HIGH COURT OF SINDH, CIRCUIT COURT MIRPUR KHAS

Criminal Revision Application No.S-24 of 2026

(Muhammad Uris and others Versus The State)

Before:

Mr. Justice Nisar Ahmed Bhanbhro

Applicants:
1. Muhammad Uris s/o Ghulamoon Nohri.
2. Ali Nawaz s/o Ghulamoon Nohri.
3. Asghar Ali s/o Ghulamoon Nohri.
4. Akbar Ali s/o Ghulamoon Nohri.
5. Saddam Hussain s/o Umar Nohri.
6. Zulfiqar Ali s/o Umar Nohri

Through Mr. Rao Faisal Ali, Advocate

Respondent: The State
Through Mr. Dhani Bakhsh Mari,
Assistant Prosecutor General, Sindh.

Date of hearing: 04.11.2026

Date of Order: 04.11.2026

O R D E R

Nisar Ahmed Bhanbhro J.- The Applicants/ Convicts every one namely 1) Muhammad Uris s/o Ghulamoon Nohri, 2) Ali Nawaz s/o Ghulamoon Nohri, 3) Asghar Ali s/o Ghulamoon Nohri, 4) Akbar Ali s/o Ghulamoon Nohri, 5) Saddam Hussain s/o Umar Nohri and 6). Zulfiqar Ali s/o Umar Nohri have assailed the judgment dated 24.04.2026 **(impugned judgment)** passed by the Court of Learned Additional Sessions Judge, Khipro **(Appellate Court)**, in Criminal Appeal No.03 of 2026 "Re. *Muhammad Uris and others v. The State*", whereby he maintained judgment dated 15-04-2026 passed in Criminal

Case No. 159/ 2024 (arising out of F.I.R bearing Crime No. 39/ 2024 for offence u/s 5-8(i) SPPMSSUGM Act, 2019 of PS Khahi) by learned Civil Judge and J.M, Khipro (**Trial Court**), whereby the applicants were convicted to suffer S.I for two years and to pay fine of Rs. 200,000/= each; and in case of default thereof to suffer S.I for six months more, with a benefit of section 382-B Cr.P.C.

2. Brief facts germane to the prosecution story as unfolded in F.I.R. are that on 08.08.2024 at 0700 hours, Complainant SIP Ghulam Muhammad Sehto, S.H.O P.S Khahi, recorded F.I.R alleging therein that on the same date at 0530 hours, during patrolling on spy information, they arrested accused persons namely Muhammad Uris, Ali Nawaz, Asghar Ali and Akbar Ali from a Landhi near the house of accused situated in Village Morro Kolhi while accused persons namely Saddam Hussain & Zulfiqar Ali made their escape good. The police party recovered *269 packets of Adab Gutka (total 26900 sachets), 31 packets of Habibi Gutka (total 3100 sachets) and 300 packets of Royal Gutka (total 33000 sachets*) from their possession. After preparation of such memo and sealing the recovered property they brought the arrested accused and recovered property at police station where complainant lodged instant F.I.R on behalf of the State.

3. After usual investigation and completing legal formalities, report under section 173 Cr.P.C was submitted before Trial Court for disposal of case in accordance with law. In compliance to section 265-C Cr.P.C Trial Court supplied police papers to the

Applicants, they were indicted for the charge, which they pleaded not guilty and claimed Trial.

4. To bring the guilt of accused home, prosecution examined following witnesses:

1. PW-01 Complainant Inspector Ghulam Muhammad Sehato at Ex.3, who produced the entries No.27 and 29 at Ex.3/A, memo of arrest & recovery at Ex.3/B & FIR at Ex.3/C.

2. PW-02 Mashir ASI Ajmal Das was examined at Exh.04, who produced memo of site inspection at Exh.4/B.

3. PW-03 P.C Sarfaraz was examined at Exh.05, who produced entries No.21 & 17 at Ex.5/A and receipt of concerned Laboratory at Ex.5/B.

4. PW-04 1st I.O SIP Khamiso Khan was examined at Exh.06, who produced entry No.23 of register No.19 at Ex.6/A, entries No.07, & 08 at Exh.6/B and entry No.22 at Ex.6/C.

5. PW-05 2nd I.O Inspector Muhammad Nadeem was examined at Exh.07, who produced entry No.22 at Ex.7/A and final chemical report at Ex.7/B.

Thereafter, side of prosecution evidence was closed by Learned Prosecutor for State. The statement of accused under section 342 Cr.P.C were recorded, wherein they denied the charge, professed innocence and prayed for acquittal; however, did not opt to examine any witness in defense or their own statement on oath.

5. After hearing the Learned Counsel for the Prosecution and Defense, Trial Court convicted and sentenced the applicants as aforementioned, which was maintained by learned Appellate Court, hence this Revision Application.

6. Learned Counsel for the Applicants argued that the contraband material was foisted upon the applicants. He contended that alleged place of arrest and recovery was a Landhi situated in the village but none from public was cited as witness. He contended that sample from the entire case property was not sent for chemical analysis and only 15 pouches of Gutka were sent to Chemical laboratory for analysis. He next argued that the sample was sent to the laboratory with a delay of 01 day; hence, the safe custody and transmission of the case property, the prosecution itself has made questionable. He next submitted that as per evidence of I.O the case property was kept in malkhana but the incharge of malkhana was not examined. He also pointed out that there were material contradictions between the statements of PWs on each point, which have not been considered by both courts below. He, therefore, submitted that prosecution case was doubtful, which as per settled law always goes to favor the accused; hence, submits that by granting this Revision Application, the impugned judgment(s) may be set aside and the Applicants may be acquitted of the charge.

7. Per contra, Learned Assistant Prosecutor General appearing for the State opposed the Revision Application on the ground that all the PWs have remained consistent on each point and minor discrepancies, if any, in the evidence occurred due to passage of time and cannot be considered fatal to the prosecution case. There is no delay in sending the sample property to the laboratory. He, therefore, by opposing the

Revision Application asserted to maintain the impugned judgment(s) and dismiss the Revision application in hand.

8. Heard Learned Counsel for the parties and perused material available on record with their able assistance.

9. Careful examination of material on record and re-appraisal of evidence leads to an ineluctable conclusion that the prosecution case is highly doubtful, replete with material contradictions in evidence and impugned judgment(s) of both Courts below suffered from misreading and non-reading of evidence.

Recovery Proceedings:

10. Scanning of the evidence on record reveals that applicants were apprehended from a *Landhi* near the house of accused situated in village Moro Kolhi, which was admittedly a populated area. In the instant case, Complainant on an advance information proceeded to the place of recovery, which was admittedly situated in a populated area. Per Section 21 the Act, the provisions of the Code of Criminal Procedure, 1898 (**the Code**) shall apply mutatis mutandis to the proceedings under this Act. It was thus incumbent upon police party to associate the witnesses from public as the suspected place was a *Landhi*. There seems to be no effort on the part of raiding party to associate any independent person with recovery proceedings, as nothing has been explained by the prosecution in that regard. Though the evidence of police officials was as good as of the independent witness, but an action must be done in accordance

with the law. Section 14 of the Act empowered an Officer of the Police not below the rank of Sub-Inspector to enter into a building, place, premises or conveyance without an order of search by the concerned Magistrate, when there is reason to believe that delay in conducting search may allow the suspect to escape or conceal the evidence, provided such permission is obtained from the Superintendent of Police of the District. For the sake of reference Section 14 is reproduced below:

> *14.* ***Power of entry search, seizure and arrest without warrant.*** *(1) Where an officer, not below the rank of Sub-Inspector Police or equivalent authorized in this behalf by Home Department, believes on a credible information received to him and arrest or a reasonable complaint has been made or a reasonable without warrant suspicion or apprehension exists of his having been so concerned , that any substance as defined in clause(vi) and (vi of section 2. in respect of which on offence punishable under this Act has been committed, is kept or concealed in any building. place, premises or conveyance, he may, without an order of warrant of search from a Magistrate against such person and without affording him on opportunity for the concealment of evidence or escape, such officer may-*
>
> *(a) enter into any such building place, premises or conveyance.*
>
> ***Provided, that before entering any house prior permission of the SSP of the concerned district shall be taken.***
>
> *(b) break open doors and windows for his liberation remove any other obstacle to such entry in case of resistance;*
>
> *(c) seize such substances and other materials used in the manufacture, sale and purchase thereof*

and any other article which he has reason to believe to be liable to confiscation and any document or other article which he has reason to believe may furnish evidence of commission of an offence punishable under this Act; and

(d) detain and arrest the person whom he has reason to believe to have committed an offence punishable under this Act.

(2) Before or immediately after taking any action under sub section the officer shat record grounds and basis of the information and proposed action and forthwith send a copy thereof to his immediate superior officer.

11. However, no permission was sought from concerned S.S.P to say that action followed due course of law. Section 21 of the Act holds that the provisions of the Code shall apply to the proceedings of arrest and recovery including section 103 of the Code. Since section 103 of the Code required association of independent witnesses in search and seizure from a place; however, to authenticate the recovery proceedings, if any independent person was not available or refused to associate in the search and seizure, then it required the head of the police party to record video through built in camera of mobile phone in order to make this court to believe that in fact the recovery was affected from the possession of accused. For the agencies involved in detection of narcotics cases, it is essential that help of modern technology may be taken by recording video and by taking photographs of recovery proceedings, such important piece of evidence be secured and produced in evidence before Trial Court to dispel any impression of foisting property or false

implication. The help of modern technology devices would further support the prosecution case and in case of any loopholes in the prosecution evidence, the accused would not get benefit of the same, as he would not be in position to damage video recordings, once this piece of evidence is successfully brought before Court, the burden will shift to the accused to establish that contraband material was foisted upon him. Article 164 of the *Qanun-e-Shahadat* Order, 1984 encourages the collection of evidence which may become available because of modern devices, it reads as under:

> ***164. Production of evidence that has become available because of modern devices etc****. In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.*

12. The above provision of law accentuated that the evidence collected through modern devices or techniques may be produced before Court. The built-in camera mobile phone is the revolution in modern day technology which is available in the hands of every person. It serves many purposes, it can be used as a source for recording audio, video, photography so also recording of statements of the accused under investigation and if securely produced before the Court can serve as a best piece of evidence supporting prosecution case. More particularly when Article 165 gives overriding effect to the provisions of *Qanun-e-Shahadat* Order 1984. The production of evidence generated through modern devices would form a substantial piece of evidence in favor of prosecution and help the Court to believe in

the existence of a fact that the incident as alleged by the prosecution has occurred, then the burden would shift on the defense to disprove charges. In presence of such a piece of evidence the credibility of witness would hardly be shattered as the entire proceedings would be available before the Court in the shape of video. The use of modern technology would help in curbing the menace of drug peddling as video recordings would expose the faces of many accused persons involved in this illicit business. For the purposes of production of evidence generated through modern technology, the prosecution has to preserve the evidence in line with guidelines envisaged under Articles 46–A and 78–A of the *Qanun e Shahadat* Order, 1984. To bring the said piece of evidence in ordinary manner may not be helpful for the prosecution and any lapse on the part of prosecution in preserving this piece of evidence will again tilt in favor of defense. Therefore, reasonable care and caution has to be exercised during investigation to preserve such piece of evidence in manner which may be acceptable and admissible in evidence and then its production before Court during evidence to ensure that no real culprit goes unpunished for the offence he committed and no innocent soul gets involved in a fake recovery case.

13. In the instant case, the police party neither obtained the order for search from the concerned Magistrate nor conveyed information to the superior officials regarding the raid, which violated the mandatory provisions of Section 14 *ibid*. In such circumstances non association of independent witnesses and

non-recording of the video of recovery proceedings created doubt to the veracity of prosecution case.

Safe Custody of Recovered Property

14. Per Prosecution Story, in all about 63000 pouches of different brands of Gutka were recovered from the *Landhi* under possession of the accused. However, only 15 pouches out of the entire allegedly recovered different brands Gutka were sealed and sent for Chemical Analysis to Laboratory. The property was deposited in the Malkhana but the incharge of the Malkhana was not examined before Trial Court. Per Laboratory Report, it only received a parcel containing 05 pouches each of Aadab, Royal King and Habibi Gutka, total 15 pouches. The samples from all the pouches were not drawn. In the circumstances, the sample did not represent the entire contraband material. The contraband was recovered on 08.08.2024 and it was sent to Chemical Laboratory on 09.08.2024, the witnesses PW-1 complainant Inspector Ghulam Muhammad and PW-3 1st I.O SIP Khamiso Khan failed to demonstrate while recording evidence that in whose possession the custody of recovered contraband remained in the intervening period. The safe custody and transmission of the contraband material to the Laboratory was compromised, which created dent in the prosecution case and doubt so created ought to be resolved in favor of the accused being a blue-eyed child of the criminal law. Reliance in this regard may be placed on the judgments of Honorable Supreme Court of Pakistan in the case of **Said Wazir and another Versus The State and others** (2023 S C M R 1144),

Qaiser Khan v. The State through Advocate General, Khyber Pakhtunkhwa, Peshawar (2021 SCMR 363), **Mst. Razia Sultana v. The State and another** (2019 SCMR 1300), **The State through Regional Director ANF v. Imam Bakhsh and others** (2018 SCMR 2039), **Ikramullah and others v. The State** (2015 SCMR 1002) and **Amjad Ali v. The State** (2012 SCMR 577) wherein it was held that in a case containing the above mentioned defect on the part of the prosecution, it cannot be held with any degree of certainty that the prosecution had succeeded in establishing its case against an accused person beyond any reasonable doubt.

Contradictions in the evidence

15. The Prosecution witnesses have contradicted each other on material points. PW-1 Inspector Ghulam Muhammad deposed that he received spy information through a person but he did not disclose the same to his staff, while P.W-2 ASI Ajmal Das deposed that complainant received spy information through cell phone and then they went to spot. PW-1 Inspector Ghulam Muhammad deposed that they collectively counted case property, while PW- 2 ASI Ajmal Das deposed that case property was counted by complainant.

Poor Investigation

16. Fair, impartial and strong investigation is always considered pivotal for the prosecution cases. In cases related to drugs peddling, it is always expected that investigation remained aloft, leaving no room for the accused to get benefit of any lapses on the part of prosecution. Those selling contraband substances

make their buyers addicts, destroy their state of mind, health and productivity, and adversely affect the lives of their family members. The very fabric of society is damaged. The Police forces are paid out of the public exchequer. It is incumbent upon them to stem this societal ill and eradicates the criminal elements by getting them convicted through Courts. The Prosecution services, paid out of the public exchequer, are responsible to advise the police to remain vigilant during investigation and follow the principles laid down by the Superior Courts. A consequence of poor investigation, not supported by evidence, adversely affects the cases of the prosecution. It is time that all institutions act professionally and use all available lawful means to obtain evidence. A credible prosecution and adjudication process also improves public perception. It is expected that all concerned will attend to these matters with the attention that they demand, because the menace of Gutka in society has far reaching consequences: by destroying entire households, creating societal problems and casting a heavy financial burden on the State when drug addicts are required to be treated. Moreover, research indicates that drugs addicts resort to all methods to obtain drugs, including committing crimes. To curb the drug peddling, it is right time to convict the persons involved in this agonizing trade and it is only possible when prosecution starts with a perfect investigation mechanism. In the present case right from recovery to filing of report under section 173 Cr.P.C entire investigation process remained compromised, which tilted balance in favor of accused.

Benefit of Doubt

17. It is settled principle of law that multiple circumstances were not necessary to create dent in prosecution story, a single circumstance creating reasonable doubt in prudent mind is sufficient to discredit prosecution story, and benefit of such doubt has to be resolved in favor of accused not as a matter of grace but as a matter of right. It is always the prosecution burdened to prove its case beyond shadow of doubt and once it fully discharges its burden then it shifts to the defence. Reliance in this regard may be made on the dicta laid down by Honorable Supreme Court of Pakistan in the case of **Ahmed Ali and another Versus The State (**2023 S C M R 781) wherein it was held that "Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right."

Conclusion

18. For what has been discussed herein above, the prosecution has failed to prove its case against the applicants beyond shadow of reasonable doubt, benefit of which, ought to be given to the accused. Consequently; instant Criminal Revision Application is allowed. The impugned judgment dated 24.04.2026 passed by the Court of Learned Additional Sessions Judge, Khipro in Criminal Appeal No.03 of 2026 and judgment

dated 15-04-2026 passed in Criminal Case No. 159/ 2024 (arising out of F.I.R bearing Crime No. 39/ 2024 for offence u/s 5-8 SPPMSSUGM Act, 2019 of PS Khahi) by learned Civil Judge and J.M, Khipro are set aside and the Applicants / Convicts are acquitted of the charge of Criminal Case No.159 of 2024. All the applicants are present on bail; their bail bonds stand canceled and surety discharged.

JUDGE

Approved for reporting.

"Saleem"