

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.D-90 of 2024.

Before:

MR. JUSTICE OMAR SIAL.

MR. JUSTICE ALI HAIDER 'ADA'.

Appellant: Mushtaque Ali *through* Mr. Muhammad Sachal
R. Awan, Advocate.

The State: *Through* Ms. Rameshan Oad, Deputy
Prosecutor General.

Date of Hearing: 14.01.2026.

Date of Decision: 22.01.2026.

J U D G M E N T

ALI HAIDER 'ADA', J.- Through this appeal, the appellant has assailed the judgment dated 14.10.2024 passed by the learned Sessions Judge/Special Court (Anti-Narcotics), Badin, in Special Case No. 43 of 2024 arising out of Crime No. 173 of 2024 registered at Police station Badin under Section 9(c) of the Control of Narcotic Substances Act, 1997 (Amended 2022). Vide the impugned judgment, the appellant was convicted and sentenced to Nine years' rigorous imprisonment with a fine of Rs. 20,000/-, and in default thereof, to suffer three months' simple imprisonment, while extending the benefit of Section 382-B Cr.P.C.

2. Briefly, the prosecution case is that on 16.04.2024 the appellant was apprehended in possession of 2025 grams of charas contained in a black plastic shopper, whereupon, after completion of codal formalities, the FIR was lodged. Upon completion of investigation, challan was submitted, and the case was sent up for trial. The learned Trial Court framed a charge on 18.07.2024, to which the appellant pleaded not guilty. The prosecution examined its witnesses, including the complainant, Mashirs, Maalkhana in charge, and the Investigating Officer, and thereafter closed its side. The appellant, in his statement under Section 342 Cr.P.C., denied the allegations



and claimed false implication. Ultimately, the learned trial Court passed the impugned judgment.

3. Learned counsel for the appellant contended that the appellant is innocent and that the prosecution failed to prove its case beyond reasonable doubt. Conversely, learned State Counsel supported the impugned judgment, arguing that minor discrepancies do not affect the case where contraband is recovered from the physical possession of the appellant.

4. Heard and perused the material available on record.

5. From the very outset, it appears that the prosecution case rests upon the alleged recovery of narcotic substance from the hands of the present appellant. In narcotics cases, the evidence is required to be examined with great care and caution. In the instant matter, although six pieces of charas, described as big and small, were allegedly recovered with a total weight of 2025 grams, the prosecution failed to specify the individual weight of each piece, which creates inconsistency and renders the recovery doubtful. The lack of a detailed and consistent description of the recovered narcotics in the official record undermines the clarity of the recovery proceedings. In this context, reliance is placed on the judgment of the Lahore High Court in *Qalandar Shah vs. The State* (2021 YLR 2349), and in the case of *Ansar Abbas alias Pakori vs. The State and another* (2021 P Cr. L J 138).

6. The seizure was made on 16.04.2024 and the property deposited the same day in the maalkhana. Muhammad Hanif, the maalkhana incharge said that it was 24.04.2024 when the property was taken from him by S.I. Atta Muhammad. S.I. Atta Muhammad however said in his testimony that he had taken the property to the chemical laboratory on 19.04.2024 but was not able to reach the laboratory in time so he returned to the police station and on 24.04.2024 he gave it to P.C. Abdul Ghani to take to the chemical laboratory. Where and with whom was the property for these days was not explained. This lapse led to the break in the chain of custody and transmission and thus conviction cannot be sustained. In this context, support is drawn from the decisions 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), *Qaiser Khan v. The State* (2021

SCMR 363), Mst. Sakina Ramzan v. The State (2021 SCMR 451), and Zubair Khan v. The State (2021 SCMR 492), all of which reiterate the imperative nature of adherence to the procedural safeguard.

7. Furthermore, the record divulges that the entry made in Register No. 19 is not in accordance with the prescribed proforma contemplated under Rule 22.70 of the Police Rules, 1934. For ready reference, the said Rule together with the prescribed proforma is reproduced below:

22-70. Register No. XIX:- This register shall be maintained in Form 22.70 With the exception of articles already included in register No. XVI every article placed in the store-room shall be entered in this register and the removal of any such article shall be noted in the appropriate column.

FORM No. 22-70

POLICE STATION _____ DISTRICT _____

Register No. XIX. Store - Room Register (Part-I)

Column 1, -- Serial No.

2 -- No. of first information report (if any), from whom taken (if taken from a person), and from what place.

3. -- Date of deposit and name of depositor.

4.-- Description of property.

5. -- Reference to report asking for order regarding disposal of property.

6. -- How disposed of and date.

7.-- Signature of recipient (including person by whom despatched).

8. -- Remarks.


8. In view of the foregoing facts, when Register No. 19 was not produced in its original form, and only a plain white paper containing a description of the property was brought on record, the same cannot be treated as a lawful entry of Register No. 19. A mere description on plain paper is insufficient to establish compliance with the statutory requirement. Reliance is placed on the recent judgment of the Honourable Supreme Court in Criminal Petition for Leave to Appeal No. 219-P of 2023, titled Irshad Khan v. The State, wherein it was observed that an extract of Register No.

19 prepared on plain paper cannot be relied upon as a substitute for the original register, and its exhibition was rightly objected to. Further, the Honourable Supreme Court in the case of *Jeehand v. The State* (2025 SCMR 923), had held that:

"We have noted that in the instant case, safe custody and safe transmission of the alleged drugs from the spot of recovery till it's receipt by the Narcotic Testing Laboratory are not satisfactorily established. The Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when it is produced before the court, remains in safe custody and is not hampered with until that time. A complete mechanism is provided in the Police Rules qua safe custody and safe transmission of the case property to concerned laboratory and then to the Trial Court."

9. Moreover, the Honourable Apex Court in the case cited *Jeehand v. The State* supra has been pleased to hold that..."**Communi observantia non set recedendum**---When law requires a thing to be done in a particular manner, the same must be done accordingly, and if the prescribed procedure is not followed, it would be presumed that the same had not been done in accordance with law

10. From the very outset, it transpires that the prosecution has failed to establish its case against the present appellant, as material discrepancies have surfaced, demonstrating the absence of complete and corroborative evidence at each link of the chain. Keeping in view the foregoing facts and circumstances, the prosecution has failed to prove the charge against the appellant beyond a reasonable doubt. It is a settled principle of law that where any doubt arises, the benefit thereof must go to the accused. This principle is deeply rooted in the maxim "**in dubio pro reo**", meaning that **when in doubt, the decision should favor the accused**. In the instant matter, it has been demonstrated through the various inconsistencies, discrepancies, and procedural lapses in the prosecution's case that even a single doubt regarding the safe custody, transmission, or recovery of the contraband must be resolved in favor of the appellant. Reliance is placed upon the case of *Qurban Ali vs. The State* (2025 SCMR 1344).



11. In view of the foregoing, we are inclined to allow this appeal. Consequently, the impugned judgment dated 14.10.2024, passed by the learned trial Court in Special Case No. 43 of 2024, is hereby set aside, and the accused/appellant is acquitted of the charges leveled against him. The jail authorities are directed to release the appellant, Mushtaque Ali s/o Muhammad Soomar Mallah, forthwith, if he is not required in any other case.


JUDGE
JUDGE

Ali.