

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Appeal No.730 of 2024

Present:

Justice Zafar Ahmed Rajput (CJ)
Justice Jan Ali Junejo

Appellant : Muhammad Abid Awan s/o Muhammad Yousif, through Mr. Shah Imroz Khan, Advocate

Respondent : The State, through Mr. Habib Ahmed, Special Prosecutor, ANF (“**SP**”).

Date of Hearing : 13.04.2026

Date of Judgment : 13.04.2026

JUDGMENT

Jan Ali Junejo, J.- This Crl. Appeal, filed under Section 48 of the Control of Narcotic Substances Act, 1997 calls in question the judgment, dated 18.10.2024, (“**impugned judgment**”) passed by the Special Court-I (CNS), Karachi (“**Trial Court**”) in Special Case No. 80 of 2023, arisen out of FIR No. 39 of 2023 registered at P.S. ANF, Korangi-Karachi under Sections 6,9(2) read with Sr. No. 6, 14, 15 of the Control of Narcotic Substances (Amendment) Act, 2022 (the “**Act**”), whereby the Appellant, Muhammad Abid Awan, was convicted for an offence under Section 9(2) read with Sr. No. 6 of the Act and sentenced to undergo R.I. for eight (08) years and to pay fine of Rs. 12,00,000/, or in default thereof, he would suffer S.I for one (01) year more. The benefit of Section 382-B, CrPC was, however, extended to him.

2. The case of the prosecution, as set up in the FIR, is that, on 17.06.2023 at about 0330 hrs., pursuant to information from DHL’s Export Supervisor (Asad Mugeem), ANF officials examined a suspicious shipment at DHL Head Office near JIAP, Karachi, booked through AJ Express Worldwide Courier, destined for Sri Lanka. On opening a carton containing assorted sports balls, 10 hockey balls were found containing ICE (*Methamphetamine*) in ten “golas” of 105 grams each, totaling 1050 grams. Later, at about 2000 hrs., ANF official reached AJ Express office located at PECHS, Karachi and apprehended the Appellant and

co-accused Syed-ul-Bashar; on their purported disclosures, co-accused Muhammad Ishaque was intercepted at KDA Chowrangi, Karachi with a motorcycle and certain personal articles.

3. After usual investigation, ANF submitted the challan against the Appellant and two co-accused; the Trial Court after completing codal formalities, as provided under Section 265-C, CrPC, framed the charge against them to which they pleaded not guilty and claimed trial. At the trial, prosecution examined PW-1, ASI Muhammad Ilyas (*mohrar malkhana*); PW-2, SI Muhammad Saleem (*complainant/ I.O.*); PW-3, PC Yasir Ali (*mashir*); PW-4, Imran Abdullah (*Operation Manager, AJ Express*); PW-5, Asad Moquim (*Export Supervisor, DHL*) and PW-6, Aijaz Riaz (*Assistant Operation Manager, AJ Express*), who have produced and exhibited various documents, including roznamcha entries (*Exh.5-A*), memo of recovery (*Exh.5-B*), FIR (*Exh.5-C*), memos of arrest (*Exh.5-D & 5-E*), letter to Chemical Examiner (*Exh.5-I*), Chemical Report (*Exh.5-J*), courier receipt and airway bill (*Exh.5-K & 5-L*), commercial invoice (*Exh.5-M*), CNIC copy (*Exh.5-N*), NADRA records (*Exh.5-Q & 5-R*), sketch (*Exh.5-S*), and CDRs (*Exh.5-T to 5-V*).

4. In his statement under Section 342, CrPC, the Appellant denied the allegations, pleaded innocence, and asserted false implication. He, however, neither opted to examine himself on oath under Section 340(2), CrPC nor did he lead evidence in his defence. After conclusion of the trial, the Trial Court, vide impugned judgment, convicted the Appellant and acquitted the co-accused Syed-ul-Bashar and Muhammad Ishaque of the charge. Hence, the present CrI. Appeal.

5. Learned counsel for the Appellant has contended that no narcotic substance was recovered from the Appellant's person; that the courier receipt was not recovered from his possession; that the I.O. admittedly did not secure, examine and produce CCTV footage from AJ Express office, despite acknowledged CCTV coverage; that the DHL record shows the shipment was booked on 16.06.2023, whereas the I.O. reached DHL office on 17.06.2023 at

0330 hrs. and did not reach AJ Express until about 2000 hrs. of the same day, rendering it illogical that the Appellant would be lingering at or around the courier offices long after the prior day's booking; that cumulatively, these aspects create reasonable doubt entitling the Appellant to acquittal.

6. Conversely, learned SP has supported the impugned judgment, arguing that the recovery from DHL has been established through official witnesses; shipment documents link the Appellant as the sender; chemical analysis confirms the contraband; safe custody and chain of custody stand proved, and once prosecution establishes its case, Section 29 of the Act shifts the burden to the accused to disprove possession/knowledge, which the Appellant has failed to discharge.

7. We have carefully considered the arguments advanced by the learned counsel for the Appellant as well as the learned SP for ANF, and have examined the evidence on record with utmost circumspection.

8. It is a settled principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt. Any material doubt arising from the evidence must be resolved in favour of the accused. In narcotics cases, strict compliance with statutory safeguards concerning recovery, safe custody, and proof of conscious possession is indispensable. While Section 29 of the Act contains a presumption, it does not arise in a vacuum; the prosecution must first lay a credible foundational nexus connecting the accused to possession/transport/attempted export of the contraband. Non-production or suppression of best available evidence invites adverse inference.

9. It is an admitted position that no narcotic substance has been recovered from the person of the Appellant. The alleged recovery took place at the DHL warehouse from a carton said to contain assorted sports items, some of which were found to conceal 1050 grams of ICE. The prosecution hinges the Appellant's culpability primarily on shipment documents bearing his name as

“sender”. Mere presence of a name on a courier document, in absence of any reliable corroborative evidence of authorship, booking, handing over, or constructive control at the time of seizure, is insufficient to establish conscious possession or knowledge, particularly where the co-accused similarly alleged to be involved were acquitted of the charge on lack of requisite evidence.

10. The prosecution alleges recovery of a “booking slip” from co-accused Muhammad Ishaque, not from the Appellant. As against the Appellant, no shipment receipt or similar original documentary proof was shown to have been recovered from his person.

11. P.W-2, the Complainant/I.O. candidly admitted that he did not obtain or preserve CCTV footage from the AJ Express office, albeit the acknowledged presence of cameras and the prosecution’s own case that the Appellant was apprehended from there. In a courier-office context, where customer interactions, handovers, and bookings are ordinarily camera-covered, CCTV constitutes vital best evidence. The unexplained omission to collect and produce such footage, despite its ready availability, substantially undermines the prosecution’s attempt to link the Appellant to the incriminating parcel beyond reasonable doubt.

12. The DHL documentation shows booking on 16.06.2023. The seizure of alleged narcotics at DHL occurred at about 0330 hours on 17.06.2023. The Appellant was allegedly found at AJ Express on 17.06.2023. The prosecution offers no cogent explanation as to why, if the parcel was booked the previous day, the Appellant would be present at the AJ Express office many hours after the next day’s pre-dawn seizure, or how such presence (even if proved) transforms into proof of conscious possession or knowledge of contraband already intercepted elsewhere. This time-line anomaly, highlighted by the defence, contributes to reasonable doubt.

13. The official witnesses have deposed regarding sealing and deposit of samples and the Chemical Examiner's report has also been produced. The primary weakness here is not the laboratory result *per se* but the Appellant's linkage to possession/knowledge of narcotic substance. The prosecution did not call any competent witness from AJ Express or DHL to prove conclusively authorship/execution of the booking documents by the Appellant through primary evidence (e.g. original booking form bearing verified signatures or thumb impressions, counterfoils, CNIC verification and terminal/CCTV logs or transactional audit trails).

14. The Trial Court has given the benefit of doubt to co-accused Syed-ul-Bashar and Muhammad Ishaque because their alleged disclosures were inadmissible and independent corroboration was deficient. The same evidentiary defects, absence of CCTV, missing/withheld CDRs, lack of personal recovery and contradictions in documentation also impact the case against the Appellant. Singling out the Appellant for conviction principally because his name appears as "sender" on courier documents, without proving authorship and connecting conduct, amounts to conviction on suspicion, not on proof. The presumption under Section 29 of the Act arises only after the prosecution proves basic facts establishing possession or involvement. Where the foundational linkage remains doubtful due to missing best evidence (CCTV), documentary authorship not proved, weight discrepancies unresolved, and no personal recovery from the Appellant, the presumption does not arise to the Appellant's detriment.

15. The cumulative effect of the above circumstances creates serious doubt regarding the prosecution's case. No narcotics were recovered from the Appellant's person, nor was any courier receipt found in his possession. The investigating agency further failed to secure CCTV footage, from both outside and inside the office of AJ Express Worldwide Courier, despite its admitted availability. Additionally, the timeline presented is inherently illogical, as it

suggests the Appellant remained at the scene for an unusually extended period even after the booking and seizure had purportedly concluded.

16. In the case of Muhammad Riaz and others v. The State and others (2024 SCMR 1839), the Apex Court of Pakistan has reiterated the fundamental principle of criminal jurisprudence that the benefit of doubt must be accorded to the accused if there is any reasonable suspicion regarding the credibility or authenticity of the prosecution's case. It has been further observed by the Apex Court that *“to extend the benefit of doubt, it is not necessary that there should be so many circumstances, if one circumstance is sufficient to discharge and bring suspicion in the mind of the court that the prosecution has faded up the evidence to procure conviction then the court can come forward for the rescue of the accused person.”*

17. For the foregoing facts and reasons, we are of the considered view that the prosecution has in fact failed to prove its case against the Appellant beyond reasonable doubt. Hence, this Appeal is allowed. Consequently, the conviction recorded and sentence awarded to the Appellant, vide impugned judgment, are set aside and he is acquitted of the charge by extending him the benefit of doubt. He shall be released forthwith, if not required by any other court in any other crime/case.

JUDGE

CHIEF JUSTICE