

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Criminal Jail Appeal No.D-68 of 2024

Before;
Mr. Justice Riazat Ali Sahar;
Mr. Justice Ali Haider 'Ada'.

Appellant : Sadiq son of Sakhi Bux Lashari,
through Mr. Altaf Hussain
Surahiyo, Advocate.

The State : Through Mr. Aitbar Ali Bullo,
Deputy Prosecutor General
Sindh.

Date of Hearing : 23.06.2026.
Date of Decision : 23.06.2026.
Date of Reasons : 29.06.2026.

J U D G M E N T

ALI HAIDER 'ADA', J.- Through the instant Jail Appeal, the appellant has assailed the judgment dated 23.08.2024 passed by the learned Special Judge for Control of Narcotic Substances/Sessions Judge, Kashmore at Kandhkot, in Special Narcotics Case No.09 of 2024, titled *The State v. Sadiq*, arising out of FIR No.34 of 2024 registered at Police Station Kashmore for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997 (as amended by Act XXV of 2022). By the impugned judgment, the learned trial Court convicted the appellant under Section 9(c) of the CNS Act and sentenced him to undergo rigorous imprisonment for twelve (12) years along with payment of a fine of Rs.100,000/-. In default of payment of the fine, the appellant was directed to further undergo simple imprisonment for five months. The benefit of Section 382-B, Cr.P.C, was also extended to him. Feeling aggrieved by the

said conviction and sentence, the appellant has preferred the instant Jail Appeal.

2. Briefly stated, the prosecution's case is that on 04.03.2024 at about 8:00 a.m., complainant SIP Adho Khan, while accompanied by subordinate police officials, allegedly apprehended the appellant near Naich Petrol Pump situated on the Main Road, Kashmore. It is alleged that the appellant was carrying a black shopping bag containing four slabs of charas weighing 2,000 grams. The recovered narcotic substance was secured under a mashirnama of arrest and recovery. Thereafter, the usual course of investigation was undertaken and, upon completion thereof, the challan was submitted before the competent Court.

3. After taking cognizance of the matter, the learned trial Court supplied copies of the police papers to the appellant in compliance with Section 265-C, Cr.P.C. Thereafter, on 23.05.2024, a formal charge under Section 9(c) of the CNS Act was framed against him, to which he pleaded not guilty and claimed trial.

4. In order to substantiate the charge, the prosecution examined SIP Adho Khan, the complainant, as PW-1 (Exh.03), who produced the mashirnama of arrest and recovery, copy of the FIR and relevant roznamcha entries. Thereafter, PC Akbar Ali was examined as PW-2 (Exh.04), who produced the memo of site inspection. The prosecution further examined PC Barkat Ali as PW-3 (Exh.05), who acted as the carrier of the case property to the office of the Chemical Examiner and produced the Road Certificate along with the relevant roznamcha entries regarding his departure from and return to the police station. The Investigating Officer, SIP Arsallah Khan, was examined as PW-4 (Exh. 06). He produced the

relevant roznamcha entries, forwarding letters, report of the Chemical Examiner, and other investigation documents. Lastly, WPC Ahmed Din, in charge of the Malkhana, was examined as PW-5 (Exh. 07), who deposed regarding the custody and safekeeping of the case property. Upon completion of the prosecution evidence, the learned State Counsel closed the prosecution side.

5. The statement of the appellant under Section 342, Cr.P.C. (Exh. 09) was thereafter recorded, wherein he denied the allegations levelled against him, professed his innocence, claimed false implication, and prayed for his acquittal. Upon hearing the parties, the learned trial Court convicted and sentenced the appellant through the impugned judgment, which is now under challenge before this Court.

6. Learned counsel appearing on behalf of the appellant contended that the prosecution case suffers from material contradictions, legal infirmities and procedural irregularities which strike at the root of the prosecution story. He argued that although the alleged recovery was effected from a public place where independent persons and public transport were admittedly available, neither the complainant nor the Investigating Officer associated any independent witness during the proceedings. Learned counsel further submitted that the prosecution has failed to establish a safe, secure and unbroken chain of custody of the alleged recovered narcotics from the time of recovery until their receipt by the office of the Chemical Examiner. According to him, the evidence adduced by the prosecution is neither confidence-inspiring nor sufficient to sustain the conviction of the appellant. He further argued that the contradictions appearing in the statements of the prosecution witnesses have materially

impaired the credibility of the prosecution case and, according to the settled principles of criminal jurisprudence, even a single circumstance creating reasonable doubt entitles an accused to acquittal. He lastly submitted that the prosecution has miserably failed to establish the charge against the appellant beyond reasonable doubt and, therefore, the impugned judgment is liable to be set aside. In support of his submissions, learned counsel placed reliance upon the cases reported as 2015 SCMR 1002, 2018 SCMR 2039, 2019 SCMR 1217 and 1300, 2023 SCMR 139, 781, 986, 1009 and 1144, 2024 SCMR 934, 2025 SCMR 923, 1995 SCMR 1345, 1998 P.Cr.L.J. 1693 and 1991 P.Cr.L.J. (Note) 622.

7. Conversely, learned Deputy Prosecutor General supported the impugned judgment and argued that the appellant was apprehended at the spot and a substantial quantity of charas was recovered from his exclusive possession. He submitted that the prosecution witnesses have consistently supported the prosecution version and that the recovery has been proved through trustworthy and confidence-inspiring evidence. According to him, the prosecution has successfully established the charge beyond a reasonable doubt, and the learned trial Court has rightly appreciated the evidence while recording the conviction. He accordingly prayed for dismissal of the appeal and maintenance of the impugned judgment.

8. Heard learned counsel for the parties and carefully examined the entire evidence and material available on the record with their able assistance.

9. Having examined the entire evidence available on record, it is an established principle of criminal jurisprudence that prosecutions under the Narcotic Substances require to

exercise a greater degree of caution. Although the menace of narcotics is a serious social evil, the severity of punishment prescribed under the statute correspondingly casts a heavier burden upon the prosecution to establish its case beyond any shadow of reasonable doubt. Every procedural safeguard provided by law must, therefore, be strictly adhered to and any lapse affecting the sanctity of the recovery or the chain of custody cannot be lightly ignored.

10. The first circumstance which has attracted the attention of this Court relates to the manner in which the alleged recovery was effected. The prosecution case is that the complainant party intercepted the appellant near Farooqi Petrol Pump on the Main Road, Kashmore. The prosecution witnesses candidly admitted during their cross-examination that the place of recovery was situated on a public thoroughfare where vehicular traffic frequently passed and members of the public were readily available. It has further come on record that another petrol pump, namely Naich Petrol Pump, was situated adjacent to the place of occurrence. Thus, there was no legal or practical impediment in associating local inhabitants of the locality as mashirs of arrest and recovery. Despite the availability of independent witnesses, neither the complainant nor the Investigating Officer made any sincere effort to associate a private person with the recovery proceedings, nor was any explanation offered for such omission. Although non-association of private witnesses may not, by itself, be fatal in every case, yet where the alleged recovery is effected from a busy public place and the entire prosecution case rests solely upon the testimony of police officials, such omission assumes considerable significance and requires the prosecution evidence to be scrutinized with greater caution. Guidance in this regard may

be drawn from ***Niaz Ali v. The State (2026 MLD 215)***, wherein reliance was placed upon the principles enunciated in ***Muhammad Aslam v. The State (2011 SCMR 820)***, ***Ghulam Shabir and another v. The State (2023 YLR 153)*** and ***Arshad Ali and another v. The State (2024 P.Cr.L.J. 1183)***.

11. Another significant infirmity pertains to the identification of the case property before the learned trial Court. During their depositions, the prosecution witnesses identified the alleged recovered narcotics as the same property recovered from the possession of the appellant. However, the record does not reflect that the sealed parcels were ever opened before the Court for the purpose of identification. During the hearing of the present appeal, the case property was summoned and examined by this Court. It transpired that the parcels were still intact and bore the original seals affixed by the office of the Chemical Examiner, which had never been broken. In such circumstances, it is difficult to comprehend how the prosecution witnesses could have identified the contents of the sealed parcels without their seals having been removed in Court. The identification of case property is not an empty formality but constitutes an essential link in the chain of evidence. Where the property remains sealed throughout and is never opened before the trial Court, the identification made by witnesses without seeing the actual contents becomes wholly doubtful. This defect seriously undermines the prosecution's case and renders the evidence regarding recovery unsafe for reliance. Support in this regard may be drawn from ***Bahawal Shaikh v. The State (2025 MLD 840)***, ***Muhammad Arif v. The State (2023 YLR 2369)***, ***Ahsan Marfani v. The State (2022***

YLR Note 5), *Suleman v. The State* (2022 MLD 1612) and *Asif Khan v. The State* (2021 MLD 1192).

12. The prosecution case further suffers from another serious infirmity concerning the transmission of the case property to the office of the Chemical Examiner. According to PW-3 Barkat Ali, who acted as the dispatch rider, the sealed parcels were entrusted to him on 08.03.2024 under Road Certificate No.19 for onward transmission to the Chemical Examiner at Rohri. However, a careful examination of Road Certificate No.19 reveals that the parcels had actually been handed over and the Road Certificate prepared on 06.03.2024. Thus, there exists an unexplained discrepancy of two days between the oral testimony of the prosecution witness and the documentary record. The prosecution has remained completely silent regarding the custody of the narcotics during this intervening period. No evidence has been produced to establish where the case property remained, under whose custody it was kept. Such unexplained gaps in the prosecution case create a serious dent in the chain of safe custody.

13. This Court has also noticed that Register No.19, upon which the prosecution has placed considerable reliance, was maintained merely on a plain sheet of paper instead of the prescribed official register. Such a document neither inspires confidence nor satisfies the mandatory requirements relating to maintenance of malkhana records. The Hon'ble Supreme Court of Pakistan, in ***Irshad Ali v. The State* (2026 SCMR 87)**, has specifically deprecated the practice of producing Register No.19 on plain paper and observed that such irregularity substantially affects the evidentiary value of the

prosecution case. The objection raised by the defence in this regard was, therefore, well founded.

14. Equally significant is the fact that the Chemical Examiner's report reveals that the narcotic substance was received by the laboratory on 08.03.2024, i.e., four days after the alleged recovery effected on 04.03.2024. The prosecution has offered no plausible explanation whatsoever for this delay. In prosecutions under the CNS Act, prompt and secure transmission of the recovered narcotics to the office of the Chemical Examiner is of paramount importance. Any unexplained delay raises a legitimate apprehension regarding the possibility of tampering, substitution or manipulation of the case property. Such delay, unless satisfactorily explained, adversely affects the credibility of the prosecution case. Reliance in this regard may be placed upon ***Mst. Sabiran Bibi v. The State (2026 SCMR 703)***.

15. The cumulative effect of the above-discussed infirmities clearly demonstrates that the prosecution has failed to establish an unbroken chain of safe custody and safe transmission of the alleged recovered narcotics from the time of recovery until their examination by the Chemical Examiner. The law is now well settled that every link constituting the chain of custody must be affirmatively proved by the prosecution. Even a single missing or doubtful link is sufficient to cast serious doubt upon the authenticity of the recovered contraband and the integrity of the prosecution case. Reference may beneficially be made to ***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).

16. The impact of the foregoing infirmities leaves no room for doubt that the prosecution has failed to prove its case against the appellant beyond a reasonable doubt. It is a cardinal principle of criminal jurisprudence that where a single circumstance creates reasonable doubt regarding the prosecution's story, the accused becomes entitled to the benefit of such doubt.

17. For the foregoing reasons, this Court, through its short order dated 23.06.2026, allowed the instant Jail Appeal, set aside the conviction and sentence recorded by the learned Special Judge for CNS/Sessions Judge, Kashmore at Kandhkot vide judgment dated 23.08.2024, and acquitted the appellant, namely **Sadiq son of Sakhi Bux Lashari**, of the charge. The Superintendent of the concerned Jail was directed to release the appellant forthwith, if his custody was not required in connection with any other case. These are the detailed reasons supporting the short order dated 23.06.2026.

JUDGE

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