

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Spl. CrI. Jail Appeal No.D-43 of 2024

**Before:**

**Mr. Justice Muhammad Saleem Jessar &  
Mr. Justice Zulfiqar Ali Sangi**

Appellant	<b>Manzoor Ahmed Kalhoro</b> , through Mr. Mir Raaz Ali Khan Bijarani, Advocate.
Respondent	The State through Mr. Aftab Ahmed Shar, Addl. Prosecutor General Sindh.
Date of Hearing.	<b>23-10-2024.</b>
Date of Judgment.	<b>23-10-2024.</b>

### **J U D G M E N T .**

**MUHAMMAD SALEEM JESSAR-J:-** Through instant Jail Appeal, appellant Manzoor Ahmed has assailed the judgment dated 13.03.2024 (**impugned judgment**), penned down by learned 1<sup>st</sup> Additional Sessions Judge/Special Judge (CNS)/Model Criminal Trial Court-1, Sukkur (**trial Court**) in Special Case No.213 of 2023, re: State v. Manzoor Ahmed) being outcome of FIR No.198 of 2023, registered at P.S, Pano Akil, under section 9(A) of CNS (Amendment Act, 2022), whereby after full-dressed trial, the trial Court found the appellant to be guilty of the charge and therefore convicted and sentenced him to suffer R.I for 18 months with fine of Rs.25,000/- and in case of default in payment of fine, to suffer S.I for two months more with benefit of section 382-b Cr.P.C, duly extended to him.

2. Appellant being dis-satisfied and aggrieved by said judgment has maintained instant appeal.

3. Brief facts of the prosecution case are that on 30.09.2023 complainant HC Muhammad Ramzan Shaikh lodged F.I.R at P.S Pano Aqil, alleging therein that on the same date while he along with his staff was on patrolling duty reached at open plot near Sui Gas Office Pano Aqil, they apprehended present appellant and recovered a shopper containing (254) purries of heroin powder, weighing (99) grams and from

his further personal search cash of Rs.100/- was also secured in presence of mashirs namely PC Ali Muhammad and PC Wazeer Ali under memo. To such effect instant F.I.R was lodged in the crime, as stated above.

4. The F.I.R was investigated and thereafter Challan was submitted against appellant. The charge was framed against appellant, to which he pleaded 'not guilty' and claimed for trial. To prove its case, the prosecution examined PW-01 HC Muhammad Ramzan (complainant Ex.03), PW-02 PC Ali Muhammad (mashir of arrest/recovery Ex.04), PW-03 SIP Muhammad Shahban (1.0 Ex.05) and PW-04 WPC Hassan Raza (Dispatcher Ex.06) and other dispatcher PC Muhammad Ali was examined at Exh.07. They also produced certain in their respective evidence. Thereafter, side of the prosecution was closed.

5. The statement of the appellant in terms of section 342, Cr.P.C was recorded, in which he denied the prosecution allegations and claimed to be innocent. However, neither he examined himself on oath nor produced any witness in his defence.

6. Learned counsel for appellant submits that the incident has not occurred as alleged; however, appellant was taken away by complainant party of this case from his home and later they made demand of huge amount as an illegal gratification, which the appellant being poor could not pay, therefore complainant became annoyed and by taking summersault has implicated him in this false case by foisting alleged contraband. He further submits that the sample of 10 puriies was segregated and sent to laboratory on 03.10.2023 and again remaining quantity was sent to laboratory on 23.10.2023 with delay of 20 days, for which no plausible explanation has been furnished. He further submits that the conduct on the part of police creates lot of doubts which goes to favour the appellant. Hence, he prays for grant of appeal as well as acquittal of the appellant.

7. Learned Additional P.G for the State opposes the appeal on the ground that appellant was found in possession of alleged contraband and no ill-will or animosity has been shown against the police; therefore, he is not entitled for the relief sought for. Learned APG when confronted

with the evidence of PW-4 WPC Hassan Raza (Exh.6) page-59 of paper book, he submits that it is an illegality on the part of investigating agency; however, insists that contraband is there.

8. Heard arguments and perused the record. No doubt, appellant was found in possession of alleged contraband viz. 254 purries of heroin powder, but at the time of its recovery, complainant had segregated only 10 purries and sent to laboratory, which was responded as positive. However, again on 23.10.2023 remaining purries/quantity of contraband was sent to laboratory which too was issued in positive. The question which creates ambiguity is why at the time of sending first 10 purries, whole quantity of contraband was not sent what was the necessity for sending the remaining quantity at later stage after 20 days. Furthermore, the net weight shown by laboratory in subsequent FSL report is 21 grams and including its wrapper shown as 99 grams. Such dilemma shows that the police have managed/arranged the quantity after putting the appellant in this case and later in order to strengthen rope of their false case have maneuvered the recovery. Such conduct on the part of police while discharging legal duties has cast serious doubt upon veracity of the prosecution evidence which entitles the appellant with benefit of doubt.

9. It is also an admitted position that the appellant was not confronted with the FSL reports at the time of his examination under section 342 Cr.P.C, which too is sufficient to hold that the prosecution has not conducted the investigation or trial in a manner provided by the law. All these factors have made the case of the prosecution highly doubtful, which as per settled law always goes to favour the accused. It is also settled law that for giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubt and if any simple doubt arises in a prudent mind, the same should be extended in favour of accused not as a matter of grace or concession, but as a matter of right. In case of **Tarique Pervez vs. The State (1995 SCMR 1345)**, it has been held by the Apex Court as under:

*“For giving benefit of doubt to an accused it is not necessary there should be many circumstances creating doubt- if a simple circumstance creates reasonable doubt in a prudent*

*mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right”.*

10. For what has been discussed hereinabove, we are of the view that the prosecution has miserably failed to establish its charge against the appellant. Consequently, instant appeal is hereby allowed. Resultantly, the impugned judgment is set aside. Accordingly, appellant Manzoor Ali Kalhoro is hereby acquitted of the charge. Appellant is in custody; therefore, he shall be released forthwith if his custody is no more required by jail authorities in connection with other criminal custody case.

The Jail appeal stands allowed/disposed of.

**JUDGE**

**JUDGE**

AHMAD