

# IN THE HIGH COURT OF SINDH AT KARACHI

Before:

**Mr. Justice Khalid Hussain Shahani**

**Mr. Justice Muhammad Jaffer Raza**

Cr. Appeal No. D-23 of 2023

Applicant : Muhammad Nawaz Brohi,  
Through Mr. Javed Ahmed Soomro, Advocate

Respondent : The State  
Through, Mr. Nazir Ahmed Bhangwar, DPG.

Date of hearing : 08.07.2025

Date of Judgment : 22.07.2025

## **JUDGMENT**

**KHALID HUSSAIN SHAHANI, J.**— The appeal, challenges the judgment of conviction and sentence dated March 31, 2023, passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Jacobabad, in Special Narcotics Case No.10 of 2022 (re. State Versus Muhammad Nawaz Raisani Brohi). The appellant seeks to set aside the conviction and sentence awarded to him.

2. The prosecution's case, as per FIR No. 79/2021 lodged on August 4, 2021, by complainant ASI Fazalullah, alleges that on the same date, a police party intercepted a Mehran car at Mouladad Phatak. The driver, identified as the appellant Muhammad Nawaz, was found in possession of a white bag (Bacheke) containing 60 slabs of hashish (Chars), each weighing 500 grams, totaling 30 kilograms. Additionally, Rs.200/- was recovered from the appellant's personal search. The recovered hashish was sealed on the spot, and a memo of arrest and recovery was prepared. The appellant was subsequently arrested, and the FIR was registered.

3. Following the investigation, a charge sheet was submitted against the appellant before the learned Sessions Judge/Special Judge (CNSA), Jacobabad. The case was subsequently transferred to the Additional Sessions Judge-I/Model Criminal Trial Court, Jacobabad. A formal charge was framed against the appellant for offence under Section 9(C) of the Control of Narcotic Substance Act, 1997, to which he pleaded not guilty and claimed trial. During the trial, the prosecution examined five witnesses: PW-1 complainant ASI Fazalullah, PW-2 PC Feroz Gul (mashir), PW-3 HC Muhbat Ali Odho, PW-4 Retired SIP Sikander Ali

Bhutto (Investigating Officer), and PW-5 Inspector Ghazanfar Ali Bhutto (Further Investigating Officer). The appellant's statement under Section 342 Cr.P.C. was recorded, wherein he denied the allegations, asserting that he was falsely implicated due to a dispute with one Muhammad Panah and that the police officials had planted the hashish. He did not opt to record a statement under Section 340(2) Cr.P.C. or produce any evidence in his defense. After considering the evidence, the learned trial court convicted the appellant in pursuance of Section 265-H (2) Cr.P.C. for the offence punishable under Section 9(C) Control of Narcotics Substance Act, 1997, sentencing him to rigorous imprisonment for life and a fine of Rs. 800,000/-.

4. Being aggrieved by the said judgment of conviction and sentence, the appellant preferred this appeal. The learned advocate for the appellant contended that the learned trial judge erred on both facts and law, asserting that the prosecution's evidence was improperly assessed, insufficient to warrant conviction, and that the trial judge failed to observe established rules of evidence appreciation, leading to a conviction based on manifestly unsatisfactory evidence. In support of his arguments, the learned advocate for the appellant also relied upon the case law cited at 2025 SCMR 923.

5. Conversely, the learned Deputy Prosecutor General for the State vehemently opposed the appeal, asserting that the prosecution successfully proved its case beyond a reasonable doubt before the trial court. He contended that the conviction was based on cogent and consistent evidence, fully corroborated by all prosecution witnesses. He argued that the substantial quantity of recovered hashish (30 kg) invoked the presumption under Section 29 of the CNS Act, placing the burden on the accused to rebut the presumption of possession. He further submitted that the minor discrepancies highlighted by the defense during cross-examination were natural due to the passage of time and did not affect the core of the prosecution's case. He emphasized that the absence of private mashirs is not fatal, especially when no enmity or mala fide is proven against the police officials, who are competent witnesses. He also pointed out that the delay in sending the sample to the chemical laboratory was negligible and within the prescribed period. The learned DPG maintained that the appellant failed to provide credible defense or evidence to counter the overwhelming evidence presented by the prosecution.

6. The evidence presented during the trial, which forms the basis of this appeal that PW-1, ASI Fazalullah Channo, the complainant, deposed that on August 4, 2021, while on patrolling duty, he stopped a Mehran car at Mouladad Phatak, finding a white bag (Bacheke) near the driver containing 60 packets of hashish, totaling 30 kg. He identified the driver as Muhammad Nawaz and recovered Rs. 200 from his personal search. He stated that the hashish was sealed on the spot, and a memo of arrest and recovery (Ex. 6-A) was prepared with mashirs PC Umardin and PC Feroz Gul. He then registered the FIR (Ex. 6-B) at the police station. Later, he handed over the case to I/O SIP Sikander Ali Bhutto, and they revisited the crime scene for a memo of visiting wardhat (Ex. 7-A). He identified the accused, cash, and car in court. During cross-examination, he testified that they checked vehicles for about 10 minutes but didn't ask any private persons to be mashirs from the checked vehicles or from Mouladad Phatak, which was 50-60 paces away. He stated that the hashish was weighed separately on a computerized steel scale. He admitted that the words "Jameela" were stamped on each slab of hashish and that the crime number on the sealed cover was written at the police station, not on the spot. He did not obtain a receipt from the I/O when handing over the case. He denied any false implication due to a land dispute with the Muhammadani community. In further cross-examination after recall, he confirmed that there was no prior friendship with the accused. He detailed their patrolling route and stated they reached the incident site in about 50 minutes. The memo of arrest and recovery was prepared on the front seat of the police mobile, taking 40-45 minutes. He personally sealed the property on the road. He denied the presence of FC or Excise checkpoints nearby and stated the I/O did not call any private persons to act as mashirs during the site visit.

7. PW-2, PC Feroz Gul, a mashir, corroborated PW-1's account of the arrest and recovery of 30 kg of hashish from Muhammad Nawaz and the recovery of Rs. 200. He stated he acted as a mashir and signed the memo of arrest and recovery (Ex. 6-A) and memo of visiting wardhat (Ex. 7-A). He identified the accused, cash, hashish, and car in court. In initial cross-examination, he stated they checked one Mehran car and three bikes before the accused's vehicle, but did not stop any private persons to act as mashirs. He confirmed Mouladad Phatak was 20-25 paces away. He stated the complainant checked the vehicle and hashish on the ground. He claimed he wrote the crime number on the sealed cover

of the recovered property. He denied false implication. In further cross-examination after recall, he confirmed no prior friendship with the accused. He stated they patrolled various places and reached the incident site in 25-30 minutes. The memo was prepared on the bonnet of the police mobile and the property was sealed by ASI Fazalullah. He denied that all writing on the Bacheka was done at the PS. He stated the I/O did not ask any private person to act as mashir during the site visit. He stated the mashirnama of site inspection was prepared by PC Umardin on the front seat of the police mobile.

8. PW-3, HC Muhbat Ali Odho, deposed that on August 6, 2021, he was handed the sealed parcel of hashish, permission letter, and other documents by I/O SIP Sikander Ali Bhutto to deposit at the chemical laboratory in Sukkur at Rohri. He deposited the parcel with Noor Muhammad, the receiving clerk, and obtained an RC receipt (Ex. 8-A). He returned to the PS on the same date and handed over the receipt to the I/O. He identified the hashish in court. During cross-examination, he admitted the RC receipt (Ex. 8-A) was dated August 5, 2021, implying the case property was at the PS from August 5 to August 6, 2021. He did not ask the I/O why he was given an RC dated August 5, 2021, on August 6, 2021.

9. PW-4, Retired SIP Sikander Ali Bhutto, the Investigating Officer, deposed that on August 4, 2021, he received the case from ASI Fazalullah, including the arrested accused, 30 kg of hashish, Rs. 200, and the Mehran car. He deposited the hashish in the Malkhana. He recorded statements of PWs and visited the crime scene with the complainant and mashirs, preparing a memo of visiting wardhat. He wrote to the SSP for permission to send the hashish for chemical analysis and sent it via PC Muhbat on August 6, 2021. He received the chemical report on October 6, 2021. He later handed the investigation papers to Inspector Ghazanfar Ali Bhutto for further investigation. He identified various documents and the case properties. In cross-examination, he confirmed the car had number plates when received, but the front one was missing in court. He admitted the recovered car was not in running position. He did not produce the original entry book showing entry No. 20. He admitted the place of wardhat was a busy area with railway employees present, but he did not enquire from them or ask any private persons to act as mashirs. He admitted that the names of mashirs were not mentioned in entry No. 27

(Ex. 9-B) or entry No. 29 (Ex. 9-C). He stated he did not produce a copy of the letter sent to the Excise Department for vehicle verification. He heard about a land dispute involving the accused but denied any false implication.

10. PW-5, Inspector Ghazanfar Ali Bhutto, the Further Investigating Officer, deposed that on October 4, 2022, he received the police file to address defects pointed out by the DPP. He verified the registration documents of the Mehran car (No. AZL-894) and recorded a statement from Hyder Umar Farooque, who stated he sold the car to Ali Nawaz Raisani. He obtained a receipt from Baloch Show Room and checked the criminal record of "Ali Nawaz" at PS Tando Allahyar (later corrected to Dera Allahyar), finding no record. He then submitted the challan. He produced the Baloch Show Room receipt (Ex. 10-A) and SHO Dera Allahyar's report (Ex. 10-B). In cross-examination, he admitted that entries for receiving documents, visiting PS Dera Allahyar, and verifying documents were not produced in court, stating that the verification was done by his ex-officer. He did not make Hyder Umar Farooque, Waheed Hussain, or Rehamtullah (witnesses to the receipt) as witnesses in the case, only recording their 161 Cr.P.C. statements. He denied that the accused's name was not Ali Nawaz and denied deposing falsely.

11. This Court has carefully perused the record and proceedings of Special Narcotics Case No. 10 of 2022, including the impugned judgment, the evidence adduced by the prosecution, and the arguments advanced by the learned counsel for the appellant and the learned DPG for the State. The grounds of appeal primarily revolve around the alleged misappreciation of evidence, insufficiency of proof, and non-observance of established rules for evidence appreciation by the trial court.

12. Upon a thorough examination of the testimonies of the prosecution witnesses, it is evident that PW-1 ASI Fazalullah and PW-2 PC Feroz Gul have consistently corroborated the prosecution's narrative regarding the arrest of the appellant and the recovery of a substantial quantity of hashish (30 kg) from his possession. Their accounts align on material particulars of the incident, including the time, place, and manner of recovery. The defense's contention regarding the non-association of private mashirs, despite the incident occurring in a busy area, was adequately addressed by the learned trial court. It is a settled proposition of law that the testimony of police officials cannot be discarded merely

because they are police employees, especially when no ill-will or animosity is alleged or proven against them. In the present case, the defense failed to establish any animosity between the police witnesses and the appellant that would suggest false implication. The minor discrepancies pointed out, such as the exact distance from Mouladad Phatak or the specific timing of memo preparation, are not of such a nature as to cast serious doubt on the veracity of the prosecution's case, particularly given the passage of time between the incident and the recording of testimonies. Regarding the alleged delay in sending the recovered hashish to the chemical laboratory, PW-3 HC Muhbat Ali Odho's testimony, coupled with PW-4 SIP Sikander Ali Bhutto's account, indicates that the sample, recovered on August 4, 2021, was dispatched on August 6, 2021, and received by the laboratory on the same day. This period does not constitute an inordinate delay that would vitiate the recovery, as correctly observed by the trial court.

13. The appellant's defense, primarily a bare denial and an assertion of false implication due to a dispute with Muhammad Panah, remained unsubstantiated. The appellant neither offered his own testimony on oath nor produced any defense witnesses to substantiate his claim. In cases involving narcotic substances, Section 29 of the Control of Narcotic Substance Act, 1997, creates a presumption of possession against the accused once the prosecution has discharged its initial burden. The appellant failed to rebut this statutory presumption. Furthermore, the legal principle that the driver of a vehicle is responsible for contraband found therein, as relied upon by the trial court, is well-established. The arguments concerning the I/O's failure to produce certain entries or verify the car's ownership documents, while procedural in nature, do not, in the absence of any proven prejudice or mala fide, undermine the core factum of recovery. The trial court correctly noted that in cases of narcotic smuggling, technicalities should be overlooked in the larger public interest if the case is otherwise proven.

14. Having carefully re-evaluated the evidence in light of the grounds of appeal, this Court finds no material contradiction or serious infirmity in the prosecution's evidence that would warrant interference with the well-reasoned judgment of the trial court. The prosecution has successfully established the charge against the appellant beyond a reasonable doubt.

15. The learned advocate for the appellant has sought to rely on the judgment of the Honorable Supreme Court in *Jeehand vs. The State* (2025 SCMR 923), particularly, it appears, for the proposition related to the weighing of contraband or the collective forensic reporting of samples. However, this Court finds that the reliance on the said judgment is misplaced, as the facts and the multitude of fundamental procedural violations that led to the acquittal in *Jeehand's* case are starkly different and far more pervasive than anything alleged or proven in the present case. A careful perusal of *Jeehand vs. The State* reveals that the benefit extended to the accused therein was not merely predicated on the issue of collective forensic reporting of samples but was a culmination of a series of serious and unmitigated procedural violations that collectively cast an insurmountable shadow of doubt on the prosecution's entire case. The Supreme Court meticulously outlined these flaws, which included, *inter alia*, the complete failure of the prosecution to bring on record any documentary evidence to establish safe custody and transmission of the case property, such as the mandatory entry of Register No. XIX or the Road Certificate as contemplated by Police Rules, 1934. Furthermore, the Supreme Court noted the seizing officer's non-compliance with Section 20 of the CNS Act, 1997, regarding search warrants for prior information, and the failure to record the spy information in the police register. Moreover, there was an unexplained deviation from the prescribed procedure for sending samples to the nearest designated laboratory. It was only *in addition to these grave and fundamental flaws* that the issue of the collective forensic report of samples being in violation of established principles was also highlighted. The Supreme Court's decision was expressly based on "serious procedural violations, absence of credible forensic evidence and failure to establish safe custody and transmission," indicating a cumulative effect of these failures.

16. In stark contrast to the factual matrix of *Jeehand's* case, the present appeal presents no such widespread and fundamental procedural irregularities that would vitiate the prosecution's case. As already discussed in paragraph 11 of this judgment, the safe custody and transmission of the recovered hashish to the chemical laboratory were satisfactorily established through the testimonies of PW-3 HC Muhbat Ali Odho and PW-4 SIP Sikander Ali Bhutto. The minor delay in dispatching the sample was found to be inconsequential and not such as to affect the integrity of the recovery. There is no evidence on record to suggest a

scenario of "prior information" that would necessitate search warrants under Section 20 or recording in Register No. II in the manner described in *Jeehand's* case, as the recovery here occurred during a routine patrolling duty and vehicle interception. Nor is there any allegation or finding regarding the bypassing of a nearer designated laboratory without justification. Therefore, any singular point of contention, such as the method of weighing or testing of the contraband, cannot be viewed through the same lens as the composite, fatal flaws identified by the Supreme Court in 2025 SCMR 923. The present case stands on its own merits, with the prosecution having largely complied with the essential requirements of law.

17. In view of the foregoing discussion, this Court is of the considered opinion that the learned trial court correctly appreciated the evidence and arrived at a just conclusion. The conviction and sentence awarded to the appellant are fully supported by the evidence on record and the relevant legal principles. There is no contrary evidence presented that would compel this Court to deviate from the findings of the trial court.

18. Accordingly, the appeal stands dismissed. The judgment of conviction and sentence dated March 31, 2023, passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Jacobabad, in Special Narcotics Case No. 10 of 2022, is hereby maintained. The appellant, Muhammad Nawaz s/o Mehar Dil Raisani Brohi, shall serve out the remainder of his sentence as per the trial court's judgment.

**J U D G E**

**J U D G E**

Asghar Altaf/P.A