# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

*Present:*
***Mr. Justice Jawad Akbar Sarwana.***
***Mr. Justice Syed Fiaz ul Hassan Shah.***

**Cr. Jail Appeal No.D-31 of 2024.**
*[Mohabbat Ali **Vs.** The State]*

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| Appellant | : | Mohabbat Ali **through** Mr. Jehanzeb Ali Dahri, Advocate. |
| Respondent | : | The State **through** Mr. Shahriyar Shar, Special Prosecutor for ANF. |
| Date of Hearing | : | 25.03.2026. |
| Date of Decision | : | 07.04.2026. |

## J U D G M E N T

***Syed Fiaz ul Hassan Shah, J :-*** Through the instant Criminal Jail Appeal, the Appellant has challenged the Judgment dated 27.04.2024 ("**impugned Judgment"**) passed by the learned Special Judge, Control of Narcotic Substances, Hyderabad **("Trial Court")** in Special Case No.78 of 2022 emanating from Crime No.06/2022 for the offence under Sections 9 (1) 3-(c) of Control of Narcotic Substances Act, 1997 **(CNS)** registered with Police Station ANF, Hyderabad, wherein the Appellant was convicted for committing offence under Section 6/9 (1).3 (c) of the CNS Act and sentenced him to suffer Rigorous Imprisonment **("R.I"**) for Nine (09) years and to pay fine of Rs.80,000/- (Rupees Eighty Thousand Only) and in case of default, he would further undergo Simple Imprisonment (**"S.I"**) for three (03) months more. However, the appellant was extended benefit of Section 382(b), Cr.P.C.

2. Briefly, the facts of the prosecution case segregated from the FIR lodged by SI Muneer Ahmed on 17.03.2022 are that on the eventful day, whilst patrol alongwith subordinates on spy information apprehended

accused Mohabbat Ali and recovered charras weighing 1940 grams from the possession, memo of arrest and recovery was prepared.

3. After usual investigation, copies were supplied to the Appellant in terms of section 265-C, Cr.P.C. vide Exh.1 and the charge was framed against him vide Exh.2, to which he pleaded not guilty and claimed to be tried vide his plea at Exh.2-B.

4. In order to prove a charge against accused, prosecution examined **PW-1** (mashir) Constable Asim Saleem at Ex.3, who produced memo of arrest and recovery at Ex.3/A. **PW-2** (complainant) SI Muneer Ahmed at Ex.4, who produced FIR, relevant entries, letter to chemical examiner and report of chemical examiner at Ex.4/A to 4/F. **PW-3** Inspector / SHO Muhammad Aqeel Shahzad at Ex.5. **PW-4** (dispatcher) Constable Shahroz Hussain at Ex.6, who produced photocopy of Road Certificate at Ex.6/A. Thereafter, the prosecution closed its side vide statement at Ex.7. The statement of appellant/accused was recorded U/S 342 Cr.P.C at Ex.8, in which he denied the prosecution allegation and claimed his innocence. He did not examine himself on oath nor led any defence evidence. Consequently, the learned Trial Court after hearing both the parties passed the Judgment, which has impugned herein before us.

5. The learned counsel appearing on behalf of the appellant has mainly argued that the prosecution has failed to prove a charge beyond reasonable doubt. He contended that in the memo of arrest and recovery (Ex.3/A), two bags containing 970 grams chars each (total weight 1940 grams) of Chars was recovered and each bag was containing two slabs, therefore, out of each slab 10 grams samples were taken out for chemical examination as mentioned in the Memorandum of Recovery; however, as per chemical laboratory report (Ex.4/F) two white transparent plastic shoppers (Serial No.1 & 2) each shopper contains two dark brown pieces having weight of 20 grams, therefore there is serious contradiction in the case property seized and mentioned in the Memorandum of Recovery and the case property sent to the Chemical Laboratory for chemical

analysis. It cannot be justified that as to which specific piece was sent for the chemical analysis from four individual slab / bag and the report submitted by Director Laboratories & Chemical Examiner Govt of Sindh, Karachi is of no legal value. He further argued that even the Register No.XIX is a handmade copy and original was not produced before learned Trial Court and even said handmade copy does not comprises eight (08) columns as required under the Police Rules; that as per Ex.4/E, Register No.II entry after recovery of alleged Narcotics, the police reached at 2000 hours and on the same time, the FIR was registered, which cannot humanly be possible as sometime must had been passed after entry in the Register No.II. Lastly, he prayed that the appeal be allowed and the impugned Judgment be set aside. He placed reliance on the case laws reported as 2025 SCMR 923, 2024 PCr.LJ 370, 2022 PCr.L J 279, 2021 PCr.LJ 1294, 2016 MLD 920, PLD 2009 Karachi 191, 2025 SCMR 1644, 2025 YLR 327, 2011 YLR 2261, 2013 PCr.LJ 1237, 2016 PCr.LJ Note 79 and Judgment passed by this Court in Cr. Jail Appeal No.D-04 of 2024.

6. Conversely, learned Special Prosecutor for ANF supported the impugned Judgment and argued that the witnesses had fully supported the prosecution case and the impugned judgment does not warrant any interference, while minor contradictions may be ignored. He further contended that the case law relied upon by the learned counsel for the Appellant i.e. 2025 SCMR 923 **(Jeehand Vs. The State)** has been announced in 2025 and present occurrence was committed in the year 2022, therefore, the principle settled in the said case law cannot adversely affect the present case and acquittal cannot be possible even on the principle of **Ameer Zeb** case as the prosecution has produced the unshaken safe custody and safe transmission of case property and chain of case property remained intact. Lastly, he prayed for dismissal of the instant Appeal.

7. We have heard the learned counsel for appellant as well as learned Special Prosecutor for ANF and with their assistance minutely perused the record of the case.

8. In the present case, the prosecution alleged recovery of narcotics weighing 1940 grams was recovered from the possession of appellant. According to the Exh.3/A Memorandum of Recovery spontaneously prepared at the crime scene by the ANF Raiding Party, total 1940 grams of the said recovered contraband was seized on the spot which was comprised in two separate shopper having 970 grams weight each and containing four individual slabs. After taking 10 grams each from the four slabs of charas, the same was deposited in the *Malkhana*, and subsequently produced before the learned trial Court. It was further deposed by the PW-3 PI, ANF Muhammad Aqeel Shahzad that he himself kept the case property as Malkhana Incharge vide Entry No.239 of Register No.XIX and he being Investigation Officer retrieved the case property from the *Malkhana* and dispatched it, through PW-5 PC Sheroz to the Chemical Laboratory within time under a Road Certificate. The laboratory report was also produced, confirming that the recovered substance was narcotic in nature.

9. However, upon scrutiny of the record, it appears that the prosecution has miserably failed to establish the continuity of safe custody and safe transmission of the case property. Per Exh. 3/A out of two shoppers containing 970 grams of charas having four slabs, 10 grams from each slab was taken out as "sample" for the purposes of chemical analysis and spontaneously samples and remaining case property was sealed separately. Conversely, handmade copy of Register No.XIX Exh.4/B stated the description of the case property quite inconsistent with the Exh.3/A Memorandum of Recovery. The Exh.3/A reveals that the 10 grams each from the four slabs were taken out as samples for chemical analysis while the Exh.4/B (Register No.XIX handmade copy) revealed that 20 grams each from the two separate shoppers were taken

out as samples. This fact was further confirmed from the report of Chemical Examiner Exh.4/F that gross weight of 45 grams was received and after applying formula net weight of 20+20 grams were found for the two shoppers instead of 10 grams each from four individual slabs and same cannot ascertainable as out of four slabs on which case property test was applied. No plausible explanation or justification has been furnished for the intervening period during which the sealed case property remained in the *Malkhana* having 10 grams each sample of four slabs were varied or converted into 20 grams by mixing it when the Exh.3/A Memorandum of Recovery mentioned that 10 grams each for four slabs of charas were sealed.

10. Further, it is quite unusual that Inspector Muhammad Aqeel Shahzad, SHO, ANF was himself claimed to be the Malkhan Incharge who produced the purported copy of Register No. XIX (Exh. 4/B) is merely a handwritten reproduction attested by himself. In such circumstances, where secondary evidence is sought to be relied upon, firstly to discharge the burden of unavailability of original and then strict compliance with Article 76 of the Qanun-e-Shahadat Order, 1984 mandatory, which has not been adhered to in the present case. The omission to identity 10+10+10+10 grams each slabs as mentioned or precisely claimed in the Exh.3/A is not only inconsistent with Exh.4/B (Register No.XIX Entry) & 4/F (Chemical Lab Report) but also raised a possibility about variation in case property as the case property sealed and deposited was not the same which was entered into the Malkhana or sent to Chemical Laboratory which creates a serious dent in the prosecution case regarding the continuity of safe custody and secure transmission of the alleged narcotics.

11. In reliance upon the Chemical Laboratory Report Exh.4/F, it is stated that two transparent plastic bags each contained two dark brown pieces weighing 20 grams, identified as charas. However, this account cannot be reconciled with the Memorandum of Recovery Exh.3/A, which

explicitly records that 10 grams were taken separately from each of the four slabs, totaling 40 grams, for the purpose of chemical analysis. The memorandum itself makes clear that the prosecution voluntarily prepared samples of 10 grams each from the four slabs. Therefore, the prosecution was duty bound to send those four separate 10-gram samples to the laboratory in order to prove its case beyond reasonable doubt. The subsequent variation—sending joint samples of 20 grams each—is inconsistent with the prosecution's own memorandum and raises a legitimate doubt. A prudent mind would question whether the originally claimed 10-gram samples were ever dispatched, or whether an altogether different form of sealed property was sent as 20-gram samples. This discrepancy undermines the credibility of the prosecution's case.

12. Learned counsel for the indigent appellants has placed reliance upon the case of ***Jeehand v. The State (2025 SCMR 923)***, wherein it has been categorically held that it is the duty of the police and prosecution to establish that the case property remained in safe custody at all times. We are mindful to observe that it is the primary duty of the Investigating Officer to ensure that the factum of handing over the case property, sealed sample parcels, and other articles recovered from the possession of the appellant was duly entered in the relevant police registers, namely Register No. II (Daily Diary) and Register No. XIX (Malkhana Register), at ***every stage of movement*** and should be remained same and consistent with the foundational document i.e. Memorandum of Recovery. The foundational provision governing maintenance of the Daily Diary is Section 44 of the Police Act, 1861, which mandates that every officer Incharge of a police station shall maintain a general diary and record therein all material events, including complaints, arrests, recoveries, and particulars of property seized. The said statutory requirement is further elaborated under Rule 22.48 of the Police Rules, 1934, which provides that the Daily Diary must be a complete, consistence and

contemporaneous record of all occurrences at the police station, including movements of police officials, arrival and departure of persons in custody, and all related proceedings, with precise timings. Reliance can be placed on the rule laid down in ***Zakir Ali v. The State*** **(2025 SCMR 1644),** ***Asif Ali & another v. The State*** **(2024 SCMR 1408),** ***Zain Shahid v. The State (2024 SCMR 843) & Ahmed Ali and another Vs. The State [2023 SCMR 781].***

13. Similarly, Rule 22.49 of the Police Rules requires that all arrivals at and departures from the police station, including movements of persons in custody and case property, must be recorded in Register No. II with exact timings. Furthermore, Rule 22.70 mandates the maintenance of Register No. XIX *(Malkhana Register)*, wherein every article deposited in the store-room must be entered with full particulars, including the name of the depositor, date of deposit, description of property, and ***details regarding its subsequent removal, along with signatures of the concerned officials***.

14. It is well-settled that a conviction may, in appropriate cases, be based even on the testimony of a single witness, provided the same is confidence-inspiring and trustworthy, as held in ***Muhammad Ehsan v. The State*** **(2006 SCMR 1857) and** ***Niaz-ud-Din v. The State*** **(2011 SCMR 725)**.

15. However, in narcotics cases, stricter standards apply. It is by now well-settled that the prosecution, in cases involving narcotics, must successfully pass a twofold test with regard to the case property. Firstly, it must establish the lawful recovery, seizure, and incorporation of the case property in the challan, coupled with unimpeachable proof of its safe custody. This requires preparation of contemporaneous documents free from doubt, reflecting accurate description, proper sealing, and deposit of the case property in the *Malkhana* under duly maintained record. Secondly, the prosecution must affirmatively prove the safe transmission of the case property, i.e., its movement from safe custody

to the Chemical Laboratory, and thereafter its return and production before the Court as admissible evidence. Each stage of this process must be supported by reliable documentary and oral evidence, ensuring an unbroken chain of custody. Any deviation, omission, or infirmity in either of these essential requirements warrants drawing an adverse inference against the prosecution, thereby entitling the accused to acquittal. This principle has been consistently reiterated by the Hon'ble Supreme Court of Pakistan in a catena of judgments, including ***Ikramullah v. The State* (2015 SCMR 1002), *The State v. Imam Bakhsh* (2018 SCMR 2039), *Abdul Ghani v. The State* (2019 SCMR 608), *Kamran Shah v. The State* (2019 SCMR 1217), *Mst. Razia Sultana v. The State* (2019 SCMR 1300), *Faizan Ali v. The State* (2019 SCMR 1649), *Zahir Shah alias Shat v. State through A.G. KPK* (2019 SCMR 2004), *Haji Nawaz v. The State* (2020 SCMR 687), *Qaiser Khan v. The State* (2021 SCMR 363), *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), *Zubair Khan v. The State* (2021 SCMR 492), and *Gulzar v. The State* (2021 SCMR 380), *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), *Qaiser and another v. The State* (2022 SCMR 1641), Muhammad Hazir V. The State (2023 SCMR 986), *Javed Iqbal v. The State* (2023 SCMR 139), Asif Ali (supra)**.

16. Prosecution must establish an unbroken chain of custody. If any link in this chain is missing or appears reasonable doubtful, the benefit thereof must accrue to the accused. In view of the above deficiencies, we hold that the impugned judgment of conviction is based on unpersuasive evidence in respect of the broken chain of safe custody and safe transmission of the case property, resulted in miscarriage of justice.

17. Tandemly, the doctrine of benefit of doubt, being a cardinal principle of criminal jurisprudence, mandates that conviction must be founded on unimpeachable evidence leading to certainty of guilt. Where any reasonable doubt arises, the same must necessarily be resolved in favor of the accused. It is well settled principle that even a single circumstance creating doubt is sufficient to entitle an accused to

acquittal as a matter of right, not as a matter of grace. Reliance may be placed upon ***Tariq Pervez v. The State*** **(1995 SCMR 1345),** ***Riaz Masih v. The State*** **(1995 SCMR 1730),** ***Muhammad Akram v. The State*** **(2009 SCMR 230),** ***Ikramullah v. The State*** **(2015 SCMR 1002),** ***Hashim Qasim v. The State*** **(2017 SCMR 986),** ***The State v. Imam Bakhsh*** **(2018 SCMR 2039),** ***Muhammad Mansha v. The State*** **(2018 SCMR 772),** ***Abdul Jabbar v. The State*** **(2019 SCMR 129),** ***Mst. Asia Bibi v. The State*** **(PLD 2019 SC 64) &** ***Khair-ul-Bashar v. The State*** **(2019 SCMR 930).** This principle, that even a single dent in the prosecution case is sufficient to demolish its entire edifice, has been reiterated in ***Amir Muhammad Khan v. The State*** **(2023 SCMR 566) &** ***Rehmatullah v. The State*** **(2024 SCMR 1782).**

18. Consequently, the prosecution has failed to prove safe custody and its evidentiary worth beyond reasonable doubt in terms of Article 117 of the Qanun-e-Shahadat Order, 1984. Accordingly, this Jail appeal is allowed. The impugned judgment is hereby set aside. The appellant is acquitted of the charge and shall be released forthwith, if not required in any other case.

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