

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
LARKANA**

*Criminal Jail Appeal No. D- 62 of 2024*

*(Khalid Hussain Buriro Vs. The State)*

**Before:**

*Mr. Justice Shamsuddin Abbasi.  
Mr. Justice Ali Haider 'Ada'.*

Appellant: Khalid Hussain son of Wali Muhammad by  
caste Buriro, *through* Mr. Pardeep Kumar B.  
Butani, Advocate.

The State: *Through*, Mr. Nazir Ahmed Bhangwar, Deputy  
Prosecutor General, Sindh.

Date of Hearing: 10.09.2025.  
Date of short Order: 10.09.2025  
Date of Reasons: 16.09.2025.

**JUDGMENT**

**Ali Haider 'Ada'.J:-** Through this Criminal Jail Appeal, the appellant has assailed the Judgment dated 23.07.2024, passed by the learned Special Judge for CNS, Kashmore at Kandhkot, in Special Case No. 03 of 2024, arising out of FIR No. 09 of 2024, registered at Police Station A-Section, Kandhkot, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997 (CNS Act). By the impugned judgment, the appellant was convicted and sentenced by the learned trial Court to undergo rigorous imprisonment for ten (10) years, and to pay a fine of Rs. 80,000/-. In case of default in payment of fine, the appellant was directed to suffer further simple imprisonment for four (4) months. However, the benefit of Section 382-B, Cr.P.C. was extended to the appellant.

2. As per prosecution case, on 11.01.2024, at about 2100 hours, the accused / appellant was apprehended by the police near Suhriyani Graveyard during a routine patrol. Upon search, the police allegedly recovered 1100 grams of charas and Rs. 300/- in currency notes from the possession of the appellant. After completing the necessary formalities at the spot, as alleged, the FIR was lodged on the same day.

3. That after usual investigation, the Investigating Officer submitted the challan before the learned trial Court, which thereafter took cognizance of the matter. The requisite documents were supplied to the appellant in compliance with Section 265-C Cr.P.C. Subsequently, on 12.02.2024, the charge was framed against the appellant, to which he pleaded not guilty and claimed to be tried. The learned trial Court then allowed the prosecution to lead its evidence.

4. In pursuance thereof, the prosecution examined its witnesses as PW-1 SIP Akbar Ali, the complainant, was examined. He produced and exhibited roznamcha entries regarding the movement of the police party, the memo of arrest and recovery of charas, and the copy of the FIR. Thereafter, PW-2 PC Muhammad Tayyab, who acted as mashir of arrest and recovery, was examined. He exhibited the memo of arrest and recovery as well as the memo of place of incident. PW-3 SIP Muhammad Ayub, the Investigation Officer, was examined. He produced and exhibited the entry of Register No. 19, other relevant entries regarding police movement, letter to SSP, road certificate, and the chemical examiner's report. PW-4 PC Niaz Muhammad, who acted as the dispatch rider, was examined. He confirmed that he submitted the case property to the chemical examiner. PW-5 Nabi Bux, Incharge of the Malkhana, was examined regarding the custody of case property. After completing the examination of witnesses, the learned Law Officer submitted a statement to close the prosecution's side of evidence.

5. Thereafter, the statement of the appellant was recorded under Section 342 Cr.P.C., wherein he professed his innocence and prayed for acquittal. After hearing both sides, the learned trial Court passed the impugned judgment, which is under challenge through this Criminal Jail Appeal.

6. The learned counsel for the appellant contended that there are material contradictions and inconsistencies in the prosecution's evidence. It was argued that the safe custody and safe transmission of the contraband were not properly proved by the prosecution, and the chain of custody was broken. It was further argued that the link between the accused and the commission of the offence was not established beyond reasonable doubt; as the appellant is entitled to the benefit of doubt.

7. On the other hand, the learned Law Officer supported the impugned judgment, contending that possession of charas has been duly established. It was argued that there is no ill-will or mala fide on the part of the prosecution to falsely implicate the appellant, who failed to prove any enmity or malice. Therefore, the conviction was rightly recorded.

8. Heard the arguments and perused the material available on record.

9. It is reflected from the record that the charas allegedly recovered from the possession of the appellant was in multiple pieces, specifically, two long slabs and five small pieces with the total weight recorded as 1100 grams. However, the separate weight of each individual piece was not carried out by the recovery officer at the time of recovery. This omission raises a significant question regarding the integrity and accuracy of the alleged recovery. In narcotics cases, particularly under Section 9(c) of the CNS Act, where the quantity of the contraband directly affects the severity of punishment. The initial burden lies squarely with the prosecution to conclusively establish the identity, quantity, and linkage of the contraband with the accused. In the absence of specific weight records for each packet or slab, the possibility of manipulation, overstatement, or procedural irregularity cannot be ruled out. Such procedural lapses are fatal to the prosecution's case, particularly when the consequences of conviction in narcotics cases are grave and entail stringent punishments. Given the above-mentioned deficiencies particularly the failure to weigh each packet individually, the lack of proper documentation, and the absence of a cogent explanation for this omission, this Court is of the view that the prosecution has failed to discharge its primary burden of proof beyond reasonable doubt. In this context, support is drawn from the cases of **Qalandar Shah vs. The State and another (2021 YLR 2349)** and **Ansar Abbas alias Pakori vs. The State and another (2021 PCrLJ 138)**.

10. It is the case of the complainant that after registration of the FIR, the necessary documents, case property, and custody of the accused were handed over to the Investigation Officer. The Investigation Officer also affirmed during his deposition that he received the entire material post-FIR and deposited the case property into the Malkhana through WHC Nabi Bux Khoso, and that a proper entry to this effect was maintained. Further, WHC Nabi Bux Khoso, who was examined as the Incharge of the

Malkhana, supported this version by stating that he received the case property and made the corresponding entry in Register No.19, as the depositor of the case property. However, upon perusal of the actual entry in Register No. 19, a material contradiction emerges. The record reveals that the case property was not deposited by the Incharge Malkhana (WHC Nabi Bux Khoso) as claimed, but rather it was deposited by the Investigation Officer himself. This inconsistency casts serious doubt on the prosecution's version regarding the custody and safe deposit of the case property. It creates a break in the chain of custody, which is critical in narcotics cases, where tampering or mishandling of the case property could affect the outcome. The failure to reconcile these contradictions undermines the credibility of the prosecution and renders the recovery proceedings doubtful. This factual divergence between the oral testimony and the document directly undermines the prosecution's claim regarding the proper and secure dispatch of the case property. The Honourable Supreme Court in case of **Jeehand v. The State (2025 SCMR 923)**, had held that:

*We have noted that in the instant case, safe custody and safe transmission of the alleged drugs from the spot of recovery till its receipt by the Narcotic Testing Laboratory are not satisfactorily established. The Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when it is produced before the court, remains in safe custody and is not hampered with until that time. A complete mechanism is provided in the Police Rules qua safe custody and safe transmission of the case property to concerned laboratory and then to the Trial Court.*

11. It further appears from the record that the letter to the SSP seeking permission to send the case property to the Chemical Examiner was issued on 12.01.2024, i.e., the very next day after the registration of the FIR. The road certificate also bears the same date viz: 12.01.2024 indicating that the case property was dispatched to the Chemical Examiner on that date, on the other hand, the Chemical Examiner, stationed at Rohri which is located at a distance of merely 2 to 3 hours by vehicle received the case property on 15.01.2024, showing an unexplained delay of almost four days in the delivery. The prosecution has offered no plausible explanation for

this delay. When the dispatch was made on 12.01.2024 as per the road certificate, it is imperative to know where the case property remained during this gap, and under whose custody. The absence of this crucial link raises serious doubts regarding the safe custody and safe transmission of the case property. In narcotics cases, where the chain of custody plays a pivotal role in maintaining the integrity of the evidence, such an unexplained delay casts a serious shadow of doubt on the prosecution's version and creates a possibility of tampering or substitution, for which the benefit must go to the accused. Reliance is placed on the judgment in *Zaheer v. The State* (2023 YLR 276). Additional support is drawn from the decisions of the Honourable Supreme Court in *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), all of which reiterate the imperative nature of adherence to this procedural safeguard. In light of these considerations, the prosecution's failure to ensure timely and properly documented custody and transmission of the recovered property creates a serious dent in the prosecution's case, thereby warranting doubt regarding the validity and truthfulness of the evidence presented.

12. It is a well-settled principle of Criminal jurisprudence that if a single circumstance creates a reasonable doubt in the prosecution's case, the accused is entitled to the benefit of such doubt. This principle is deeply rooted in the maxim "in dubio pro reo", **meaning that when in doubt, the decision should favor the accused.** In the instant matter, as has been demonstrated through the various inconsistencies, discrepancies, and procedural lapses in the prosecution's case, even a single doubt regarding the safe custody, transmission, or recovery of the contraband must be resolved in favor of the appellant. Reliance is placed upon the case of *Qurban Ali vs. The State* (2025 SCMR 1344).

13. In view of the foregoing circumstances, it is manifest that the prosecution has failed to prove the charge against the appellant beyond the shadow of reasonable doubt. Accordingly, the appellant is rightly entitled to the benefit of doubt, and the conviction recorded by the learned trial court could not be sustained. This Court had already allowed the

instant appeal through a short order dated 10.09.2025, whereby the appellant was acquitted of the charge. As a result, the impugned judgment of conviction and sentence was set aside, and the jail authorities were directed to release the appellant forthwith, if not required to be detained in any other case. The detailed reasons recorded hereinabove form the basis of the said short order.

*JUDGE*

*JUDGE*

S.Ashfaq/-