

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present:

Mr. Justice Jawad Akbar Sarwana.

Mr. Justice Syed Fiaz ul Hassan Shah.

Cr. Jail Appeal No.D-21 of 2025.

[Noor Kamal Vs. The State]

Appellant : Noor Kamal **through** Mr. Raja Jawad Ali Saahar, Advocate.

Respondent : The State **through** Ms. Rameshan Oad, Deputy Prosecutor General.

Date of Hearing : 01.04.2026.

Date of Decision : 08.04.2026.

J U D G M E N T

Syed Fiaz ul Hassan Shah, J :- The Appellant has challenged the Judgment dated 30.01.2025 (“**impugned Judgment**”) passed by the learned Special Judge for CNS Cases, Matiari (“**Trial Court**”) in Special Case No.25 of 2024 emanating from Crime No.04/2024 for the offence under Sections 9 (1) 3-(c) of Control of Narcotic Substances (Amendment) Act, 2022 (“**CNS**”) registered with Police Station Excise Crime Circle Hala, District Matiari, whereby the Appellant was convicted under Section 265-H(ii) Cr.P.C and sentenced him for fourteen (14) years imprisonment and to pay fine of Rs.80,000/- (Rupees Eighty Thousand Only) and in case of default, he would further undergo imprisonment for three (03) months more. However, the appellant was extended the benefit of Section 382(b), Cr.P.C.

2. Briefly, the facts of the prosecution case were that on 03.08.2024 at about 02:00 p.m., a party of Excise Police, Excise Crime Circle Hala, District Matiari, headed by the complainant Inspector Wazeer Ali Lakho, while on routine patrol, apprehended the above-named Appellant on the Hala–Hyderabad National Highway near Bhit Shah Mori. Upon personal search, a black-colored shopper was recovered from his possession containing **charas weighing 5000 grams**, in the presence of official mashirs. Thereafter, a crime report was lodged against him.

3. After usual investigation, copies were supplied to the Appellant in terms of section 265-C, Cr.P.C. vide Exh.1 and the charge was framed against him vide Exh.2, to which he pleaded not guilty and claimed to be tried vide his plea at Exh.2-A.

4. In order to prove a charge against Appellant/accused, the prosecution examined **PW-1** (Complainant) Inspector Wazeer Ali at Ex.3, who produced memorandum of arrest and recovery at Ex.3/A, entries of departure and arrival at Ex.3/B, FIR at Ex.3/C, Maalkhana entry No.4 at Ex.3/D, Entries No.14 & 15 regarding departure and arrival of dispatcher of case property at Ex.3/E, letter to chemical examiner at Ex.3/F, receipt of chemical examiner at Ex.3/G and report of chemical laboratory at Ex.3/H. **PW-2** (mashir) EC Allah Bachayo at Ex.4. Thereafter, the prosecution closed its side vide statement at Ex.5. The statement of appellant/accused was recorded U/S 342 Cr.P.C at Ex.6, in which he denied the prosecution allegations and claimed his innocence. He did not examine himself on oath nor led any defence evidence. Consequently, the learned Trial Court after hearing both the parties passed the Judgment, which has impugned herein before us.

5. The learned counsel appearing on behalf of the appellant argued that the prosecution has failed to prove the charge beyond reasonable doubt, and the Appellant is innocent and has falsely been implicated by the prosecution in this case. He further contended that the prosecution has failed to prove safe custody and safe transmission of the case property; that the raiding officer seized the case property, lodged the FIR as a complainant and he himself investigated the case; that during his evidence, the complainant / I.O deposed that 10 pieces of chars were recovered total weighing 5000 grams, but instead of confirming description of case property, on the contrary he deposed that 13 pieces were recovered. He further argued that even the Register No.XIX is a handmade copy and then self-attested by complainant / I.O and original of such official record was never produced before learned Trial Court and even such handmade copy does not reveal the proper signature of the officers who deposited or hold by Malkhana Incharge or even when it was withdrawn for chemical analysis and said handmade copy does not comprise eight (08) columns as required under the Police Rules;

therefore, he prayed for set-aside of impugned Judgment and acquittal of the Appellant.

6. On the other hand, learned Deputy Prosecutor General supported the impugned Judgment and contended that it is a well-reasoned Judgment and does not warrant any inference by this Court, while minor contradictions may be ignored. Lastly, she prayed for dismissal of the instant Appeal.

7. We have heard the learned counsel for appellant as well as learned Deputy Prosecutor General for the State and with their assistance minutely perused the record of the case.

8. We observed that in the case of recovery of Narcotics contrabands, the prosecution is under bounded duty to prove its safe custody and safe transmission of case property from the time of recovery and preparation of memorandum of recovery, its storage in the official Maalkhana, thereafter transmission to the chemical laboratory for chemical analysis and subsequent return of such case property to the Malkhana and production before the trial Court to prove without any shadow of doubt that the recovered Narcotics was in fact the same which was recovered from the crime scene, spontaneously seized in presence of at least two Mashirs (witnesses), deposited in the Official Store Room (Malkhana) for safe custody whilst taken out from the Malkhana after entry in Register No.XIX, through a valid Road Certificate, to the Chemical Laboratory for safe transmission, including its return and production, before the Trial Court at the time of recording of evidence. Finally, to present a Chemical Analysis report that the Narcotics which was recovered from the possession of the Appellant was psychotropic substance and the accused is guilty for the commission of offence(s) under the ibid Act. In the present case, at the outset, there is a disconnect between the FIR and the charge, with regard to the time of occurrence. The information is an essential component of an offence. In the memorandum of recovery (Ex.3/A), the time of recovery, i.e., occurrence was mentioned as 02:00 p.m. of 03.08.2024 while the charge was framed of recovery/ occurrence with a different timing i.e. 0200 hours (midnight). In the settled criminal jurisprudence, such ignorance cannot be outrightly ignored as an oversight or mere discrepancy as argued by the defence,

that the disconnect were merely a typographical error. . Clearly, the time mentioned in the Charge, in the facts and circumstances of the case, provenly cannot be assumed to be correct.

9. More importantly, there is material contradiction in the description of the case property. The Memorandum of recovery Ex.3/A reflects that 5000 grams of charas, comprising 10 pieces of charas were recovered from the possession of the Appellant at the time of occurrence. While PW-1 Wazeer Ali, Seizing Officer, complainant and Investigation Officer deposed contrary to the Memorandum of Recovery. PW-1 deposed: ***“...I weighed the two pieces of charas at one time and it weighed to one K.G. Weight of the total pieces was added which become 05 KG. Such fact is not mentioned in the memo of arrest and recovery. The total pieces of charas were 10 in number. It is fact that today the case property produced by me containing 13 pieces of charas. Voluntarily says that some piece of charas were broken during the examination at laboratory. All the pieces of charas wrapped with golden colour polythene and due to wrapping if they broke they cannot be separated...”*** PW-1 deposition concerning 13 pieces of charas instead of 10 pieces weakens the prosecution’s case, with his evidence serving not to affirm the case of prosecution through Memorandum of Recovery, but instead highlight contradictions and create dents that undermined the prosecution’s position. Such material contradictions further weakened the case of prosecution standing glaring contradictory to the Laboratory Report of Chemical Examiner Exh.G that 10 dark brown pieces each wrapped in golden plastic wrapper / panni were received at the Chemical Laboratory. Therefore, the prosecution has failed to prove that the case property 5000 grams of charas as mentioned in the memorandum of recovery (Ex.3/A) and in Examination Report of Chemical Laboratory is same and thereby failed to prove the description of case property and its safe custody.

10. The credibility of this PW-1 Wazeer Ali, also loses its’ evidentiary value when he deposed ***“...It is fact that the departure entry No.08 dated 03.08.2024 shows that I received spy information when I was at Circle Office Excise Hala and I left the Circle Office directly to the pointed place. I recorded false statement”***

before this Court that I was available at Old Hala Naka when I received the spy information...”.

11. The evidence of the PW-1 Wazeer Ali, further dents the case of prosecution on the point of the safe transmission of case property. His evidence creates doubt in the safe transmission of the case property. A careful examination of alleged Register No.XIX reveals that it is a handmade copy which was prepared and attested by PW-1 and produced before the Trial Court and has no reference of signature of the officer, who deposited case property or kept the case property in Malkhana. The same handmade copy is neither copy made by electronic process nor original was produced before the Trial Court, therefore, compliance of Article 76 of the Qanun-e-Shahadat Order, 1984 was not made out by the prosecution to prove their case beyond reasonable doubt. ***“...It is correct to suggest that I did not produce the original entry of Register-19. It is correct to suggest that the entry of Register No.19 did not show its heading. First I kept the case property in Malkhana then I lodged the FIR...”***

12. The evidence of the PW-1 further created a dent with regard to the sealing of case property at the crime scene and sent to the Chemical Laboratory vide Exh.3/E. He deposed that ***“...It is also does not show whether the property has been returned from the Chemical Examiner or not. It is correct to suggest that the letter addressed to chemical examiner shows the detail of case property in which the item No.3 is actually three sealed samples. Item No.3 sealed sample is actually the property containing five KG charas...”*** While the Certificate of Test Analysis issued by the Director Chemical Laboratories revealed that case property received at the Chemical Lab have had only 01 seal instead of 03 seals as claimed by the PW-1 and mentioned in the undated Letter Exh.3/E addressed to Chemical Laboratory coupled with the fact that the courier / dispatcher who transported the case property to the Chemical Laboratory was not examined nor the Road Certificate was produced as as required under the Police Rules, 1934.

13. Most importantly, the prosecution failed to examine the Maalkhana Incharge to establish that, after the seizing officer deposited the case property, it remained in the Maalkhana under his custody. This omission falls short of the

requirement of safe custody and secure transmission of the case property. Furthermore, the second and final witness, E.C. Allah Bachayo, testified: “...**The chemical examiner asked me to bring separate cloth to seal the property in a new cloth bag, which I did. That cloth bag was given to me with the contents written on it...**” His statement further undermines the prosecution’s case, creating doubt as to whether the property sealed at the time of recovery and preparation of the Memorandum of Recovery (Ex.3/A) was subsequently de-sealed and re-sealed in another cloth bag, contrary to the principle of safe custody. This creates a serious question in a prudent mind whether it was the same or was changed in view of the de-sealing of the case property. In ***Jehand v. The State (2025 SCMR 923)***, it has been categorically held that it is the duty of the police and prosecution to establish that the case property remained in safe custody at all times.

14. We are mindful to observe that it is the primary duty of the Investigating Officer to ensure that the factum of handing over the case property, sealed sample parcels, and other articles recovered from the possession of the appellant was duly entered in the relevant police registers, namely Register No.II (Daily Diary) and Register No.XIX (Malkhana Register), at ***every stage of movement*** and should remain the same and consistent with the foundational document i.e. Memorandum of Recovery. The foundational provision governing maintenance of the Daily Diary is Section 44 of the Police Act, 1861, which mandates that every officer Incharge of a police station shall maintain a general diary and record therein all material events, including complaints, arrests, recoveries, and particulars of property seized. The said statutory requirement is further elaborated under Rule 22.48 of the Police Rules, 1934, which provides that the Daily Diary must be a complete, consistence and contemporaneous record of all occurrences at the police station, including movements of police officials, arrival and departure of persons in custody, and all related proceedings, with precise timings. Reliance can be placed on the rule laid down in ***Zakir Ali v. The State (2025 SCMR 1644)***, ***Asif Ali & another v. The State (2024 SCMR 1408)***, ***Zain Shahid v. The State (2024 SCMR 843)*** & ***Ahmed Ali and another Vs. The State [2023 SCMR 781]***.

15. Similarly, Rule 22.49 of the Police Rules requires that all arrivals at and departures from the police station, including movements of persons in custody and case property, must be recorded in Register No. II with exact timings. Furthermore, Rule 22.70 mandates the maintenance of Register No. XIX (*Malkhana Register*), wherein every article deposited in the store-room must be entered with full particulars, including the name of the depositor, date of deposit, description of property, and ***details regarding its subsequent removal, along with signatures of the concerned officials.***

16. It is by now well-settled that the prosecution, in cases involving narcotics, must successfully pass a twofold test with regard to the case property. Firstly, it must establish the lawful recovery, seizure, and incorporation of the case property in the challan, coupled with unimpeachable proof of its safe custody. This requires preparation of contemporaneous documents free from doubt, reflecting accurate description, proper sealing, and deposit of the case property in the *Malkhana* under duly maintained record. Secondly, the prosecution must affirmatively prove the safe transmission of the case property, i.e., its movement from safe custody to the Chemical Laboratory, and thereafter its return and production before the Court as admissible evidence. Each stage of this process must be supported by reliable documentary and oral evidence, ensuring an unbroken chain of custody. Any deviation, omission, or infirmity in either of these essential requirements warrants drawing an adverse inference against the prosecution, thereby entitling the accused to acquittal. This principle has been consistently reiterated by the Hon'ble Supreme Court of Pakistan in a catena of judgments, including ***Ikramullah v. The State* (2015 SCMR 1002), *The State v. Imam Bakhsh* (2018 SCMR 2039), *Abdul Ghani v. The State* (2019 SCMR 608), *Kamran Shah v. The State* (2019 SCMR 1217), *Mst. Razia Sultana v. The State* (2019 SCMR 1300), *Faizan Ali v. The State* (2019 SCMR 1649), *Zahir Shah alias Shat v. State through A.G. KPK* (2019 SCMR 2004), *Haji Nawaz v. The State* (2020 SCMR 687), *Qaiser Khan v. The State* (2021 SCMR 363), *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), *Zubair Khan v. The State* (2021 SCMR 492), and *Gulzar v. The State* (2021 SCMR 380), ***Qaiser and another v. The State* (2022 SCMR 1641), Muhammad Hazir V. The State** (2023 SCMR 986), ***Javed Iqbal v. The State* (2023 SCMR 139).****

17. Tandemly, the doctrine of benefit of doubt, being a cardinal principle of criminal jurisprudence, mandates that conviction must be founded on unimpeachable evidence leading to certainty of guilt. Where any reasonable doubt arises, the same must necessarily be resolved in favor of the accused. It is well settled principle that even a single circumstance creating doubt is sufficient to entitle an accused to acquittal as a matter of right, not as a matter of grace. Reliance may be placed upon *Tariq Pervez v. The State (1995 SCMR 1345)*, *Riaz Masih v. The State (1995 SCMR 1730)*, *Muhammad Akram v. The State (2009 SCMR 230)*, *Ikramullah v. The State (2015 SCMR 1002)*, *Hashim Qasim v. The State (2017 SCMR 986)*, *The State v. Imam Bakhsh (2018 SCMR 2039)*, *Muhammad Mansha v. The State (2018 SCMR 772)*, *Abdul Jabbar v. The State (2019 SCMR 129)*, *Mst. Asia Bibi v. The State (PLD 2019 SC 64)* & *Khair-ul-Bashar v. The State (2019 SCMR 930)*. This principle, that even a single dent in the prosecution's case is sufficient to demolish its entire edifice, has been reiterated in *Amir Muhammad Khan v. The State (2023 SCMR 566)* & *Rehmatullah v. The State (2024 SCMR 1782)*.

18. Consequently, the prosecution has failed to prove safe custody and secure transmission coupled with a proper description of the case property and its evidentiary worth beyond reasonable doubt in terms of Article 117 of the Qanun-e-Shahadat Order, 1984. Accordingly, this Jail appeal is **allowed**. The impugned judgment is hereby **set aside**. The appellant Noor Kamal s/o Sarfaraz Khan Pathan is **acquitted** of the charge and shall be released forthwith, if not required in any other case.

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