

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Criminal Appeal No. D- 18 of 2025
(Mehmood Khan Pathan Vs. The State)

Before:-
Mr. Justice Riazat Ali Sahar,
Mr. Justice Ali Haider 'Ada'.

Appellant: Mehmoood Khan Pathan son of Gahzi Khan Pathan, *through* Mr. Mehboob Ali Thaheem, Advocate.

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

Date of hearing: 11.08.2026.
Date of Decision: 11.08.2026.
Date of Reason: 01.09.2026.

JUDGMENT

Ali Haider 'Ada', J:-, Through this Criminal Appeal, the appellant has assailed the judgment dated 18.08.2025, passed by the learned Additional Sessions Judge-I (MCTC), Jacobabad, in Special Case No.11 of 2023, arising out of FIR No.181 of 2022, registered at Police Station Saddar, Jacobabad, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997 ("CNS Act"), whereby the appellant was convicted and sentenced to suffer Rigorous Imprisonment for 14 years and to pay a fine of Rs.500,000/-, and in default thereof, to suffer Simple Imprisonment for six months. The benefit of Section 382-B, Cr.P.C. was also extended to him.

2. The crux of the prosecution case, as set out in the FIR, is that on 11.10.2022, the appellant was allegedly found in possession of 100 kilograms of charas, comprising 200 slabs, which were being transported in a tractor-trolley. The narcotics were recovered by the police party, whereafter the FIR was registered. Upon completion of the investigation and other legal formalities, the challan was submitted before the learned trial Court, which took cognizance of the offence.

3. On 04.03.2023, the learned trial Court framed charge against the appellant, to which he pleaded not guilty and claimed trial. In support of its case, the prosecution examined PW-1 ASI Ghulam Murtaza, Malkhana Incharge, who produced the relevant Roznamcha entries and the prescribed Register No.19. The prosecution thereafter examined PC Liaquat Ali, the mashir of arrest and recovery, who produced and exhibited the memo of arrest and recovery. The prosecution further examined Ashiq Ali, the complainant, who produced the relevant Roznamcha entries, the letter addressed to the SSP for transmission of the recovered contraband, the letter issued by the SSP to the Chemical Laboratory, Karachi, and the road certificate. The complainant also produced and exhibited the test report issued by the Pakistan Council of Scientific and Industrial Research (PCSIR), Laboratory Complex, Karachi. The prosecution also examined the dispatch rider, Waheed Ali. Thereafter, the prosecution closed its side. The statement of the appellant was recorded under Section 342, Cr.P.C, wherein he denied the allegations and prayed for his acquittal. However, he neither opted to examine himself on oath under Section 340(2), Cr.P.C. nor produced any witness in his defence. Upon appreciation of the evidence available on record, the learned trial Court proceeded to pass the impugned judgment.

4. Learned counsel for the appellant mainly contended that the recovered property had been foisted upon the appellant and that the impugned judgment was passed without proper appreciation of the evidence. He argued that there were material contradictions and discrepancies in the prosecution evidence, particularly with regard to the safe custody and safe transmission of the recovered narcotics, which, according to him, created reasonable doubt in the prosecution case. He, therefore, prayed for acquittal of the appellant.

5. Conversely, learned Deputy Prosecutor General opposed the appeal and submitted that the prosecution had duly established the safe custody as well as safe transmission of the recovered narcotics through cogent and confidence-inspiring evidence. He contended that the discrepancies, if any, were minor in nature and did not go to the root of the prosecution case or create any reasonable doubt. He

maintained that the learned trial Court had properly appreciated the evidence available on record and had rightly convicted and sentenced the appellant. He, therefore, supported the impugned judgment and prayed for dismissal of the appeal.

6. Heard and perused the record.

7. The case of the prosecution, in brief, is that 100 kilograms of charas was recovered from the vehicle being driven by the appellant, out of which 50 kilograms was sent to the Chemical Examiner for analysis. Upon careful reassessment of the evidence, we find that there is no material discrepancy or infirmity capable of creating any doubt regarding the safe custody and safe transmission of the recovered narcotics. The prosecution has satisfactorily established both safe custody and safe transmission of the recovered contraband without any material lapse or interruption in the chain of custody.

8. The contention that such a huge quantity of narcotics could have been foisted upon the appellant cannot be accepted merely based on a bald assertion. It has come on record that the appellant was driving the vehicle and, being its driver, was in charge of and had control over the vehicle in which the narcotics were recovered. In such circumstances, his plea of lack of knowledge regarding the presence of the contraband does not inspire confidence. In this regard, reliance may safely be placed upon the judgment of the Honourable Supreme Court in ***Muhammad Noor v. The State (2010 SCMR 927)***, wherein it was held as under:

8. As regards Driver of the vehicle, it is important to note that when he is driving the vehicle, he is Incharge of the same, therefore, it would be under his control and possession. Hence, whatever articles lying in it would be under his control and possession. The liability of the driver, in view of provisions of section 27 of P.P.C., has been considered by this Court in the case of Sherzada v. State 1993 SCMR 149, wherein it was observed as under:--

The next point raised by the learned counsel was that it is provided in section 27, P.P.C. that when property is in the possession of wife, clerk or servant on account of

that person, it is in that person's possession within the meaning of this Code. The learned counsel argued that the appellant was a driver, hence an employee of the owner of the car and even if he is admitted to be in possession of the contraband article on behalf of the owner, he cannot be said to be liable for that possession. But this argument of the learned counsel is without force on the face of it because section 27, P.P.C. is confined to the Pakistan Penal Code only, as the words "within the mean of this Code" appearing in that section clearly indicate. This section has not been made applicable to the Prohibition (Enforcement of Hadd) Order, 1979 as is evident from Article 26 of that Order where certain other provisions of the P.P.C. have been made applicable."

9. Furthermore, in the prevailing circumstances, the prosecution has successfully discharged its initial burden, thereby attracting the presumption contemplated under Section 29 of the Control of Narcotic Substances Act, 1997. It was, therefore, incumbent upon the appellant to furnish a plausible explanation and establish his defence, particularly as to how such a huge quantity of narcotics came to be found in the vehicle under his control. However, the defence has failed to furnish any satisfactory explanation or bring on record any circumstance sufficient to cast doubt upon the recovery of the contraband from the vehicle. In this regard, reliance may be placed upon ***Jahangir Khan v. The State* (2025 YLR 1457)** and ***Qasam Khan v. The State* (2024 YLR 1882)**.

10. Nothing material has been brought on record, nor has anything been suggested by the defence, to establish any ill-will, enmity or mala fide on the part of the police officials against the appellant so as to provide any plausible basis for his false implication or for foisting such a substantial quantity of narcotics upon him. The evidence produced by the prosecution, therefore, inspires confidence and has remained unshaken on material particulars. In this regard, reliance may be placed upon ***Muhammad Azam v. The State* (PLD 1996 SC 67)**, ***Muhammad Hanif v. The State* (2003 SCMR 1237)**, ***Riaz Ahmed v. The State* (2004 SCMR 988)**, ***Naseer Ahmed v. The State* (2003 SCMR 1361)** and ***Zafar v. The State* (2008 SCMR 1254)**.

11. Upon fresh appraisal of the entire evidence, we are of the considered view that the appellant, being the driver of and in control of the vehicle, cannot be absolved of responsibility for transporting the recovered charas. The principle in this regard is also supported by the judgments of the Honourable Supreme Court in ***Ghulam Qadir v. The State (PLD 2006 SC 61)*** and ***Mushtaq Ahmed v. The State (2020 SCMR 474)***, wherein the legal position regarding the liability of a person transporting narcotics has been enunciated. The relevant portion of the judgment in *Mushtaq Ahmed v. The State (2020 SCMR 474)* is reproduced hereunder:

"Prosecution case is hinged upon the statements of Aamir Masood, TSI (PW-2) and Abid Hussain, 336-C (PW-3); being officials of the Republic, they do not seem to have an axe to grind against the petitioner, intercepted at a public place during routine search. Contraband, considerable in quantity, cannot be possibly foisted to fabricate a fake charge, that too, without any apparent reason; while furnishing evidence, both the witnesses remained throughout consistent and confidence inspiring".

12. In another case of ***Shabbir Hussain v. The State (2021 SCMR 198)***, the Honourable Supreme Court of Pakistan has observed as under:-

"Mehmood-ul-Hassan Inspector (PW-3) joined by Mumtaz Bibi Lady Constable (PW-4) in the witness box furnished details of the arrest and recovery. We have gone through their statements to find them in a comfortable and confident unison on all the salient aspects of the raid as well as details collateral therewith. Learned counsel for the petitioner has not been able to point out any substantial or major variation or contradiction in their statements that may possibly justify to exclude their testimony from consideration. On the contrary, it sounds straightforward and confidence inspiring without a slightest tremor. Absence of a witness from the public, despite possible availability is not a new story; it is reminiscent of a long drawn apathy depicting public reluctance to come forward in assistance of law, exasperating legal procedures and lack of witness protection being the prime reasons. Against the above backdrop, evidence of official witnesses is the only available option to combat the menace of drug trafficking with the assistance of functionaries of the State tasked with the responsibility; their evidence, if found confidence inspiring,

may implicitly be relied upon without a demur unhesitatingly; without a blemish, they are second to none in status. Similarly, forensic report is sufficiently detailed to conclusively establish narcotic character of the contraband. The argument is otherwise not available to the petitioner as he never disputed the nature of substance being attributed to him nor attempted to summon the chemical analyst to vindicate his position. A challenge illusory as well as hyper-technical is beside the mark in the face of "proof beyond doubt" sufficient to prove the charge to the hilt. Petition fails. Leave declined."

13. In Case of **Zain Ali v. The State (2023 SCMR 1669)**, the Honourable Supreme Court of Pakistan was pleased to hold as under:

9. The menace of drugs has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Courts of the country address a problem of such serious dimensions. Studies based on conferences and seminars have very often shown that the menace is deep rooted. This menace is a great threat to a peaceful society and is affecting many lives especially the youngsters, therefore, immediate steps are required to be taken to curb these nefarious activities. The proceeds of narcotics are largely utilized in antistate/terrorist activities, which this country is facing since decades. When the prosecution is able to prove its case on its salient features then un-necessary technicalities should not be allowed to hamper the very purpose of the law on the subject. The close analysis of the whole prosecution evidence i.e. the recovery of huge quantity of narcotics, the happening of the occurrence in broad daylight, separating the samples from each packet in a prescribed manner and sending them to the Chemical Examiner, report of the Chemical Examiner and the statements of the prosecution witnesses when evaluated conjointly leaves no room to come to a different conclusion than what has been arrived at by the learned High Court. The learned High Court has correctly appreciated the material aspects of the case and the conclusions drawn are in line with the guidelines enunciated by this Court on the subject. Learned counsel for the appellant has not been able to point out any legal or factual error in the impugned judgment, which could be made basis to take a different view from that of the learned High Court.

14. The record shows that the complainant narrated the same version as set out in the FIR. The said witness was subjected to cross-examination by the defence, but nothing adverse or detrimental to the prosecution case could be elicited from him. He was cross-examined with regard to his arrival at the spot, the manner in which the vehicle was to stop, and the mode and manner of recovery from the vehicle. In order to ascertain whether the complainant had narrated the entire truth and whether the incident had occurred in the mode, manner and at the time alleged, the statement of the recovery witness was also recorded. The said witness was cross-examined on material aspects of the case; however, he remained consistent with the version narrated by the complainant. The manner in which the complainant proceeded from the Police Station was duly corroborated by the marginal witness, as was the manner in which the recoveries were effected from the vehicle. The cumulative effect of the evidence establishes that the prosecution successfully proved the charge against the accused. In this regard, reliance may safely be placed upon ***Liaquat Ali and another v. The State (2022 SCMR 1097)***, wherein the Honourable Supreme Court has held as under:

So far as the argument of the learned counsel for the petitioner that the contraband charas, its safe custody and safe transmission is not established is concerned, the learned High Court has very ably dealt with this issue in paragraphs 18 and 19 of the impugned judgment while holding that the Control of Narcotic Substances (Government Analysts) Rules, 2001 virtually place no bar on the Investigating Officer to send the samples beyond 72 hours of the seizure. These Rules are stricto sensu directory and not mandatory in any manner. It does not spell out that if there is any lapse and the time is consumed beyond 72 hours, it would automatically become instrumental to discard the prosecution case in all manners. The Control of Narcotic Substances (Government Analysts) Rules, 2001, cannot control the substantive provisions of the Control of Narcotic Substances Act, 1997. These Rules cannot in any manner frustrate the salient features of the prosecution case which otherwise hinges upon (i) receipt of information, (ii) action by the concerned law enforcing agency, (iii) recovery of contraband narcotics, (iv) the report of chemical examiner regarding analysis of the recovered contraband, (v) the

finding of fact by the courts below after recording of evidence i.e. (a) witnesses of the raiding party, (b) the recovery witnesses, (c) Investigating Officer and all other attending circumstances. If the series of acts which ultimately resulted into recovery of contraband narcotic are juxtaposed with the violation of the Rules due to one reason or the other as alleged, it cannot by any stretch of imagination be considered reasonable in law to smash the prosecution case on its salient features. The transportation of drugs either inside the country or sending it abroad has become a menace against morality, decency, public order, law and order situation which indirectly intrudes upon the sovereignty of the country. If this practice is allowed to continue it will squarely hamper the very purpose of the law on the subject and would squarely bring bad name for the country in the eyes of international community."

15. The Apex Court in the case of **"Shamsher Ahmad and another v. The State and others" (2022 SCMR 1931)** has held that:

"While appreciating the evidence, the court must not attach undue importance to minor discrepancies and such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. The accused cannot claim premium of such minor discrepancies. If importance be given to such insignificant inconsistencies then there would hardly be any conviction."

16. Further, the Apex Court in case titled **"Kashif Amir v. The State" (PLD 2010 Supreme Court 1052)** was pleased to hold that:

"Further, when a person is driving the vehicle, he is Incharge of the same and it would be under his control and possession, hence, whatever articles lying in it would be under his control and possession. Reference in this behalf may be made to the case of Muhammad Noor v. The State (2010 SCMR 927). Similarly, in the case of Nadir Khan v. State (1988 SCMR 1899) this court has observed that knowledge and awareness would be attributed to the Incharge of the vehicle."

17. For further guidance, in case of **Mushtaq Ahmed v. The State (2020 SCMR 474)**, in which the Hon'ble Supreme Court held as under:

"3. Prosecution case is hinged upon the statements of Aamir Masood, TSI (PW-2) and Abid Hussain, 336-C (PW-3); being officials of the Republic, they do not seem to have an axe to grind against the petitioner, intercepted at a public place during routine search. Contraband, considerable in quantity, cannot be possibly foisted to fabricate a fake charge, that too, without any apparent reason; while furnishing evidence, both the witnesses remained throughout consistent and confidence inspiring and as such can be relied upon without a demur."

18. Same view has also been taken in the case of **Hussain Shah and others v. The State (PLD 2020 Supreme Court 132)** wherein the Honourable Supreme Court of Pakistan has held as under:-

"3.a huge quantity of narcotic substance had been recovered and subsequently a report received from the Chemical Examiner had declared that the recovered substance was Charas. The prosecution witnesses deposing about the alleged recovery were public servants who had no ostensible reason to falsely implicate the said appellant in a case of this nature. The said witnesses had made consistent statements fully incriminating the appellant in the alleged offence. Nothing has been brought to our notice which could possibly be used to doubt the veracity of the said witnesses."

19. As regards the defence plea that the appellant has been falsely implicated in the present crime and that the charas was foisted upon him, the record shows that the accused were arrested at the spot and a huge quantity of contraband was recovered from the vehicle. The vehicle was admittedly being driven by the accused. This fact was duly proved by the complainant/Investigating Officer and corroborated by the other prosecution witness/mashir. It is difficult to accept that such a huge quantity of narcotics could have been foisted upon the appellant without his knowledge. In the circumstances, the plea that he was unaware of the presence of such a substantial quantity of contraband in the vehicle does not inspire confidence. The prosecution witnesses, all police officials, narrated the occurrence in a consistent and straightforward manner and, despite lengthy cross-examination, their testimony could not be shaken on any material particular. Nothing has been brought on

record to suggest any circumstance providing a plausible basis for the false implication of the appellant or foisting of such a huge quantity of narcotics upon him. Reliance in this regard may safely be placed upon ***Naveed Akhtar v. The State (2022 SCMR 1784)*** and ***Liaquat Ali and another v. The State (2022 SCMR 1097)***.

20. As regards the evidentiary value of the testimony of police officials, it is settled that their evidence is to be assessed on the same standard as that of any other witness, unless it is established that they had any animus or motive against the accused. The reluctance of members of the general public to associate themselves as witnesses in cases of this nature is a judicially recognized reality; therefore, there is no legal impediment to relying upon the testimony of official witnesses where their evidence remains confidence-inspiring and is not shattered during cross-examination. Police officials are competent witnesses and their testimony cannot be discarded merely because of their official status. Reliance in this regard may be placed upon ***Faisal Shahzad v. The State (2022 SCMR 905)*** and ***Ajab Khan v. The State (2022 SCMR 317)***.

21. Furthermore, the report of the Forensic Science Laboratory shows that all the samples were subjected to chemical and instrumental analysis and were found to contain narcotic substance. Nothing has been brought on record to suggest that the safe custody or safe transmission of the samples was compromised at any stage. There is also no apparent or plausible reason on record suggesting that the appellant was falsely implicated in the present case or that such a huge quantity of narcotics was foisted upon him. In this regard, reliance may be placed upon ***Shabbir Hussain v. The State (2021 SCMR 198)***.

22. In view of the foregoing discussion and upon reappraisal of the entire evidence, we are of the considered view that the prosecution has successfully proved its case against the appellant beyond reasonable doubt. No material illegality, irregularity, misreading or non-reading of evidence has been pointed out which could justify interference with the impugned judgment. The learned trial Court has properly appreciated the evidence available on record

and has arrived at a conclusion warranting no interference by this Court. Consequently, the appeal was dismissed vide short order dated 11.08.2026, and the impugned judgment dated 18.08.2025 was maintained. These are the detailed reasons in support of the short order dated 11.08.2026.

JUDGE

JUDGE

Approved for Reporting.

S.Ashfaq/-