

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No. D-25 of 2025

PRESENT:

Mr. Justice Riazat Ali Sahar

Mr. Justice Ali Haider 'Ada'

Appellant : Through M/s. Muhammad Hashim Mansoor alias Mansoori Soomro & Javed Ahmed Soomro, son of Mohammad Nawaz, Advocates. Gopang.

The State : Through Mr. Nazeer Ahmed Bangwar, Deputy Prosecutor General, Sindh.

Date of Hearing : 15.06.2026

Date of Decision : 15.06.2026

Date of Reasons : 22.06.2026

J U D G M E N T

Ali Haider 'Ada', J.- Through the instant criminal appeal, the appellant, Mansoor alias Mansoori, has called in question the judgment dated 28.10.2025 passed by the learned 1st Additional Sessions Judge/Special Judge for CNSA/MCTC, Kamber, in Special Case No.73 of 2024, titled *The State v. Mansoor @ Mansoori*, arising out of FIR No.127 of 2024 registered at Police Station Kamber for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997, as amended by Act No. XXV of 2022. Through the impugned judgment, the learned trial Court convicted the appellant and sentenced him to undergo rigorous imprisonment for fourteen (14) years and to pay a fine of Rs.400,000/-. In default of payment of fine, he was directed to suffer simple imprisonment for a further period of six months. The benefit of Section 382-B, Cr.P.C. was also extended in his favour. Being dissatisfied with the said judgment, the appellant has preferred the instant appeal.

2. Briefly stated, the prosecution case is that on 24.05.2024, the appellant was allegedly apprehended by the police and found in

possession of a black-coloured shopper containing ten slabs of charas weighing 5,020 grams. After completing the requisite legal formalities, the complainant lodged the subject FIR against the appellant.

3. Upon completion of the usual investigation, challan was submitted before the competent Court. The learned trial Court took cognizance of the offence and supplied copies of the relevant documents to the accused in compliance with Section 265-C, Cr.P.C. Thereafter, charge was framed against the appellant on 26.08.2024, to which he pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined the complainant as PW-1, who produced the relevant departure and arrival entries of Roznamcha, memo of arrest and recovery, and a copy of the FIR. Thereafter, PW-2, the mashir of arrest and recovery, was examined and he also supported the prosecution version. The Investigating Officer was then examined as PW-3, who produced the relevant Roznamcha entries, memo of inspection of the place of incident, letter addressed to the SSP seeking permission for chemical examination, road certificate, and the report of the Chemical Examiner. Subsequently, the dispatch rider was examined as PW-4, followed by the Incharge Malkhana, who produced Register No.19 pertaining to the safe custody of the alleged narcotics. After examining its witnesses, the prosecution closed its side.

5. Thereafter, the statement of the appellant under Section 342, Cr.P.C. was recorded, wherein he denied the prosecution allegations and professed his innocence. Upon hearing the parties, the learned trial Court convicted and sentenced the appellant through the impugned judgment.

6. Learned counsel for the appellant contended that the prosecution has failed to prove its case beyond reasonable doubt. According to him, the evidence of the prosecution witnesses suffers from material contradictions and inconsistencies, which strike at the root of the prosecution case. He further argued that the appellant has been falsely implicated due to previous enmity and that the prosecution has failed to produce reliable and trustworthy documentary evidence connecting him

with the alleged offence. Learned counsel further submitted that serious doubts have arisen regarding the safe custody and safe transmission of the alleged contraband from the place of recovery till its examination by the Chemical Examiner, thereby rendering the prosecution case doubtful. He, therefore, prayed for acceptance of the appeal and acquittal of the appellant.

7. Conversely, learned Deputy Prosecutor General, Sindh, supported the impugned judgment and argued that a substantial quantity, i.e., 5,020 grams of charas, was recovered from the possession of the appellant. According to him, such a huge quantity of narcotics could not have been foisted upon the appellant without any reason. He maintained that the prosecution has successfully established its case through reliable oral as well as documentary evidence and that the learned trial Court has rightly recorded the conviction after proper appreciation of the evidence. He, therefore, prayed for dismissal of the appeal.

8. Heard and perused the material available on record.

9. Upon a careful appraisal of the evidence, it has surfaced that the prosecution case suffers from a material infirmity regarding the identity and integrity of the alleged contraband. The complainant, who was the head of the raiding party and recovery officer, was shown the case property during the course of his deposition before the learned trial Court after it was de-sealed. Significantly, only two large pieces (patties) of charas contained in a parcel were produced before the Court, whereas the prosecution case, as reflected in the FIR and recovery memo, was that ten slabs of charas weighing in aggregate 5,020 grams had been recovered from the possession of the appellant. The complainant, during cross-examination, candidly admitted that the charas shown to him in Court was in the shape of two large pieces and not ten slabs as allegedly recovered at the time of the incident. This discrepancy strikes at the root of the prosecution case and casts serious doubt upon the identity of the case property. The prosecution has failed to offer any plausible explanation as to how the alleged ten slabs were transformed into two large pieces by the time the property was produced before the Court. Such an unexplained

change in the shape and condition of the recovered narcotics creates a serious dent in the prosecution story and renders the safe custody and preservation of the case property highly doubtful.

10. Furthermore, the prosecution has not brought on record any material demonstrating the individual weight or particulars of each of the alleged ten slabs. In the absence of such essential details, it becomes difficult to ascertain whether the contraband allegedly recovered from the appellant was the same substance that was ultimately produced before the Court and subjected to chemical examination. The identity of the recovered narcotics being the cornerstone of a prosecution under the Control of Narcotic Substances Act, any uncertainty in this regard must necessarily accrue to the benefit of the accused. In these circumstances, the prosecution cannot be said to have established, beyond reasonable doubt, that the contraband produced before the Court and sent for chemical analysis was the very same substance allegedly recovered from the possession of the appellant. Reliance in this regard may be placed upon *Bahawal Shaikh v. The State* (2025 MLD 840), *Sadam Khan v. The State* (2025 YLR 327), *Ahmed Khan v. The State* (2025 PCr.LJ 756), *Qalandar Shah v. The State* (2021 YLR 2349), and *Ansar Abbas @ Pakori v. The State and another* (2021 PCr.LJ 138).

11. Furthermore, it is come on the record that during deposition of the witnesses that place of incident was situated in the heart of city and Iqra School is also located there but such thing that either any efforts being made for collection of any independent evidence, the prosecution witnesses were totally silent, as even the complainant in chief examination relied upon that actually he received the spy information regarding the presence of accused with contraband material. So once he received spy information, then to necessitate to join the independent corroboration as available at place of incident but failed to do so. In this regard, reliance is placed upon *Muhammad Aslam v. The State* (2011 SCMR 820) and *Ghulam Shabbir and another v. The State* (2023 YLR 153). Further, reliance is placed upon the decision of this Court in **Arshad Ali and another vs. The State** (2024 PCr.LJ 1183) [Sindh-DB], similarly, in the case

of **Shahzaib alias WaderoFeroze vs. The State(2024 YLR 1298) [Sindh-DB]**, this Court held that:

"....It has come in evidence that the accused was arrested from TarazoChowk which is a thickly populated area and the complainant SIP Sarfraz Ali Qureshi had sufficient time to call the independent persons of locality to witness the recovery proceedings but it was not done by him for the reasons best known to him and only the police officials who are subordinates to the complainant were made as mashirs of arrest and recovery proceedings. It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of Section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case) and the peoples were available there, omission to secure independent mashirs, particularly, in the police case cannot be brushed aside lightly by this court. Prime object of Section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. After all, preparation of mashirnama is not aformality but it's object is to prevent unfair dealings. There is also no explanation on record why the independent witness has not been associated in the recovery proceedings. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable,dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses. But here in this case, we have also noted number of contradictions in between the evidence of prosecution witnesses which cannot be easily brushed aside. Above conduct shows that investigation has been carried out in a casual and stereotype manner without making an effort to discover the actual facts/truth.

Guidance can be sought from the judgment of the Division Bench of this Court in the case of **Danish v. The State(2025 YLR 1355)**, wherein it was held that:

11. Also to note is that, the incident took place at Mureed Goth, near Qureshi colony gate Lyari Expressway surrounded by population, but no independent witness has been associated for arrest and recovery which is clear violation of the provisions of Section 103 Cr.P.C. It appears that investigating officer has failed to discharge his duties in the manner as provided under the law. It is noteworthy that investigating officer was well aware of the fact that no independent and private person was associated by the complainant to act as mashir of arrest and recovery, therefore, he was under obligation to make positive efforts and arrange an independent witness while visiting the place of incident, but no such indication is available on record.

Further guidance is available from the judgment of this Court in the case of **Mir Muhammad and others v. The State**(2024 PCr.LJ 370), wherein a Division Bench of this Court has held that:

“...It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case), omission to secure independent witnesses, particularly, in police case cannot be brushed aside lightly by this court. Prime object of section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. There is also no explanation on record why no any independent person either from the place where they received spy information or from the place of incident has been joined to witness the recovery proceedings though it was a day time incident. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses.”

12. It is by now a settled principle of law that in cases arising under the Control of Narcotic Substances Act, the prosecution is required to establish through reliable and confidence-inspiring evidence that the recovered narcotics remained in safe custody from the moment of recovery until their examination by the Chemical Analyst. Any break in the chain of custody or unexplained delay in the transmission of samples is sufficient to cast doubt upon the prosecution case. In the present case, the unexplained delay of about six days in sending the samples for chemical analysis, coupled with the failure to prove safe custody and safe transmission of the alleged contraband, constitutes a material infirmity which adversely affects the prosecution case. Support in this regard may be derived from the judgment rendered by the Honourable Supreme Court of Pakistan in *Mst. Sabran Bibi v. The State* (2026 SCMR 703).

13. The prosecution case suffers from yet another serious infirmity relating to the chain of custody of the alleged contraband. The dispatch rider, while appearing before the learned trial Court, deposed during his examination-in-chief that he received the case property on 30.05.2024 for

onward transmission to the office of the Chemical Examiner. However, this statement is in direct conflict with the contents of the road certificate produced by the prosecution, which reflects that the contraband was handed over to the dispatch rider on 29.05.2024. This material contradiction regarding the date of receipt and transmission of the case property has remained unexplained and adversely affects the prosecution's claim of safe custody and safe transmission of the alleged narcotics. Equally significant is the evidence of the Incharge Malkhana. Although he deposed that the Investigating Officer had handed over the recovered contraband to him for safe custody and deposit in the Malkhana, a careful examination of the relevant entry produced from Register No.19 does not substantiate his assertion. The entry neither clearly reflects the particulars deposed to by the witness nor does it conclusively establish that the case property was deposited by the Investigating Officer in the manner alleged by the prosecution. Furthermore, the record reveals that the entry produced from Register No.19 is not maintained in the prescribed format contemplated under Rule 22.70 of the Police Rules, 1934. The said Rule mandates that Register No.19 shall be maintained in a prescribed proforma and that every article placed in the store-room shall be duly entered therein, while the removal of any such article shall also be recorded in the relevant column. The object of maintaining such a register is to ensure transparency and to preserve a flawless chain of custody of the case property. In the present case, the entry relied upon by the prosecution does not conform to the requirements of Rule 22.70 of the Police Rules, 1934. The prescribed particulars, which are essential to establish the receipt, storage, movement, and dispatch of the case property, are either absent or inadequately reflected. Consequently, the Register No.19 produced by the prosecution cannot be treated as a reliable piece of evidence to establish the safe custody of the alleged contraband. For ready reference the form No.22.70 of Police Rules 1934 is reproduced as under:-

FORM No. 22-70

POLICE STATION _____ DISTRICT

Register No. XIX. Store - Room Register (Part-I)

Column 1, -- Serial No.

2 -- No. of first information report (if any), from whom taken (if taken from a person), and from what place.

3. -- Date of deposit and name of depositor.

4.-- Description of property.

5. -- Reference to report asking for order regarding disposal of property.

6. -- How disposed of and date.

7.-- Signature of recipient (including person by whom despatched).

8. -- Remarks.

14. The matter does not end here. An examination of the record reveals that Register No.19, which is the primary document maintained for proving safe custody of case property in the Malkhana, was not produced before the learned trial Court in its original form. Instead, the prosecution merely brought on record a plain sheet of paper containing a description of the alleged case property and sought to treat the same as an extract of Register No.19. In the considered view of this Court, such a document cannot be equated with, nor substituted for the statutory Register No.19 required to be maintained under Rule 22.70 of the Police Rules, 1934. Mere narration or description of the case property on a plain sheet of paper does not satisfy the legal requirement of proving the safe custody, deposit, movement, and dispatch of the contraband through a duly maintained official register. The production of the original register, or a duly certified extract thereof prepared in accordance with law, is essential for establishing the chain of custody in narcotics cases. Guidance in this regard may be sought from the judgment of the Honourable Supreme Court of Pakistan rendered in *Irshad Khan v. The State (Criminal Petition for Leave to Appeal No.219-P of 2023)*, wherein it was observed that an extract of Register No.19 prepared on plain paper cannot be treated as a substitute for the original register and that objection to its exhibition was rightly sustained.

15. It is by now a settled principle of law that in prosecutions under the Control of Narcotic Substances Act, strict proof of safe custody and safe transmission of the recovered narcotics is indispensable. Where the prosecution fails to establish an unbroken chain connecting the recovery

of the contraband with its ultimate examination by the Chemical Analyst, the benefit arising from such deficiency must necessarily accrue to the accused. Support in this regard may be derived from *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), wherein the Honourable Supreme Court consistently emphasized that the prosecution must establish an unbroken and trustworthy chain of custody of the recovered narcotics, failing which the conviction cannot be sustained.

16. It is a settled principle of criminal jurisprudence that the benefit of doubt must be extended to an accused if there exists even a single circumstance which creates a reasonable doubt regarding his guilt in the mind of a prudent person. Reliance in this regard may be placed upon *Sajjad Hussain v. The State* (2022 SCMR 1540), *Abdul Ghafoor v. The State* (2022 SCMR 1527), and the judgment of the learned Division Bench of this Court in *Nadir Hussain v. The State* (2025 YLR 487).

17. Consequently, the appellant is entitled to the benefit of doubt and the same must necessarily be extended in his favour. In view of the foregoing discussion and the material available on record, Accordingly, extending the benefit of doubt to the appellant, this Court, through a short order dated 15.06.2026, allowed the instant appeal, set aside the conviction and sentence recorded by the learned trial Court, and acquitted the appellant of the charge. The appellant was directed to be released forthwith, if not required in any other custody case. These are the detailed reasons in support of the aforesaid short order.

JUDGE

JUDGE