IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No.946 of 2025

Before:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

Applicant	:	Syed Aly Raza son of Syed Alam *Through* Mr. Aamir Mansoob Qureshi Advocate.
Respondent	:	The State, *Through* Mr. Musharaf Azhar, Special Prosecutor ANF.
Date of hearing	:	19.08.2026
Date of Order	:	24.08.2026

O R D E R

KHALID HUSSAIN SHAHANI, J. – Applicant Syed Aly Raza invokes the inherent jurisdiction of this Court, calling in question an order dated 25.09.2025, passed by the learned Special Court II (CNS) Karachi, dismissing an application for acquittal under Section 265-K Cr.P.C filed by the applicant in Special Case No. 62 of 2023, emanating from FIR No. 46 of 2023 for offence under sections 9(1), 6(f), 14, 15 of CNS Act, 1997 (as Amended in 2022) of PS ANF- Clifton Karachi, mainly on the pretext that, upon the material already collected and the evidence now recorded, there is no legally sustainable probability of his conviction.

2. The prosecution case originates from FIR No.46/2023 registered at Police Station ANF Clifton, Karachi. On 16 October 2023, acting upon spy information, an ANF party proceeded to the PICT examination area and inspected export container No. TEMU-5615050, declared to contain Himalayan pink salt for export to the Maldives. Three persons were present near the container: Asma Abidi, clearing agent Tajamul Hussain, and the present applicant. Upon opening the sealed container, the raiding party found twenty-four packets, each stated to contain 500 grams of heroin, concealed in one carton among the salt consignment, making an aggregate alleged recovery of twelve kilograms.

3. The applicant was arrested at the spot. No narcotic substance, packing material, incriminating document, unexplained money, key, seal, or article connecting him with the concealment was recovered from his

person. His personal search yielded ordinary personal effects, a mobile telephone, identity documents, Chamber of Commerce card and cash. The prosecution itself records his explanation that he is a broker who purchases goods from the market against orders and retains a margin.

4. The investigation traced the procurement of eighteen tons of salt, its packing, movement in Mazda trucks, temporary storage at Shafi Godown, loading into the export container, sealing, subsequent parking at Jungle Shah Yard/Younus Godown, and transportation to PICT. The statements collected by the prosecution attribute those physical operations principally to Mubashir Ali Khan, Mirza Taimoor, the clearing and freight personnel, transporters, labourers, godown staff and other persons. The applicant is not shown to have collected the salt from the factory, transported it, kept it in a godown, loaded it into the container, supplied the suspicious carton, altered any packet, possessed the container keys, affixed or broke the seals, prepared export documents, or exercised dominion over the sealed container after the salt was handed over.

5. The consistent explanation emerging from the prosecution's own material is that the applicant arranged a lawful commodity, pink salt on the request of the overseas buyer and handed it over to persons nominated by that buyer; that payment remained outstanding; and that he attended PICT after being called there on the representation that Mirza Taimoor would make the balance payment. Presence at the examination area is therefore admitted; guilty knowledge of the concealed contraband is not.

6. Learned defence counsel, adopting the grounds set out in the application, submits that the applicant's implication rests upon suspicion generated by his presence and his antecedent role as a broker of salt. He argues that suspicion cannot replace proof of conscious possession, knowledge, participation or abetment; that the chain of handling the commodity and container affirmatively passes through other persons; that the applicant neither controlled the consignment nor participated in packing, loading, sealing, storage or transport; and that no call record, financial trail, forensic extraction, surveillance material, independent witness, document or recovery supplies the missing nexus.

7. Counsel further relies upon the police report and, more importantly, the sworn testimony of the Investigating Officer. It is contended that the officer, after two phases of investigation and after reproducing the case of the prosecution at length, ultimately admitted in unambiguous terms that both investigations disclosed no material showing any direct or indirect

connection of Syed Aly Raza with the seized contraband. According to counsel, once the prosecution's own investigating witness closes every evidentiary avenue in that manner, continuation of trial becomes punitive rather than adjudicatory and attracts section 265-K of the Code.

8. The learned Special Prosecutor ANF opposes the application. He submits, in substance, that the applicant is named in the FIR, was found at the port beside the subject container, had procured the underlying salt, had communicated with persons connected with the shipment, and that narcotics offences are grave offences affecting society at large. He maintains that the opinion of an Investigating Officer is not binding upon the Court; that the prosecution should ordinarily be permitted to lead all cited evidence; that the statutory presumption under the narcotics law may become available upon proof of foundational facts; and that a detailed evaluation of credibility at an intermediate stage may improperly trench upon the final trial.

9. The following questions arise: (i) what is the nature and reach of this Court's jurisdiction under section 265-K of the Code; (ii) whether, on the prosecution material and evidence already recorded, there remains a real, as opposed to conjectural probability of conviction of this applicant; and (iii) whether continuation of proceedings against him would serve a legitimate forensic purpose.

10. Section 265-K is an express jurisdiction conferred upon the Court conducting a trial under Chapter XXII-A of the Code. In substance, it provides that nothing in that Chapter prevents the Court from acquitting an accused at any stage if, after hearing the prosecutor and the accused and for reasons to be recorded, it considers that there is no probability of the accused being convicted of any offence. The phrase "at any stage" is deliberate. It rejects the proposition that the Court must mechanically traverse every remaining procedural step after the legal possibility of conviction has disappeared.

11. The jurisdiction is exceptional, but it is not illusory. It is neither an appellate review of the police opinion nor a miniature trial upon disputed facts. Its object is to arrest a prosecution that has ceased to possess a legally sufficient evidentiary foundation. The test is not whether conviction is merely conceivable in the abstract; almost any hypothesis can be imagined. The statutory test is whether, on material capable of lawful proof and viewed at its reasonable prosecutorial maximum, conviction retains a real probability. Where an essential ingredient is supported only by

speculation, the Court is not obliged to postpone the inevitable merely for ceremonial completion of trial.

12. The principle enunciated in PLD 1999 SC 1063[1] is directly attracted to the peculiar evidentiary position of the present case. The august Supreme Court held that the expression "at any stage of the case" employed in section 265-K, Cr.P.C. deliberately dispenses with the recording of the entire prosecution evidence as an indispensable precondition to acquittal. The controlling inquiry is whether the evidence yet to be produced, even if taken at its prosecutorial maximum and read conjointly with the material already available, could reasonably improve the prosecution case or creates a genuine possibility of conviction; where the answer is in the negative, continuation of the trial would merely consume public time without corresponding forensic benefit. In the present case, the position is materially stronger: the Investigating Officer, after conducting two investigations and examining the entire available record, has conceded on oath that no material establishing any direct or indirect connection of Syed Aly Raza with the seized contraband was discovered. The prosecution has neither identified any remaining witness capable of supplying that indispensable nexus nor pointed to any outstanding documentary, forensic, financial or electronic evidence that could establish conscious possession, knowledge or intentional participation. Thus, unlike a case involving incomplete evidence whose probative worth remains to be tested, the evidentiary theory against the applicant already stands exhausted. Requiring the remaining witnesses to be examined merely as a ritualistic formality would serve no lawful purpose and would run contrary to the ratio of *Muhammad Sharif*, for the statutory jurisdiction under section 265-K exists precisely to terminate a prosecution where further evidence cannot realistically alter the inevitable conclusion that there is no probability of conviction.

13. The same approach accords with the common-law "no case to answer" principle: the prosecution must adduce evidence upon which a properly directed tribunal could lawfully convict. If evidence is absent on an essential element, the case must stop; if the evidence is merely tenuous but its strength depends upon credibility capable of assessment at trial, restraint may be appropriate. Section 265-K is textually broader because it expressly directs attention to the probability of conviction, but it does not authorize the Court to decide evenly balanced credibility disputes prematurely.

---

[1] *Muhammad Sharif v. The State*

14. The presumption of innocence is the starting point and remains operative throughout the trial. The "golden thread" of criminal jurisprudence places the burden of proving guilt upon the prosecution. Article 117 of the Qanun-e-Shahadat Order, 1984 embodies the corresponding rule of evidence: the party asserting guilt must prove the facts necessary to sustain it. Article 10-A of the Constitution guarantees a fair trial and due process. A fair trial protects society's interest in the conviction of the guilty, but equally protects an individual from being kept under accusation when the State's own evidence cannot establish a legally essential nexus.

15. Criminal liability is personal. Association, acquaintance, commercial dealing, presence at a place, or the lawful procurement of an innocent commodity does not, without more, establish knowledge of a concealed narcotic or participation in its concealment. The prosecution must bridge the inferential distance between innocent conduct and the charged offence by reliable evidence. Where two inferences are reasonably available, one consistent with innocence and the other with guilt, the criminal standard does not permit the Court to select guilt by conjecture. A single reasonable doubt arising from the record is not a concession; it is the accused's right.

16. The seriousness of a charge cannot reduce the standard of proof. The greater the penal consequence, the greater the need for disciplined adherence to proof. A statutory presumption in narcotics law does not arise in a vacuum and cannot substitute for foundational facts. Before any evidentiary burden may shift, the prosecution must first establish facts linking the particular accused to conscious possession, custody, control, knowledge, financing, facilitation or another legally defined form of participation. Presumption cannot be used to manufacture the very nexus upon which its operation depends.

17. Likewise, common intention or abetment cannot be inferred merely from a commercial introduction or lawful supply. There must be evidence of intentional aid, encouragement, agreement, shared design or knowing facilitation. *Mens rea* may of course be proved circumstantially, but the circumstances must form a coherent chain incompatible with reasonable innocence. Missing links cannot be supplied by the gravity of the allegation, nor can proof against one accused migrate automatically to another.

18. The recovery of heroin from the container is not in dispute for the limited purpose of this application. The decisive question is individualized attribution. The applicant was neither the exporter named in the documents nor the importer; he was not the clearing agent, freight forwarder, transporter, godown keeper, container driver, seal custodian, packing labourer or person shown to have loaded the suspicious carton. The contraband was not recovered from his body, residence, vehicle, office or exclusive custody. His presence occurred after the container had been packed, sealed, moved through different locations and brought to PICT.

19. The prosecution witnesses whose investigative statements describe the operational chain materially support this separation. Asma Abidi’s account places the applicant at PICT to obtain the remaining price from Mirza Taimoor. Tajamul Hussain’s account similarly records that the applicant arrived for payment, while the clearing and movement of the container were handled independently. Factory, transport and godown witnesses trace physical possession of the salt cartons and packing material to others. Whatever case those circumstances may create against other persons is not a substitute for proof against this applicant.

20. The applicant’s original act, arranging eighteen tons of pink salt is facially lawful and independently corroborated by the factory and market witnesses. The investigation confirms an initial inspection of non-uniform packing, cancellation of that arrangement, procurement of uniform 800-gram packs from another salt factory, and eventual delivery of the consignment to persons nominated by the buyer. There is no evidence that the applicant supplied heroin, procured the suspect packet, re-entered the goods after handover, selected the carton in which heroin was found, or retained control over the consignment during packing and export processing.

21. No forensic extraction or call-data analysis has been produced showing discussion of narcotics. No suspicious payment to or from the applicant has been traced. No independent witness describes him handling drugs or packing material. No fingerprint, video, location trail, document or recovered object ties him to the concealment. No evidence demonstrates a share in any illicit profit. His mobile telephone and documents were seized, yet the investigation yielded no inculpatory result. These are not minor gaps in corroboration; they concern the constituent link between the accused and the offence.

22. The fact that the applicant knew Abbas Hussain or Mirza Taimoor, or dealt with them regarding salt, cannot itself become incriminating. Commercial dealings often require communication and physical attendance. The law does not presume criminal knowledge from acquaintance. Nor can the applicant's arrival at PICT reasonably prove prior knowledge when the prosecution's own account supplies a concrete innocent purpose, collection of the unpaid balance, and there is no evidence that he attempted to access, divert, conceal or remove the container.

23. The Court is mindful that the opinion written at the foot of a police report is not binding. A court determines guilt from admissible evidence, not from the Investigating Officer's conclusion. But the present case does not turn upon his bare opinion. It turns upon his admissions as a witness concerning the factual product of his own investigations: what he searched for, what he collected, and what he did not find. These are evidentiary admissions going to the existence of a nexus, not a legal direction to the Court.

24. In his cross-examination on behalf of Syed Aly Raza, the Investigating Officer admitted that he had conducted two investigations, received the record of the first investigation, examined the relevant accused, reflected their statements in his report, and was unable to collect material showing the applicant's involvement. His culminating admission is categorical:

> *"It is fact that my both investigations do not show any material to show that accused Alay Raza had any direct or indirect connection with the seized contraband. It is fact that I have deposed truthfully."*

25. That answer is decisive in the particular evidentiary setting. It was not extracted from a witness lacking knowledge of the case; it came from the officer who registered and/or investigated the matter, marshalled the witnesses, collected the records, searched for financial and communications material, submitted the police report and narrated the prosecution case. No re-examination qualified the admission. The prosecution has identified no remaining witness who can supply a fact which its investigation failed to discover, and no undisclosed forensic or documentary material is said to await production.

26. A possibility founded only on the hope that some witness may contradict the complete investigation is not the statutory probability contemplated by section 265-K. The Court must distinguish between

incomplete evidence and an exhausted evidentiary theory. Here, the State's own principal witness has confirmed the latter. Requiring the applicant to remain on trial solely because other accused may have a case to answer would offend individualized criminal responsibility.

27. The earlier refusal of acquittal does not bar reconsideration after a material change in the evidentiary record. At the earlier stage, the Court considered that evidence was required to determine the applicant's role and emphasized that the Investigating Officer's opinion was not binding. That evidence has now been recorded. The very inquiry contemplated by the earlier order has yielded a sworn concession that neither investigation disclosed a direct or indirect connection. Section 265-K expressly operates "at any stage"; its jurisdiction would be rendered sterile if an earlier interlocutory refusal prevented the Court from responding to evidence subsequently recorded.

28. The applicant's nomination in the FIR carries the case no further. An FIR sets the criminal law in motion; it is not substantive proof of guilt. The secret information explained why the container was checked, but the informer has supplied no evidence tested in Court establishing the applicant's knowledge. Information sufficient for investigation is not necessarily evidence sufficient for conviction.

29. The prosecution's reliance upon the applicant's presence and procurement of salt is likewise insufficient. Each fact is admitted and each is reasonably explained by lawful commercial activity. Neither fact, separately or together, proves that the applicant knew that one out of numerous cartons contained heroin after the goods had passed through the hands and custody of others. To convert those neutral facts into guilt would require an additional evidentiary bridge which the investigation expressly failed to find.

30. The submission that all prosecution witnesses should first be examined states the ordinary rule, but not an inflexible command. Section 265-K exists because there are cases in which completion of every formal step would be futile. This is not an instance where credibility disputes among eyewitnesses require final appraisal, or where documentary evidence remains to be proved against the applicant. The central defect is absence of evidence on nexus and knowledge, affirmed by the prosecution's own investigating witness after extensive investigation.

31. The societal harm caused by narcotics trafficking is grave and the courts must deal firmly with proved offenders. Yet firmness is not achieved by diluting legal proof. The legitimacy of narcotics enforcement depends upon distinguishing participants from bystanders and lawful traders. Acquitting an accused against whom no nexus exists does not trivialize the offence; it preserves the moral and legal authority of the criminal process.

32. Upon a holistic assessment, the prosecution can establish the existence and recovery of contraband from the container, and may attempt to establish the liability of other accused. It cannot, on its own material, establish conscious possession, custody, control, knowledge, agreement, intentional assistance, financing or any other culpable participation by Syed Aly Raza. The chain against him begins with lawful procurement of salt and ends with presence for payment; the indispensable criminal link between those facts is wholly absent.

33. This conclusion does not rest upon weighing two competing versions or choosing one witness over another. It rests upon the prosecution's failure to produce evidence on an essential ingredient and the affirmative admission of its Investigating Officer that no direct or indirect connection was found. Even if every remaining neutral fact were accepted at its highest, a conviction would require conjecture. Criminal courts adjudicate upon proof, not upon the possibility that innocence may conceal guilt.

34. We therefore hold that there is no probability, in the legal and realistic sense required by section 265-K of the Code, of the applicant being convicted of the charged offence or any allied offence upon the present record. Further proceedings against him would serve no legitimate evidentiary purpose, would prolong the restraint and anxiety of a criminal trial without a sustainable case, and would amount to an abuse rather than a completion of process.

35. For the foregoing reasons, the application under section 265-K, Cr.P.C. is allowed. Accused Syed Aly Raza son of Syed Alam is acquitted of the charge in FIR No.46/2023, Police Station ANF Clifton, Karachi, in Special Case No.62/2023, under section 265-K of the Code of Criminal Procedure, 1898.

36. He is on bail. His bail bond is cancelled and the surety stands discharged, subject to completion of the formalities required by law. Any

original document or property belonging exclusively to him and not otherwise required in the case shall be returned after due verification and expiry of the period prescribed for challenge, if applicable.

37. It is clarified that the observations in this order are confined strictly to the case of Syed Aly Raza and shall not prejudice the trial or defence of any co-accused. The prosecution case against the remaining accused shall be determined independently upon the evidence admissible against each of them.

J U D G E

J U D G E