

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

## Criminal Jail Appeal No.D-25 of 2024

Before:

*Mr. Justice Jawad Akbar Sarwana.*

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

**Appellant:** Hameedullah son of Imdad Ali, Through  
Ms. Urooj Aqeel, Advocate.

**The State:** Mr. Shahriyar Shar, Special Prosecutor ANF.

**Date of hearing:** 06.05.2026

**Date of decision:** 20.05.2026

### JUDGMENT

**Syed Fiaz ul Hassan Shah, J:** Through this appeal, the appellant has challenged the judgment dated 25.03.2024, passed by learned Special Judge Control of Narcotic Substance/Model Criminal Trial Court-II/Additional Sessions Judge-IV, Hyderabad in Special Case No.246 of 2022, Re: State vs. Hameedullah, bearing U/ss 9-1, 3(e) Amended CNS Act, 2022, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant to suffer R.I for Life Imprisonment in view of amended table of Control of Narcotic Substance, 1997 published 6<sup>th</sup> September, 2022 Islamabad, being Act No.XX of 2022 and to pay fine of Rs.800,000/-(Eight Lacs only). In case of default in payment of fine he shall undergo S.I for six months more. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. The facts in brief necessary for disposal of instant Criminal Appeal are that complainant SI Munir Ahmed on 13.11.2022, was discharging his duties at Police Station, meanwhile informer, with reference to his ups, appeared at Police Station and shared information that inter-province smuggler namely Hameedullah S/o Imdad Ali will bring contraband narcotic for supply to his selected customer in between 1600 to 1700 hours in Bedford Truck No.SBA-257 from Matiari road, National Highway, Hyderabad, and on prompt

action, definite recovery may be affected. On receipt of said information, in view of directions of high ups, a raiding party consisting upon complainant, PC Asim Saleem, PC Manzoor Rind, PC Shahid Ahmed, PC Mohsin Ali, informer and driver Gul Sher was constituted and vide entry No.08 at 1530 hours, they duly equipped with weapons proceeded from Police Station and arrived at pointed place at 1615 hours where started blockade. Near about 1615 hours, complainant's party spotted pointed truck duly marked by informer to be same as being required, coming from Matiari side, which was got stopped along the road at left side, then its driver was apprehended. The passerby were asked to associate as mashir but they refused and in such compelling circumstances, PC Asim Saleem and PC Manzoor Rind were named as mashirs. On query, said person disclosed his name as Hameedullah S/o Imdad Ali and on inquiry about contraband narcotic, said person after a short resistance, admitted the custody of contraband narcotic concealed expertly under beneath of second seat of the truck and produced 41 multi coloured foil packets to complainant. Complainant checked each packet by applying cut and found in the shape of double slabs, hence, each packet was weighed and found weighing 1/1 kilograms total 41 kilograms. Out of each slab, 10/10 grams total 20 grams from each packet was sealed in 41 Khakhi envelopes separately for chemical examination by applying Nos.1 to 41 and same were sealed in white cloth bag by marking said bag as parcel No.1, whereas packets of Charas were numbered as 1 to 41 and same were sealed in white colour nylon sacks in the manner that one sack was containing packets Nos.1 to 20 and another sack Nos.21 to 41 by marking said sacks as 2 & 3. On checking truck, one colour copy of registration book, was recovered from its dashboard, whereas accused was found in possession of Pak currency notes of Rs.2000/- one itself mobile phone alongwith SIM. On query, accused admitted the ownership of the recovered truck. Thereafter, accused and case property including Bedford Truck No.SBA-257, Engine No.6013721, Chassis No.24882, Model 1976 as per colour copy and its key were taken into custody, memorandum of arrest and recovery was prepared in presence of above mashirs, contents of which were read over to them, who after admitting the same, put their signatures thereon,

where-after accused and case property were brought at Police Station where complainant registered present 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 complainant/I.O SI Munir Ahmed at Ex.3, he produced extract of departure and arrival entries at Ex.3/A, memo of arrest and recovery at Ex.3/B, FIR at Ex.3/C, entry of Malkhana at Ex.3/D, extract of departure and arrival entries from Karachi at Ex.3/E, sample receipt at Ex.3/F, letter to Chemical Examiner at Ex.3/G, Chemical Examiner report at Ex.3/H, seven letter/replies addressed to ETO Excise Department at Ex.3/I to Ex.3/O, two letters address to DPO Dera Murad Jamali @ Naseerabad at Ex.3/P & Ex.3/Q respectively, and letter to Deputy Commissioner Dera Murad Jamali @ Naseerabad at Ex.3/R, PW-2 mashir PC Manzoor Hussain at Ex.4, PW-3 (messenger of sealed parcel) PC Mohsin Ali at Ex.5, and PW-4 Incharge Malkhana ASI Iqbal Hussain at Ex.6, where-after learned SPP for ANF closed the side in evidence of prosecution vide statement at Ex.7.

**5.** The statement of accused Under S. 342 of Cr.P.C was recorded vide Ex.8 wherein accused denied the charges and deposed that he is innocent and has falsely been involved in this case. However, he has neither examined himself on oath nor examined any witness in his defence.

**6.** Learned counsel for the appellant argued that the appellant/accused is innocent and has falsely been implicated in this case; the learned counsel for the appellant argued that while preparing the Memorandum of Recovery Ex-3A, the Raiding Officer had not mentioned in the description official vehicle. More so the departure entry was 1530 hours while the memo was prepared on 1615 hours.

She further contends that the vehicle from which the alleged recovery was affected by the by the ANF, was never produced before the trial court and the PW-1 and PW-2 contradict each other as no articles were produced or referred no chasis or Engine number of the vehicle was mentioned of the alleged recovered vehicle. She further contends that neither the of ownership documents was produce nor the driver's license was produced by the prosecution in order to prove that the vehicle was existing and the appellant qualified as valid driver. She further contends that the PW-1 and PW-2 contradicts each other on the make and model of the vehicle; the PW-1 states that the vehicle was Bedford truck while the PW-2 states that it was Hino truck and even the description of such truck be it Bedford or Hino Company, has not been mentioned in the Register No. XIX. In support of her contention, she relied upon 2024 SCMR 1571. She further contends that the PW-2 was not the eyewitness of the recovery as per his own evidence as he self-claimed that he was standing outside. She further contends that the PW1 in his examination in chief deposed that the case property was containing double slabs and the prosecution took out 10g from each slab for the purposes of chemical analysis and such double slabs was taken out was combinedly as 20 gram each rather than to take out separately. According to Learned Counsel for the Appellant, the Record Memorandum of Recovery states that the case property was recovered and 10g sample was taken out from 41 slaps. While when entered the case property into the Malkhana under Register No.XIX dated 13.11.2022 it was mentioned that out of 41 KG comprises 41 pieces, samples of the 20g from each were taken out and such 41 samples were sealed in separate brown envelope by putting mark of sample No. 01 to 41. No Road certificate was produced despite the fact that the police official taken out sample case property to the chemical laboratory for the purposes of chemical analysis. She further contended that neither the video nor the photographs were recorded/captured despite the availability of mobile phone with the officials. The Appellant is first offender. The PW-1 SIP Munir Ahmed worn four hats on his head being SHO, Rading Officer, Complainant and the Investigation Officer in the present where huge quantity of alleged charas was recovered instead to join other senior officials to

strong the prosecution's case which shows the malafides and in support of her contention she relied upon 2019 Pakistan Cr LJ 1334.

7. On the other hand, learned Special Prosecutor, ANF supported the impugned judgment by submitting that the accused was arrested on the spot with a huge quantity of recovery of 41 kilograms charas. He vociferously opposed the Contention of the learned council for the appellant that wait till now produced vehicle was not produced and state that during the further examination in chief of the PW 1 the trial court has emphatically mentioned that case property produced before the court which to all understanding must include and read that the vehicle truck was produced before the trial court. He further contends that the recovered church was double slap that's why the E each slab was cut it by taking 10 gram from each slab out of 41 slaps and therefore due to double total weight come to 820g and there quite consistency between the Memorandum of Recovery, religious entries in the register number 19, chemical Examination report as well as the oral testimony as such the appellant cannot take the benefit of laymen excuse when a huge quantity of 41 KGS charas was recovered from their exclusive and conscious possession and therefore no interference is warranted in the judgment passed by the trial court.

8. The learned counsel for the appellant rebutted the contention of the special prosecutor and draw our attention towards the description of property Referred at the bottom of the impugned judgment with regard to the order for the confiscation and destroy of case property and states that the learned trial judge / trial court as itself stated that the case property including the vehicle Bedford truck having registration number SBA 257, engine No 6013721, Chasis No.24882, Model 1976 was deemed to be confiscated as shown in the charge and according to learned counsel this is another reason to appreciate that the vehicle was indeed not produced before the trial court otherwise the trial court ought to order for a state of a confiscation of the said vehicle truck rather to refer the truck as mentioned in the charge sheet which clearly understand that the truck was not before the trial court and this serious infirmity alone sufficient to set aside the Judgment of the trial court.

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

**10.** With regard to the production of case property before the trial Court, it is noted with concern that the 41 kilograms recovered charas was initially segregated into two parts by cutting 10 grams each from double slabs, culminating into 20 grams samples, totaling 820 grams for chemical analysis. The remaining 40 kilograms and 180 grams were retained in the Malkhana. However, when the case property was produced before the trial Court during further examination-in-chief of PW-1 SIP Munir, two plastic sacks in sealed condition were de-sealed, and 41 golden foiling packets each containing two slabs were recovered. The 820 grams of samples contained in 41 brown envelopes were never produced before the trial Court and neither was any justification of consumption at laboratory nor any Entry to this effect brought on record. PW-4 ASI Iqbal Hussain, in his cross-examination, admitted that the entry did not bear any endorsement regarding resubmission of case property into the Malkhana after receiving it back from the office of the Chemical Examiner. He further admitted that he had not produced the entry for release of case property for the purpose of production during trial.

**11.** We also note with grave concern that the prosecution set up its case on the recovery of 41 kilograms of charas from the hidden cavity of the truck driven by the appellant. Yet, on careful examination of the evidence of PW-1 SIP Munir, who was the raiding officer, complainant, SHO, ANF, and investigation officer, it is evident that he did not attribute a single word regarding the production of the truck bearing Registration No. SBA-257. The trial Court has not mentioned about the production of the truck as case property. None of the prosecution witnesses confirmed that the truck was produced during their evidence, nor was it referred to in the statement by the PW-1.

**12.** Even in the questions framed under Section 342 Cr.P.C., while Question No.4 mentioned recovery of 41 kilograms of charas from the truck, no direct question was framed regarding the production of the truck itself before the Court. This omission leads to the inference that the truck was not produced during the statement under Section

342 Cr.P.C. either. Further, the judgment at its conclusion merely noted that the truck was confiscated “as shown in the charge sheet,” rather than recording that it was confiscated upon production during evidence as it was not produced. There is a clear distinction between seizure reflected in the charge sheet and production during trial. From every perspective, it stands disproved that the prosecution produced the truck before the trial Court during evidence.

**13.** To sum up, we observed that the trial Court has not reached to a just conclusion that the case property i.e. sample Charas and Vehicle Truck SBA-257 were produced before it or any valid explanation given by the prosecution for its failure, if any. No findings have been recorded on this material points, therefore, in its absence, the conviction and sentence find unsustainable. Accordingly, the impugned Judgment is set aside and matter is remanded to the trial Court to denovo the trial and after hearing both the parties, decide afresh in accordance with law.

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