

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No. D-53 of 2024

Before:

***Mr. Justice Riazat Ali Sahar,
Mr. Justice Ali Haider 'Ada'.***

Appellant: Mehrab son of Haji Khan @ Muhammad Azeem
By caste Malik, *through* Mr. Muhammad Afzal
Jagirani, Advocate.

Respondent: The State, *through* Mr. Nazeer Ahmed Bangwar,
Deputy Prosecutor General, Sindh.

Date of Hearing: 01.06.2026.

Date of Decision: 09.06.2026.

JUDGMENT

Ali Haider 'Ada'.J:-Through the instant Criminal Appeal, the appellant has assailed the judgment dated 19.08.2024 passed by the learned 1st Additional Sessions Judge/MCTC/Special Judge (CNS Cases), Kandhkot, in Special Case No.01/2024 arising out of FIR No.318/2023 registered at Police Station A-Section, Kandhkot, whereby he was convicted under Section 9(c) of the Control of Narcotic Substances Act 1997, and sentenced to suffer rigorous imprisonment for nine years with a fine of Rs.80,000/-, and in default thereof to further undergo simple imprisonment for two years, along with the benefit of Section 382-B, Cr.P.C.

2. Briefly stated, the prosecution case is that on 20.12.2023, a police party headed by ASI Ghulam Sarwar Jaffery, while on patrol duty, received spy information that the appellant, who was allegedly wanted in certain criminal cases, was present at Mazari Curve carrying a black shopper containing narcotics. Acting upon such information, the police party reached the pointed place and apprehended the appellant, who allegedly attempted to escape on seeing the police. Upon search, 2000 grams of Charas was recovered

from the shopper carried by him. Necessary mashirnama of arrest and recovery was prepared in the presence of mashirs, and thereafter the appellant along with the recovered contraband was brought to the police station, where the present FIR was registered against him under Section 9(c) of the CNS Act 1997.

3. After completion of investigation, challan was submitted before the competent Court. Upon compliance with legal formalities, charge was framed against the appellant, to which he pleaded not guilty and claimed trial. In support of its case, the prosecution examined the complainant, mashir, investigating officer, Incharge Malkhana and dispatcher, and produced relevant documentary evidence. Thereafter, the prosecution closed its side. The statement of the appellant under Section 342, Cr.P.C. was recorded, wherein he denied the prosecution allegations, professed innocence and prayed for justice. He neither examined himself on oath under Section 340(2), Cr.P.C. nor produced any witness in defence. Upon conclusion of the trial, the learned trial Court convicted and sentenced the appellant through the impugned judgment, which is under challenge in the present appeal.

4. Learned counsel for the appellant contended that the learned trial Court failed to appreciate the evidence in its true perspective and that the prosecution had not been able to prove its case beyond reasonable doubt. He further argued that the conviction and sentence awarded to the appellant are not sustainable in law. Conversely, the learned Deputy Prosecutor General supported the impugned judgment and argued that a substantial quantity of Charas was recovered from the possession of the appellant; that there was no motive for the police officials to falsely implicate him; and that the prosecution successfully established its case through reliable and confidence-inspiring evidence. He, therefore, prayed for dismissal of the appeal.

5. Heard, learned counsel for the parties and have carefully gone through the evidence and material available on the record.

6. A careful perusal of the evidence shows that, according to the complainant and mashir, the police party received spy information at Gola Curve and thereafter proceeded to the place of arrest. However, during cross-examination, while describing the route of patrolling, they did not specifically state that they had reached Gola Curve before receiving such information; rather, they deposed that after patrolling on Kashmore Road, they proceeded directly towards the place of arrest. This inconsistency casts doubt upon the prosecution story. Moreover, the alleged recovery was effected from a public place, yet no independent person was associated in the recovery proceedings. The prosecution has offered no explanation for such omission. In this regard, reliance is placed upon *Muhammad Aslam v. The State* (2011 SCMR 820) and *Ghulam Shabbir and another v. The State* (2023 YLR 153). Further, reliance is placed upon the decision of this Court in *Arshad Ali and another vs. The State* (2024 PCr.LJ 1183) [Sindh-DB], similarly, in the case of *Shahzaib alias WaderoFeroze vs. The State*(2024 YLR 1298) [Sindh-DB], this Court held that:

"...It has come in evidence that the accused was arrested from TarazoChowk which is a thickly populated area and the complainant SIP Sarfraz Ali Qureshi had sufficient time to call the independent persons of locality to witness the recovery proceedings but it was not done by him for the reasons best known to him and only the police officials who are subordinates to the complainant were made as mashirs of arrest and recovery proceedings. It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of Section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case) and the peoples were available there, omission to secure independent mashirs, particularly, in the police case cannot be brushed aside lightly by this court. Prime object of Section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and

minimize the scope of foisting of fake recovery upon accused. After all, preparation of mashirnama is not a formality but its object is to prevent unfair dealings. There is also no explanation on record why the independent witness has not been associated in the recovery proceedings. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses. But here in this case, we have also noted number of contradictions in between the evidence of prosecution witnesses which cannot be easily brushed aside. Above conduct shows that investigation has been carried out in a casual and stereotype manner without making an effort to discover the actual facts/truth.

Guidance can be sought from the judgment of the Division Bench of this Court in the case of **Danish v. The State(2025 YLR 1355)**, wherein it was held that:

11. Also to note is that, the incident took place at Mureed Goth, near Qureshi colony gate Lyari Expressway surrounded by population, but no independent witness has been associated for arrest and recovery which is clear violation of the provisions of Section 103 Cr.P.C. It appears that investigating officer has failed to discharge his duties in the manner as provided under the law. It is noteworthy that investigating officer was well aware of the fact that no independent and private person was associated by the complainant to act as mashir of arrest and recovery, therefore, he was under obligation to make positive efforts and arrange an independent witness while visiting the place of incident, but no such indication is available on record.

Further guidance is available from the judgment of this Court in the case of **Mir Muhammad and others v. The State(2024 PCr.LJ 370)**, wherein a Division Bench of this Court has held that:

“...It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case), omission to secure independent mashirs, particularly, in police case cannot be brushed aside lightly by this court. Prime object of section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting

of fake recovery upon accused. There is also no explanation on record why no any independent person either from the place where they received spy information or from the place of incident has been joined to witness the recovery proceedings though it was a day time incident. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses."

7. Furthermore, although narcotics cases require greater care and caution due to the gravity of the offence, such gravity does not relieve the prosecution of its obligation to establish the case through a complete and unbroken chain of evidence. In the present case, the prosecution alleged that four pieces of Charas were recovered from the possession of the appellant, but it failed to disclose the individual weight of each piece and merely stated the collective weight as 2000 grams. The absence of such essential particulars creates doubt regarding the alleged recovery and renders the prosecution version unreliable. Reliance in this regard is placed upon *Qalandar Shah v. The State* (2021 YLR 2349) and *Ansar Abbas @ Pakori v. The State and another* (2021 PCrLJ 138).

8. Additionally, the complainant, who was also the head of the raiding party, admitted during cross-examination that when the case property was de-sealed before the trial Court, a specific golden-colored seal/stamp was found affixed on the recovered Charas. However, neither the mashirnama of recovery nor any other prosecution document, including the Chemical Examiner's report, contains any reference to such a distinguishing mark. The omission to document the admitted golden-colored seal creates serious doubt regarding the identity of the case property and adversely affects the prosecution case. In this regard, reliance is placed upon *Bahawal Shaikh v. The State* (2025 MLD 840), *Muhammad Arif v. The State* (2023 YLR 2369), and *Ahsan Meerani v. The State* (2022 YLR Note 5). Further reliance is placed upon the cases of *Ahsan Marfani vs The State* (2022 YLR Note 5), this Court held that:

14. The description available on the charas were not mentioned in the mashirnama of arrest and recovery to show and to prove that the charas produced before the chemical analyzer and the Court at the time of evidence was same and was recovered from the accused. The complainant admitted this fact during his cross examination when the property was de-sealed before the court, complainant stated that it is fact that the slab of charas present in court having monogram and such monogram is not mentioned in mashirnama. It is fact that charas is available in cartoon.

Asif Khan vs The State (2021 MLD 1192).

It therefore, evident that according to the statement of Sheikh Muhammad Aslam, (PW.4) 36 packets of charas, each packet contained 12 lither, total weighing 40 Kgs was recovered from the gas cylinder of the car and from each lither, he separated 5/5 grams of charas for chemical analysis but as stated above when the case property was de-sealed in the court the number of lithers contained in all the packets was found as 443 and total weight of the contraband came to 30 Kgs and 924 grams. Moreso number of lithers were also different in each packets. It is further admitted that the prosecution has failed to bring on record the individual weight of each packet of charas and lithers, which fact is irreconcilable, went root of the case and badly damaged the case of the prosecution. In this manner, it cannot be determined whether the case property produced before the court was the same property which was taken into possession from the accused at the time of occurrence and subsequently handed over to Moharrar malkhana. The depositions of the aforementioned star witnesses of prosecution regarding recovery of contraband at the spot, makes the case of the prosecution highly doubtful

9. The complainant deposed that after registration of the FIR, he handed over the accused and case property to the Investigating Officer, who in turn stated that he entrusted the case property to the Incharge Malkhana for its deposit in the Malkhana. The Incharge Malkhana also supported this version. However, the entry in Register No.19 reflects the name of the Investigating Officer, and not the Incharge Malkhana, as the depositor of the case property. This material inconsistency has remained unexplained. Such discrepancy casts doubt upon the safe transmission of the case property, which is an essential requirement in narcotics cases. Support, in this regard may is placed upon *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), wherein the imperative nature of maintaining an unbroken chain of custody was emphasized.

10. It may further be observed that although the prosecution brought on record the criminal history of the appellant, even the learned trial Court did not place reliance upon such circumstance and specifically observed that no material had been produced to establish any previous conviction of the appellant. In any event, mere pendency of criminal cases against an accused does not ipso facto disentitle him from the benefit of doubt where the prosecution failed to prove the charge in the case at hand beyond reasonable doubt. It is a settled principle of criminal jurisprudence that every accused is presumed innocent until proven guilty through legally admissible, confidence-inspiring and trustworthy evidence. Such presumption remains attached to an accused throughout the proceedings unless rebutted by unimpeachable evidence. Reliance in this regard is placed upon *Naveed Asghar and others v. The State* (PLD 2021 SC 600).

11. It is settled principle of Law that the benefit of doubt must be extended to an accused if there exists even a single circumstance that creates reasonable doubt regarding his guilt in prudent mind. It is not necessary that there be a multitude of doubts or inconsistencies. A solitary, credible doubt is sufficient to entitle the accused to an acquittal. Reliance in this regard is placed upon the authoritative judgments of the Hon'ble Supreme Court in *Sajjad Hussain v. The State* (2022 SCMR 1540), *Abdul Ghafoor v. The State* (2022 SCMR 1527) and the judgment of the Division Bench of this Court in *Nadir Hussain v. The State* (2025 YLR 487).

12. For the foregoing reasons and discussion, it is evident that the prosecution has failed to prove its case against the appellant beyond

reasonable doubt. The material discrepancies and infirmities discussed above have created serious doubt in the prosecution case, entitling the appellant to the benefit of doubt under the settled principles of criminal jurisprudence. Consequently, this appeal is allowed. The conviction and sentence awarded to the appellant by the learned trial Court vide impugned judgment are set aside, and he is acquitted of the charge. The appellant shall be released forthwith, if not required in any other criminal case.

JUDGE

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