

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

Criminal Appeal No.549 of 2023

(Nabi Bakhsh Balouch and another v. the State)

Criminal Appeal No.529 of 2023

(Zaheer and 03 others v. the State)

Criminal Appeal No.530 of 2023

(Illahi Bakhsh and 05 others v. the State)

Mr. Mallag Assa Dashti, advocate for the appellants

M/s. Imtiaz Ali Channa and Rafique Ahmed Baloch,
advocates for the appellants

Ms. Firdous Faridi, Special Prosecutor Customs

Mr. Yasser Wahab Kalwar, Additional Collector of
Customs Enforcement, Karachi

Date of hearing: 07.05.2026

Date of Judgment: 25.05.2026

JUDGMENT

Omar Sial, J. On 22.10.2019, Customs authorities received reliable information that a large quantity of narcotics was being smuggled at sea aboard a wooden fishing launch, AL-QAMBER, Registration No. 13181-BFD. This information was shared with the Pakistan Maritime Security Agency (PMSA), which informed MCC Preventive Karachi that it had intercepted the launch along with its 12 crew members. Later that day, at about 2:00 p.m., a Customs team reached PMSA Headquarters and, in the presence of witnesses Abdul Malik Baloch IPS(H) and Muhammad Ejaz IPS(H), jointly examined 10 PP bags. From 6 of those bags, officials recovered 170 polythene packets marked '**BOSS 2018 (333)**' containing brown powder that tested positive for heroin, with a total gross weight of 170.350 kilograms. From the remaining 4 bags, they recovered

92 polythene packets marked '**New England Coffee**' containing crystalline material that tested positive for opium alkaloids (crystal), with a total gross weight of 102.9 kilograms. The PMSA then handed over the recovered narcotics and the 12 crew members to ASO officials, who took them to ASO Headquarters, NMB Wharf. There, the narcotics were formally seized, representative samples were drawn and sealed for laboratory testing, all twelve accused were arrested for offences under Sections 6, 7, and 8 of the CNS Act, 1997, punishable under Section 9(c), notices of arrest were served, and the FIR was lodged.

2. All the accused pleaded not guilty and claimed trial. During the trial, the prosecution examined the following witnesses: **PW-1 Rtd. SPS Abdul Maalik Balouch**, who produced the mashirnamas of taking over and seizure; **PW-2 IPS Azhar Malik**, the complainant, who produced the detention receipt, notices of arrest, and the seizure memo; **PW-3 PO Syed Ali Asjad Bukhari**, the Investigating Officer; **PW-4 Muhammad Ahmed**, Chief Intelligence Officer; **PW-5 (wrongly mentioned as PW-7) SPS Jamal Zia**, who produced his official card and the sample analysis memo; and **PW-6 (wrongly mentioned as PW-8) SPS Muhammad Iqbal Javed**, who produced a photocopy of the State Warehouse Register. In their statements under Section 342 Cr.P.C., the accused denied the allegations and maintained their innocence, but did not put forward any substantive defense.

3. By judgment dated 09.10.2023, the learned Judge, Special Court-II (CNS), Karachi, convicted the following accused: (i) Zaheer Ahmad, (ii) Sir Ahmad, (iii) Syed Mohammad, (iv) Naseer Ahmad, (v) Mohammad Naeem, (vi) Zubair Ahmad, (vii) Nabi Bakhsh Balouch, (viii) Moosa, (ix) Nazeer Ahmad, (x) Mohammad Waqas, (xi) Jasim, and (xii) Ellahi Bakhsh. Each was sentenced to imprisonment for life under Section 9(c), read with Sections 14 and 15, of the CNS Act, 1997, and fined Rs.100,000. In default of payment, each

was to undergo one year's imprisonment. These appeals challenge that judgment.

4. The appellants' learned counsel has argued that the safe custody and transmission of the narcotics was not proved at the trial; therefore, in line with a series of judgments of the Honorable Supreme Court, the conviction could not be sustained. The learned Special Prosecutor, Customs, in rebuttal, stated that the facts of custody and transmission are before the Court. We have heard learned counsel for the appellants and the learned Special Public Prosecutor for the Customs Department. We have also carefully examined the record and proceedings of the case. Our findings and observations follow.

5. The date of seizure, a basic detail, was not clarified at the trial. PW-1 Abdul Malik Baloch, while stating that the contraband had been handed over to him by PMSA on 22.10.2019, in an unsealed condition, expressed his ignorance about the date when the seizure was made. In his words: *"It is correct to suggest that I do not know when the accused persons were arrested by PMSA, either one or ten days prior to the handing over."* PW-2 Azhar Malik testified that: *"I do not know on which date the PMSA officials arrested the accused persons from the deep sea."* Both witnesses also admitted that the documentation prepared contains no arrest date. Both witnesses admitted that the property given to them by PMSA was unsealed. PW-3 Syed Ali Asjad Bukhari, the Investigating Officer, acknowledged *"it is correct to suggest that the whole operation was carried out by PMSA, it is correct to suggest that none of the Customs officials were available in the open sea with PMSA in the operation. It is correct to suggest that I have not made any of the officers/officials of PMSA as witnesses in the challan."* This witness, like his colleagues, was also unaware when the accused were arrested. At the end of the trial, following a section 540 Cr.P.C. application, one gentleman, Mohammad Ahmed, claiming to be the Chief Intelligence Officer

of PMSA, was summoned as a witness, who came and told the Court that the arrest and seizure were made on 22.10.2019. This witness and his testimony were an afterthought. He had not been cited on the witness calendar. No section 161 Cr.P.C. statement of this witness was recorded, and it appears that the sole purpose for his being called as a witness was to plug one of the many lacunas in the prosecution case.

6. The property ostensibly taken over by Customs from PMSA on 22.10.2019, was not deposited in the State Warehouse till 30.10.2019. As regards the samples purportedly taken by the PMSA, PW-2 Azhar Malik testified that those remained with him from 22.10.2019 till 25.10.2019, when they were sent by post to the chemical analyst for examination. Where and how the property was kept from 22.10.2019 to 30.10.2019 was not explained at trial; nor was it explained how Azhar Malik secured custody from 22.10.2019 to 25.10.2019. The State Warehouse in charge, Mohammad Jawed Iqbal, testified that the case property was brought to him by Azhar Malik on 30.10.2019. It is pertinent to reiterate that the case property was taken over by Customs on 22.10.2019.

7. Contrary to PW-2 Azhar Malik's claim that he has the samples from 22.10.2019 till 25.10.2019, the chemical analysts' report shows that the samples were received by it on 28.10.2019, through postal service with a cover letter dated 23.10.2019. No evidence was produced at trial to show that the postal journey was safe and free from any risk of tampering.

8. The prosecution and investigation in the case were one of the worst we have seen in recent years. It is the first case where a sizeable number of samples of narcotics have been sent by post to the chemical analyst without ensuring or recording the safe custody and transmission. Safe custody and transmission were not proved at the trial. No explanation for the massive lapses was given. It is now well settled that if there is a

break in the custody, safekeeping, or transmission, a conviction cannot be sustained.

9. These appeals are allowed and the appellants are acquitted of the charge. They may be released if not required in any other custody case.

JUDGE

JUDGE