No. 19 was produced, so the safe custody of the case property was never proved; that no road certificate was brought on record; that the complainant investigated his own case; that no passenger, driver or conductor of the bus was associated, and no video was recorded despite the

requirement of the Act of 2024; and that only half of the alleged recovery was sent for analysis. He placed reliance on four judgments of the Supreme Court.[1]

6. Mr. Sardar Ali Solangi, learned Deputy Prosecutor General, supported the impugned judgment. He submitted that the report of the Chemical Examiner is positive, that both witnesses are consistent, and that the appellant has shown no enmity towards the Excise officials that could explain a false case. He sought the dismissal of the appeal.

7. We have heard learned counsel and have ourselves reviewed the evidence, as an appellate court of fact is bound to do. The point for determination is whether the prosecution proved, beyond reasonable doubt, that the substance analysed by the Chemical Examiner was the substance recovered from the appellant and in the quantity charged.

8. So far as the seizure itself is concerned, the two witnesses are consistent with each other on the date, time, place and manner of recovery. The incorrect date of departure in the first line of the FIR, repeated by PW-2 in his examination-in-chief, was a slip; the roznamcha entry and the memo both carry the correct date, and PW-2 corrected himself in re-examination. Section 20 of the Act of 2024 takes searches and arrests under the Act out of section 103 Cr.P.C., so the absence of private mashirs does not, by itself, vitiate the recovery. On these points, we find no fault with the trial court.

9. That, however, is only the first half of a narcotics case. A conviction under the Act ultimately rests on the report of the Chemical Examiner, and that report is worth only as much as the proof that what reached the laboratory is what was seized. The trial court did not put this question to itself at all.

10. The law on the subject is settled. In ***Imam Bakhsh***[2] the Supreme Court held:

> ***"The prosecution must establish that the chain of custody was unbroken, unsuspicious, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody***

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[1] *Muhammad Nasir v. The State* 2026 SCMR 224; *Jeehand v. The State* 2025 SCMR 923; *Abdul Mateen Mehboob v. The State* 2026 SCMR 135; *Zahid Sarfaraz Gill v. The State* 2024 SCMR 934.
[2] *The State through Regional Director ANF v. Imam Bakhsh* 2018 SCMR 2039.

> ***and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction."***

11. The chain, as explained in ***Ameenullah***,[3] a case which went up from this very Bench, runs from the recovery, through the keeping of the property at the police station and its removal from there, up to its receipt in the office of the analyst. On the link that concerns us, the Supreme Court said:

> ***"If a person who is in charge of the place of storage in the Police Station i.e the Mall Khana or some other responsible person related with its affairs is not produced as a witness nor unimpeachable evidence relating to the record maintained is produced to establish the entry into and taking out of the material and samples from such designated storage place, then the safe custody becomes doubtful and thus breaks the chain."***

12. The same view was taken in ***Mehmood Khan*** ,[4] which arose from a recovery made by the same Excise Police Station, Jacobabad, on the same Shikarpur Road. The Moharrar or malkhana in-charge was not produced, and the custody record was withheld. The Supreme Court held that the prosecution must affirmatively prove that from the moment of recovery until receipt by the Chemical Examiner, the property remained protected from any possibility of tampering or substitution. It held that even a single missing link is enough and set aside the conviction.

13. We now turn to the record before us. PW-1 states that he brought the appellant and the property to the police station at 02:00 a.m. and registered the case. The next thing he says about the property is that the sample was "dispatched by me through EC Mir Jiand", who left under entry No.03 at 08:30 a.m. For the six and a half hours in between, he does not say where the two parcels lay. He does not say that he kept them with himself. He does not say that he deposited them in the malkhana or handed them to anyone, and no entry in any register of case property was produced. Arrival entry No.02 (Ex.03/A) records only that the party returned with the accused and the recovered property. PW-2, for his part, says that, on the directions of the complainant, he "took" the sample to Rohri; he does not say from whom or from where he received it.

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[3] *Ameenullah v. The State* 2026 SCMR 870.
[4] *Mehmood Khan v. The State* 2026 SCMR 1606.

14. There is more. In cross-examination, PW-1 stated that when the party returned to the police station, EC Muhammad Aslam was in charge. That official was not examined. PW-2 gave a different account, saying that the complainant himself remained in charge, with EC Muhammad Aslam acting only in his absence. Who had charge of the station and, with it, of the case property during those hours is thus left in doubt by the prosecution's own two witnesses.

15. The position after the dispatch is no better. The second parcel, containing the other six slabs, never left the police station until it was produced before the trial court. The sample parcel returned from the laboratory; PW-1 says EC Mir Jiand was sent to collect it on 02.02.2026, but PW-2, in his own deposition, says nothing about having brought it back. Where either parcel was kept in the months before production in court and in whose charge, nobody has stated. In ***Abdul Raheem***[5], the Supreme Court treated exactly these omissions as fatal: the property had remained with the complainant, who was also the investigating officer, before it was handed to the constable, "*with no explanation as to where it was kept during this intervening period*", and its custody after return from the laboratory was likewise unexplained.

16. Learned Deputy Prosecutor General is right that the sample reached the laboratory on the day of the recovery and that the carrier was examined. That proves the transmission. It does not prove the preceding custody, and the two are separate links, each of which the prosecution must establish. The Supreme Court has acquitted where the complainant was silent on what became of the property after seizure,[6] and where custody was addressed orally but the register was not produced.[7] The present case stands on an even weaker footing, for here there is not even an oral account on the point. A positive report, in these circumstances, loses its evidentiary value.[8]

17. There is a second difficulty, which the trial court also failed to notice. Twelve slabs are said to have been recovered. Six were sent to the

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[5] *Abdul Raheem v. The State* 2026 SCMR 1516.
[6] *Muhammad Iqbal v. The State* 2025 SCMR 704; *Muhammad Nasir* (n.1 above).
[7] *Jeehand* (n.1 above).
[8] *Ameenullah* (n.3 above).

laboratory; the report (Ex.03/H) speaks of one parcel containing six patties with a net weight of 3,000 grams. The other six slabs were never analysed. In ***Ameer Zeb***[9], the Supreme Court held that a sample must be representative of the entire substance recovered, and that where no sample is taken from a particular packet, cake or slab, that slab cannot be counted. The appellant was charged with and sentenced for six kilograms under Serial No.3(d), which begins at 5,000 grams. On the prosecution's own evidence, that quantity was never proved to be charas.

18. The remaining features of the case must be viewed in this light. The complainant investigated his own complaint. That is not illegal, but the Supreme Court has said that in such a case the evidence must be examined with extreme caution.[10] The only other witness is his subordinate, who was at once the mashir, the scribe of the memo and the FIR, and the carrier of the sample. The co-mashir, EC Qudratullah, and HC Ghulam Sarwar, who is said to have helped seal the parcels and taken charge of the appellant, were not examined. The appellant was taken from a bus full of passengers, yet neither the driver, the conductor, nor any passenger was made a witness.

19. Sub-section (2) of section 17 of the Act of 2024 provides that "*The video recording of all raids, seizures, inspections and arrests shall be made by the officer in-charge of such operations.*" The complainant admits that he took no photographs and recorded no video. Whether that provision applies to a seizure made in a public conveyance, and what follows from its breach, need not be decided in this appeal, which turns on the failure to prove safe custody. It is enough to say that where the Legislature has itself asked for such a record, none is made and no person outside the raiding party is produced, the court looks for assurance in the rest of the evidence. Here the rest of the evidence does not supply it. As observed in ***Mehmood Khan***,[11] such circumstances may not always be fatal on their own, but they assume considerable importance where the safe custody of the narcotic is itself in doubt.

20. The trial court dealt with the plea of foisting, the date in the FIR, the absence of private mashirs and the absence of video, and on that basis held the charge proved. It did not enquire how the property was kept at the

[9] *Ameer Zeb v. The State* PLD 2012 SC 380.
[10] *Abdul Raheem* (n.5 above).
[11] *Mehmood Khan* (n.4 above).

police station, by whom, or on what record, nor did it notice that half of the alleged recovery was never analysed. It also described the evidence as sufficient to "prima-facie connect" the accused with the offence, which is not the standard by which a charge carrying a minimum of fourteen years is to be judged. The punishments under the Act are severe, and for that very reason the proof of recovery, custody, sampling and transmission has to be strict. The conviction cannot be sustained.

21. The prosecution has failed to prove the safe custody of the case property from the time it reached the police station, and has failed to prove that the quantity charged was charas. These are not technicalities; they go to the question of whether the appellant has been shown to have possessed a narcotic at all. The doubt so arising must go to him, not as a matter of grace but as a matter of right.[12]

22. For these reasons, the appeal is **allowed**. The impugned judgment dated 18.06.2026 is set aside, and the appellant, Sabir, son of Allah Ditta Bhand, is acquitted of the charge. He shall be released forthwith, unless required to be detained in any other custody case. Pending application, if any, stands disposed of.

JUDGE

JUDGE

Zulfiqar

[12] *Mehmood Khan* (n.4 above).