

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

## Criminal Jail Appeal No.D-50 of 2024

Before:

*Mr. Justice Jawad Akbar Sarwana.*

*Mr. Justice Dr. Syed Fiaz ul Hassan Shah.*

**Appellant:** Muhammad Saleh son of Anwar Ali Rind, Through Mr. Abdullah Soomro, Advocate.

**The State:** Mr. Altaf Hussain Khokhar, D.P.C.

**Date of hearing:** 06.05.2026

**Date of decision:** 20.05.2026

### JUDGMENT

**Syed Fiaz ul Hassan Shah, J:** The appellant has challenged the judgment dated 31.05.2024 (**impugned Judgment**) passed by learned Additional Sessions Judge-V/Model Criminal Trial Court, Shaheed Benazirabad (**Trial Court**) in Sessions Case No.607 of 2023, Re: State vs. Muhammad Saleh, bearing U/ss 9-1, 3(C) the Control of Narcotic Substance (Amendment) Act, 2022 (**CNS**), whereby the learned trial court after full-dressed trial convicted and sentenced the appellant to suffer S.I for ten (10) years with fine of Rs.100,000/- and in case of default in payment of fine he further shall undergo S.I for three months while extending benefit of Section 382-B Cr.P.C.

2. The facts are that on 02.06.2023, the complainant SIP Muhammad Ameen Keerio of PS Khadhar along-with his staff namely ASI Ghulam Mustafa Abbasi, ASI Muhammad Iqbal Waggan, PC Zulfiqar Ali and PC Abdul Hakeem duly uniformed and official arms ammunition, investigation kit, computerized scale and handcuffs left Police Station in government police mobile No.SP-827 with Driver PC Ashique Hussain vide entry No.15 at about 1815 hours for patrolling within territorial jurisdiction and after patrolling at different places when reached at Jam Dahri via link road leading from Khadhar to Sakrand at about 2000 hours, in the headlight of government vehicle one person was seen standing on southern side of road in wait of conveyance

holding black plastic shopper in his right hand, on seeing the police mobile and police party in uniforms coming towards him, he tried to escape away, however, police stopped him and tactfully apprehended alongwith black shopper under suspicious condition. Due to non-availability of private mashirs complainant deputed ASI Ghulam Mustafa Abbasi and ASI Muhammad Iqbal Waggan as mashirs and taken the black shopper into the custody of police and enquired from the accused who disclosed his name Muhammad Saleh son of Anwar Ali Rind R/o Mehran colony City Sakrand. They opened the said black shopper, recovered from the possession of accused, and found 03 pieces of charas, 01 big and 02 small pieces and weighed the same on digital scale which becomes 1150 grams and sealed the entire charas with black shopper for chemical analysis and conducted his body search and recovered one currency note of Rs.100/- and one currency note of Rs.50, total denomination Rs.150/-, from side pocket of his shirt and sealed the same separately. On query accused disclosed that recovered charas belongs to him which he used to sale at different places for his survival. Appellant/Accused was arrested for commission of offence of 9(i) (3)(C) CNSA and complainant had prepared such mashirnama in presence of above mashirs with their signatures and brought the arrested accused along with recovered case property at PS and lodged this FIR.

**3.** After procedural formalities, copies of documents were supplied to the accused vide Ex.1 in compliance of section 265-C Cr.P.C, and charge was framed against the accused vide Ex.2 in compliance of section 265-D Cr.P.C, to which accused pleaded not guilty and claimed to be tried vide his plea at Ex.2/A, to which in compliance of section 265-E Cr.P.C.

**4.** At the trial, the evidence of prosecution recorded in compliance of section 265-F Cr.P.C, wherein prosecution examined PW-01 SIP Muhammad Ameen Keerio (complainant) at Ex.03, who produced mashirnama of arrest and recovery at Ex.03/A, attested photocopy of departure entry No.15, arrival entry No.17 and entry No.18 of lodgment of FIR at Ex.03/B, FIR at Ex.03/C and attested photocopy of entry of Register-19 at Ex.03/D. PW-02 ASI Ghulam Mustafa (mashir) at Ex.04, who produced mashirnama of site

inspection at Ex.04/A. PW-03 PC Ghulam Hussain (Parcel Deliverer) at Ex.05, who produced attested photocopy of R.C at Ex.05/A and attested carbon copy of departure and arrival entries at Ex.05/B. PW-04 WHC Abid Hussain (Incharge of PS Malkhana) at Ex.06. PW-05 SIP Deedar Hussain Solangi (Investigation Officer) at Ex.08, who produced attested carbon copy of departure entry No.19 and arrival entry No.22 at Ex.08/A and original chemical examiner report at Ex.08/B. The prosecution closed the side of evidence vide statement Ex.09. Thereafter, the prosecution closed the side of evidence vide statement at Ex.9.

5. The statement of accused Under S. 342 of Cr.P.C was recorded vide Ex.10. He did not prefer to depose on oath, as required U/S 340(2) of Cr.P.C or lead evidence of witnesses in defence. He totally denied the prosecution case and then the case was fixed for final arguments.

6. Learned counsel for the appellant argued that the appellant/accused is innocent and has falsely been implicated in this case; that nothing has been recovered from the possession of accused but the alleged charas/recovery has been foisted upon him by the police; that register-XIX was not produced and no permission obtained for photocopy as per police rules and as per prescribed proforma must be eight columns; that the alleged place of incident is commercial thickly populated area and police has not given any explanation for non-joining independent witness; that no private witnesses have been associated as Mashir in this case; therefore, there is violation of section 103 Cr.P.C. He lastly argued that there are several contradictions, lacunas, and legal infirmities in the evidence of prosecution witnesses but the learned trial Court did not consider the same hence, he prayed for that the impugned judgment may be set-aside and the appellant may be acquitted.

7. On the other hand, learned D.P.G for the State supported the impugned judgment by submitting that the accused was arrested on the spot with a huge quantity of recovery of 1150 grams charas. Section 103 Cr.P.C is not applicable in cases of recovery of narcotics. He further argued that all the prosecution witnesses have supported

the case and produced all the relevant record; therefore, appeal may be dismissed.

**8.** We have heard the counsel for the parties and perused the record.

**9.** There are material contradictions in depositions of PW-1 SIP Mohammad Amin who had deposed that he handed over the case property to WHC Abid Hussain for deposit in the Malkhana, with entry made in Register No. XIX at Serial No. 31. On the contrary, PW-5 SIP Didar Hussain, Investigation Officer deposed that he himself deposited the case property in PS Malkhana through WHC Abed Hussain Keerio. This contradiction on a material point creates uncertainty as to who actually deposited the case property, thereby undermining the credibility of the prosecution's version and raising doubt about compliance with the doctrine of safe custody.

**10.** We have also noted deficiencies in Malkhana Register Entries. PW-5 SIP Deedar Hussain admitted during cross-examination that Register No. XIX (Exhibit 3/D) did not contain the names of SIP Mohammad Amin. Even PW-2 Ghulam Mustafa, cited as an eyewitness to the recovery proceedings, did not confirm whether the case property was deposited by PW-1 or PW-5 upon return to the police station. Similarly, PW-5 SIP Didar Hussain admitted that on 5 June 2023, he retrieved the case property from the Malkhana after a delay of three days and sent it to the Chemical Laboratory through PC Ghulam Hussain Jamali. No road certificate was produced to show that PC Jamali was authorized to transport the sealed case property. These omissions constitute a violation of Police Rules, 1934, and raises doubt about whether the property remained intact and untampered during safe custody and safe transit.

**11.** The contradictions between PW-1 Raiding Officer and PW-5 Investigation Officer regarding the deposit of the case property cannot be ignored casually, as they strike at the very heart of the doctrine of safe custody. The prosecution has failed to provide a valid explanation about the handling of the case property immediately after return to the police station and until its production before the trial Court.

If the case property was deposited by PW-1 Raiding Officer, his name ought to have been mentioned in Register No. XIX, which has not been done. Conversely, if the case property was deposited by PW-5 Investigation Officer, he was required to satisfy the Court as to when and from whom he received the property for deposit in the Malkhana. The absence of this crucial link discards the claim of safe custody. Coupled with the fact of uncorroborated entries in the Malkhana Register, the delay in sending the property for chemical analysis, and the lack of a road certificate, these infirmities collectively demonstrate serious lapses in maintaining safe custody. Such deficiencies materially affect the chain of custody and cast grave doubt on the prosecution's story. The failure to establish safe custody of the case property renders the prosecution evidence unreliable.

**12.** In light of the above findings, the Court holds that the prosecution has failed to establish the safe custody and proper transmission of the case property in accordance with law. The contradictions and procedural lapses highlighted herein entitle the accused to the benefit of doubt. Accordingly, the prosecution case is not proved beyond reasonable doubt and fails on the point of safe custody of the case property.

**13.** In view of the above findings, the Court holds that the prosecution has failed to prove the safe custody and proper transmission of the case property in accordance with law. The contradictions and procedural lapses entitle the accused to the benefit of doubt. Accordingly, the accused is acquitted of the charge under the relevant provisions of law, and the case stands disposed of.

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