

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

BEFORE:
Justice Arbab Ali Hakro
Justice Muhammad Osman Ali Hadi

Criminal Appeal No. D-45 of 2024

Appellant : Through Mr. Safdar Ali Ghouri, Advocate
Punhal son of Shahal Sarki

The State : Through Mr. Sardar Ali Solangi, Deputy
Prosecutor General, Sindh

Date of Hearing : **22-10-2026**

Date of Judgment : **29-10-2026**

J U D G M E N T

ARBAB ALI HAKRO, J- Through this appeal under Section 48 of the Control of Narcotic Substances Act, 1997 (hereinafter referred to as '**the Act of 1997**'), the appellant, Punhal, son of Shahal Sarki, has challenged the judgment dated 04.07.2024 (**the impugned judgment**) passed by the learned Sessions Judge/Special Judge (CNSA), Jacobabad (hereinafter referred to as '**the trial Court**') in Special Narcotics Case No. 90 of 2023, arising out of Crime No. 36 of 2023 of Police Station A-Section Thull. By the impugned judgment, the appellant was convicted under Section 265-H(ii) Cr.P.C. for possession of 1500 grams of charas and sentenced to rigorous imprisonment for nine years, a fine of Rs.80,000/-, and, in default to undergo simple imprisonment for two months more, with the benefit of Section 382-B Cr.P.C.

2. The prosecution case, as set out in the FIR lodged by ASI Allah Rakhio Mahar on behalf of the State, is that on 15.03.2023 he left the police station at 1100 hours for patrolling, accompanied by PC Mukhtiar Ali and PC Shahid Ali, in a police mobile driven by HC Abdul Latif. At 1150 hours, at Khabar Mor, he received spy information that a person carrying charas was waiting

for conveyance near Dingri Bridge on the road leading to Jacobabad. The police party reached the location at 1200 hours and saw the appellant standing on the southern side of the road, holding a black plastic shopper in his right hand. On seeing the police, he ran but was chased and caught within about fifty paces. No private person being available, the two constables were made mashirs. The shopper contained three slabs of charas, two wrapped in yellowish plastic bearing the words 'Kharooj 2023-2024' and the third in white plastic bearing the words 'Gumnan 2023-2024'. Each slab weighed 500 grams, totalling 1500 grams. Half the quantity, 750 grams, was separated and sealed with the shopper as a sample, and the remaining 750 grams was sealed separately. Two currency notes of Rs.50/- were recovered from the appellant's shirt pocket. The mashirnama of arrest and recovery was prepared at the spot, and the FIR was registered on return to the police station.¹

3. After the investigation, the challan was submitted, and on 28.08.2023 the appellant was charged under section 9(1)(3)(c) read with section 6 of the Act of 1997. He pleaded not guilty.² The prosecution examined five witnesses: the complainant ASI Allah Rakhio (PW-1), the mashir PC Mukhtiar Ali (PW-2), PC Ghulam Yaseen, who took the sample to the laboratory (PW-3), the investigating officer SIP Ghulam Nabi Bijarani (PW-4), and WHC Baqa Muhammad, in-charge of the malkhana (PW-5). Through them, the departure and arrival entries, the mashirnamas, the FIR, the entry in Register No. XIX, the letter seeking permission and the letter granting permission to send the sample, the road certificate, and the report of the Chemical Examiner were produced, and the remaining witnesses were given up.³ In his statement under section 342 Cr.P.C., the appellant denied the recovery, called the chemical report 'managed', and said that the witnesses,

¹ Mashirnama of arrest and recovery (Ex.5/B); arrival entry No. 20 (Ex.5/C); FIR (Ex.5/D); entries No. 21 and 22 (Ex.5/E).

² Charge (Ex.3) and plea (Ex.3/A).

³ Ex.5 to Ex.10.

being police officials, had deposed falsely against him. He neither examined himself on oath nor led evidence in defence.⁴ The trial Court found the charge proved and convicted and sentenced him as stated above.

4. Mr. Safdar Ali Ghouri, learned counsel for the appellant, contended that the appellant was picked up from his house and that the charas was foisted upon him; that although the information was received in advance at a densely populated place and the recovery was made on a busy road near a petrol pump, no private person was associated and no video was recorded; that all the witnesses are police officials; that the complainant and the mashir contradict each other as to the distance from which the appellant was first seen, the colour of the scale, where and how the memo was written, who held the appellant at the spot and who held the case property at the spot and on the way back to the police station; that the co-mashir, PC Shahid Ali, was not examined and that an Assistant Sub-Inspector was not competent to make the recovery. He prayed for acquittal.

5. Mr. Sardar Ali Solangi, learned Deputy Prosecutor General, supported the impugned judgment. He contended that the witnesses are consistent on every material particular, no enmity has been suggested, safe custody and transmission are proved by oral and documentary evidence, the report of the Chemical Examiner is positive, and the sentence is the minimum provided by law.

6. We have heard the learned counsel and examined the record with their assistance.

7. The questions that arise are: (i) whether the recovery of 1500 grams of charas from the appellant is proved; (ii) whether the safe custody of the case property and the safe transmission of the sample to the Chemical Examiner are established; (iii) whether any of the other objections raised by

⁴ Ex.11.

the appellant vitiates the conviction; and (iv) under which provision the appellant stands to be convicted and what sentence the law permits.

8. The complainant and the mashir have given a consistent account of the departure from the police station, the information received at Khabar Mor, the arrest after a short chase, the number, wrapping and markings of the slabs, the weighing, the separation of the sample and the sealing of both parcels at the spot. That account accords with the mashirnama and the FIR on every material point. The FIR was registered at the police station within about an hour and a half of the recovery, leaving little room for deliberation. Both witnesses underwent lengthy cross-examination, but nothing emerged to show that they knew the appellant before or had any reason to implicate him falsely. The plea that the appellant was picked up from his house was not put to any prosecution witness, was not taken in his statement under section 342 Cr.P.C., and has no evidence behind it. It is an afterthought.

9. The evidence of police officials is not to be discarded merely because of their official status. It is to be tested like that of any other witness, and where it remains consistent and no animus is shown, it can be relied upon.⁵ Section 25 of the Act of 1997 excludes the application of section 103 Cr.P.C. to searches made under the Act, so the absence of private witnesses does not, by itself, cast doubt on the recovery.⁶ The complainant said that two or three persons at Khabar Mor declined to join, while the mashir said that nobody was asked; since the law does not require private witnesses, the point is of no consequence.

10. The remaining contradictions relied upon are that the complainant placed the distance at which the appellant was first seen at 70 or 80 paces and the mashir at 20 or 25; that the complainant described the electronic scale as golden with golden digits and the mashir as silver with red digits;

⁵ *Liaquat Ali v. The State* 2022 SCMR 1097; *Gul Muhammad v. The State* 2026 SCMR 1395.

⁶ *Muhammad Hanif v. The State* 2003 SCMR 1237.

that the complainant said he wrote the memo while seated, with the paper on a clipboard, whereas the mashir said it was written on the bonnet of the police mobile; and that they differed on which constable held the appellant at a given moment and on whether the proceedings took forty-five or fifty minutes. The witnesses were examined nine months after the event. These are differences of recollection on matters of detail. They do not touch the recovery, the quantity, the sealing or the identity of the substance, and they do not render the prosecution account improbable. The difference as to who held the sealed parcels between the spot and the police station stands on another footing and is dealt with below.

11. Since the Chemical Examiner's report is the evidence on which a conviction under the Act of 1997 ultimately rests, the prosecution must prove that the parcels remained in safe custody from the scene until they reached the laboratory. It discharges that burden by producing the persons who handled the parcels, namely the seizing officer, the in-charge of the malkhana and the carrier of the sample, together with the relevant police record. Where that is done and their evidence remains unshaken, the Supreme Court has consistently upheld the conviction.⁷

12. Each link is proved by the person who held it and is supported by a contemporaneous document. The sealed parcels were brought to the police station with the appellant under arrival entry No. 20 at 1315 hours. The complainant handed them over to the investigating officer at 1345 hours, who had them deposited in the malkhana through WHC Baqa Muhammad. The WHC entered them at serial No. 21 of Register No. XIX the same day. The investigating officer sought permission from the SSP on 15.03.2023, which was granted on 16.03.2023. On 17.03.2023, the sample parcel was taken out of the malkhana under entry No. 8 at 0845 hours and handed to PC Ghulam Yaseen under road certificate No. 53. The road certificate bears

⁷ *Fakhar Abbas v. The State* 2026 SCMR 1553; *Zeeshan Khan v. The State* 2026 SCMR 1697; *Gul Muhammad* (n.5 above).

the receipt of the Chemical Laboratory, Sukkur, at Rohri, dated the same day, and the report records receipt on 17.03.2023 through PC Ghulam Yaseen, with the seals in satisfactory condition. PC Ghulam Yaseen returned under entry No. 15 at 1615 hours. The investigating officer, the WHC, and the carrier all stood by their statements in cross-examination.⁸

13. The sample reached the laboratory about forty-five hours after recovery, within the seventy-two hours contemplated by rule 4 of the Control of Narcotic Substances (Government Analysts) Rules, 2001. The interval is explained by the permission sought from and granted by the SSP. The Rules are, in any case, directory, and a lapse in complying with them would not, by itself, discard a prosecution case otherwise proved.⁹

14. What reached the laboratory is also shown to be what was seized. The Chemical Examiner describes the parcel as containing three black-brown pieces, two wrapped in yellow plastic labelled 'Kharooj 2023-2024' and one in white plastic labelled 'Gum Naam 2023-2024', all kept in a black shopper, with a net weight of 750 grams.¹⁰ This is the description given in the mashirnama, the FIR and the evidence. When the parcel returned by the laboratory was de-sealed in court at the request of the defence, it contained three pieces in a black shopper, two in golden wrappers and one in white. The substance analysed is thus shown to be the very substance recovered from the appellant.

15. The one discrepancy regarding custody that warrants closer examination concerns the return journey. The complainant said that the sealed parcels were held by PC Shahid Ali while he wrote the memo and on the way to the police station; the mashir said that they lay on the bonnet

⁸ Ex.5/C, Ex.5/E, Ex.8/A to Ex.8/E, Ex.7/A and Ex.7/B; depositions of PW-3 (Ex.7), PW-4 (Ex.8) and PW-5 (Ex.9).

⁹ *Liaquat Ali* (n.5 above).

¹⁰ Report No. 1644 dated 10.04.2023 (Ex.8/E).

while the memo was written and were with the complainant on the front seat on the way back. PC Shahid Ali was given up.

16. The discrepancy does not affect the integrity of the parcels. Both witnesses agree that the parcels were sealed at the scene with three seals each; that the whole party returned with the appellant and the parcels together in one police mobile; that the journey took between fifteen and thirty minutes; that on arrival the parcels lay on the table of the WHC while the appellant sat in the custody of the two mashirs, and that the complainant then handed them to the investigating officer. At no stage did the parcels leave the company of the raiding party or travel with anyone apart from it. The difference is only as to which of the men seated in the same vehicle had the already sealed parcels in his hands during a short drive. The laboratory found the seals intact, and the contents matched the mashirnama. PC Shahid Ali could only have repeated what the complainant and the mashir, both of whom made the same journey, have proved; his non-production does not attract the presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984. The discrepancy leaves no gap in the chain of custody.

17. The case is, in fact, on all fours with **Fakhar Abbas**, in which the Supreme Court maintained a conviction under section 9(1)3(c) of the Act of 1997, as substituted in 2022, for 1460 grams of charas, imposing a sentence of nine years and a fine of Rs.80,000/-, with safe custody and transmission having been proved through the investigating officer, the moharrir and the carrier.¹¹

18. Although not argued, the question of quantity must be answered, because under the Act of 1997 the sentence turns on it. It is settled that where a narcotic substance is recovered in separate slabs, a separate sample has to be drawn from each slab and kept separate for analysis; if that is not done, only the quantity from which a sample was taken and tested can be

¹¹ *Fakhar Abbas* (n.7 above).

attributed to the accused. Here, the sample was made up of a portion of each of the three slabs; each portion remained in its own labelled wrapper and was not mixed with the others. The Chemical Examiner records that 10 grams were consumed from each piece, which tested positive for charas by the Fast Blue B salt and TLC tests. Every slab having been sampled and tested, the whole 1500 grams is proved to be charas.

19. No law or rule required the recovery to be recorded on video. The Supreme Court has held that the absence of a video recording, by itself, does not provide a ground for acquittal after a full trial where the recovery and the chain of custody are otherwise proved.¹²

20. Section 21 of the Act of 1997 empowers an officer not below the rank of Sub-Inspector, authorized in that behalf, to enter and search a building, place, premises or conveyance without a warrant. The appellant was not found in any such place; he was standing on a public road and was arrested within ten minutes of the information reaching a patrolling party. In such circumstances, the Supreme Court has rejected the objection that an Assistant Sub-Inspector could not act¹³ and has held that even an arrest, seizure or investigation by an officer below the prescribed rank is, at most, an irregularity curable under Section 537 Cr.P.C. where no prejudice is shown.¹⁴ No prejudice has been shown here.

21. The offence was committed on 15.03.2023, after Section 9 of the Act of 1997 had been substituted by the Control of Narcotic Substances (Amendment) Act, 2022 (XX of 2022). Under item 3 of the Table in Section 9(1), possession of charas weighing 1000 grams or more but less than 5000 grams falls under clause (c) and is punishable with imprisonment which may extend to fourteen years but not less than nine years, and a fine which may extend to Rs.400,000/- but not less than Rs.80,000/-. The charge was rightly

¹² *Zeeshan Khan* (n.7 above).

¹³ *Muhammad Akram v. The State* 2007 SCMR 1671.

¹⁴ *Muhammad Hanif* (n.6 above).

framed under that clause, and the trial Court, while sentencing, applied the same range. The operative part of the impugned judgment, however, records the conviction under 'Section 9-3(d)', which relates to 5000 grams or more but less than 10,000 grams. That is a slip. It has caused no prejudice to the appellant, who was charged and tried for, and defended himself against, an offence under clause (c). The finding is liable to be altered accordingly under Section 423(1)(b) Cr.P.C., the defect being curable under Section 537 Cr.P.C.

22. The sentence of nine years' imprisonment and a fine of Rs.80,000/- is the minimum prescribed for clause (c) and cannot be reduced. The Sindh Control of Narcotic Substances Act, 2024, which came into force on 28.10.2024 after the impugned judgment, saves proceedings and penalties under the repealed Act by section 45(2). In any case, it prescribes the same term of imprisonment for this quantity, with a higher minimum fine, so it does not avail the appellant.

23. The prosecution has proved beyond reasonable doubt that 1500 grams of charas was recovered from the appellant, that it remained in safe custody, and that its sample reached the Chemical Examiner intact. No misreading or non-reading of evidence, or illegality affecting the merits, has been shown. The appeal is, therefore, **dismissed**. The finding of the trial Court is altered to one of conviction under section 9(1), item 3(c) of the Table, read with section 6 of the Act of 1997, as substituted by Act XX of 2022, and the sentence of rigorous imprisonment for nine years and a fine of Rs.80,000/-, in default simple imprisonment for two months, is maintained with the benefit of section 382-B Cr.P.C. The appellant shall serve the remaining sentence in accordance with law.

JUDGE

JUDGE