

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Appeal No. D-101 of 2024

Before.

**Mr. Justice Amjad Ali Bohio, J.**

**Mr. Justice Khalid Hussain Shahani, J.**

Appellant : Ghulam Yaseen son of Muhbat Jatoi  
Through Mr. Sohail Ahmed Khoso, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 29.10.2025

Date of Judgment : 29.10.2025

Reasons recorded on : 31.10.2025

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J.**— Through this criminal appeal, the appellant Ghulam Yaseen Jatoi has assailed the judgment dated 09.10.2024 passed by learned 1<sup>st</sup> Additional Sessions Judge/Special Judge for CNS/Model Criminal Trial Court, Naushahro Feroze in Special Case No.22/2024, whereby the appellant was convicted for offence under Section 9-E of Control of Narcotic Substances Act, 1997 and sentenced to imprisonment for life with fine of Rs.10,00,000/-.

2. The prosecution case, as per FIR No. 30/2024 dated 23.01.2024, alleges that on the said date at 1600 hours, a police party headed by SIP Ghulam Abbas Umrani intercepted the appellant at National Highway near Taluka Board while he was driving a Mehran Suzuki Car bearing registration No.BEW-703. Upon search of the vehicle, police allegedly recovered two gunny bags containing 50 packets each of charas, totaling 100 kilograms. During personal search, cash amount of Rs.1,500/- and one OPPO mobile phone were allegedly recovered from appellant's possession. The police party had left CIA Center Naushahro Feroze vide entry No.09 at 1500 hours for routine patrolling. At Taluka Board, they received spy information about the said vehicle carrying contraband. The appellant was arrested, memo of arrest and recovery was prepared at the spot, and he was brought to Police Station Naushahro Feroze where FIR was registered at 1800 hours.

3. After completion of investigation, challan was submitted against the appellant. Charge was framed under Section 9-E CNS Act to which appellant pleaded not guilty. During trial, prosecution examined four witnesses: PW-1 SIP Ghulam Abbas Umrani (complainant), PW-2 ASI Safdar Ali Buriro (mashir), PW-3 SIP Muhammad Ishaque Malah (IO), and PW-4 WHC Bux Ali (malkhana incharge). The chemical examination report confirmed the recovered substance as charas. Appellant was examined under Section 342 Cr.P.C. but did not lead any defense evidence. The learned trial court, after hearing both sides, convicted the appellant and awarded the aforementioned sentence.

4. Learned counsel for the appellant contended that the trial court erred in convicting the appellant without applying independent judicial mind. The conviction is based solely on oral evidence without observing, diluting upon the connected material. The prosecution evidence is riddled with material contradictions, omissions, and procedural irregularities which create reasonable doubt in favor of the appellant. Specific contentions raised include: delay of two hours in lodging FIR without explanation; non-production of crucial police entries including Entry No.24 and departure entries; material contradictions in evidence regarding description of contraband, its packaging, and sample preparation; failure to associate private mashirs despite the location being a busy highway; irregularities in dispatch of case property to chemical examiner; and failure to establish safe custody and safe transmission of samples. The defense relied upon case law including 2024 SCMR 1571, and 2023 SCMR 139, arguing that in cases with such contradictions and procedural lapses, benefit of doubt must be extended in favor of the accused.

5. The learned Deputy Prosecutor General supported the impugned judgment contending that prosecution has successfully proved its case beyond reasonable doubt. The recovery of 100 kilograms of charas from appellant's possession is established through consistent evidence of prosecution witnesses. The chemical examination report positively confirms the recovered substance as

narcotic contraband. It was argued that police witnesses are competent witnesses and no animosity has been established against them. Minor discrepancies in evidence do not affect the core of prosecution case. Section 25 of CNS Act excludes application of Section 103 Cr.P.C, hence non-association of private mashirs is not fatal to the prosecution case.

6. We have carefully examined the evidence on record, perused the impugned judgment, and considered arguments advanced by learned counsel for the parties. The prosecution bears the burden to prove its case beyond reasonable doubt, and any doubt arising in the prosecution case must be resolved in favor of the accused.

7. The record of the instant criminal appeal has been subjected to scrupulous examination by this Court, encompassing the oral evidence of all four prosecution witnesses, documentary exhibits, contents of cross-examination, and physical objects produced. This careful review is essential not only to ascertain the reliability of the prosecution's version but also to ensure that the standards laid down by the Supreme Court of Pakistan in narcotics offences are faithfully adhered to.

8. PW-01 SIP Ghulam Abbas, is observed as evasive and inconsistent on fundamental factual matters. He failed to maintain coherence, especially when confronted with the details of sample extraction. Initially, he stated that he had secured 500 (five hundred grams) from each bag, but on further questioning, conceded that only one hundred (100) grams in two parcels constituted the samples. Such wavering on material aspects undermines the reliability of the witness and raises serious questions as to his personal knowledge about the procedure actually adopted. This Court took judicial notice of the contents upon de-sealing and found that substances in the packets differed significantly from the description offered by the witness. Whereas SIP Abbas claimed all packets contained hard, dark brown substances, the sample exhibited in court included

soft as well as hard pieces of various colors including black, red, and brown, which casts doubt upon the prosecution's version.

9. The contradictions are compounded by the testimony of ASI Safdar Ali Buriro, the mashir, who sharply differs from SIP Abbas on at least ten pivotal points, including route taken, time and distance from place of arrest to police station, and custody of the accused. ASI Buriro adamantly denied that any Railway Phatak existed on the route used, contrary to the complainant's account. Both witnesses offered irreconcilable versions as to who took custody of the accused. The distinctions in detail such as the time consumed in weighing the contraband, the duration of stay at various locations, and the very measurements of distance are not easily dismissed as lapses of memory but are material contradictions that go to the root of the prosecution case. Their testimonies regarding the number and size of packets are at odds, and the evidence inspected in court corroborates neither witness.

10. The investigating officer, SIP Muhammad Ishaque Mallah, presented attested copies instead of original register entries, and admitted that no private or independent mashir was associated in any part of the investigation, despite the recovery occurring at a public, busy roadside location. The court finds this absence of independent witnesses a significant flaw, especially in light of the Supreme Court's repeated emphasis on corroboration in matters of grave offences. The malkhana in-charge, WHC Bux Ali Solangi, could not recall the color of sacks or the details of property delivery and, crucially, acknowledged that the relevant malkhana register did not contain the date of issuance, further eroding the credibility of the safe custody documentation.

11. The most critical lapse in the prosecution case emerges from a careful comparison of the Road Certificate, property transmission entries, and the Chemical Examiner's Report. The Road Certificate indicates that samples were dispatched to the chemical laboratory on 25<sup>th</sup> January, but the laboratory receipt records their receipt only on 26<sup>th</sup> January. No explanation, reasonable or

otherwise, is offered by any witness or the investigating officer for this unaccounted period. The prosecution version thereby unravels at its most essential link: the chain of custody and safe transmission of the representative samples stands broken, dubious, and riddled with suspicion. The possibility of substitution, tampering, or contamination during this unexplained interlude cannot be ignored. In narcotics prosecutions, where conviction is substantially grounded upon the analyst's report, such a break in the chain fatally impairs the reliability of that principal piece of evidence.

12. The Supreme Court of Pakistan has laid down a strict interpretation regarding safe custody and chain of custody, holding that from the initial seizure till the receipt at laboratory, every link must be proven safe and secure. It is settled by the august Supreme Court of Pakistan in a series of landmark pronouncements, prominent among them being the judgments in *The State through ANF v. Imam Bakhsh and others* (2018 SCMR 2039) and *Khair-ul-Bashar v. The State* (2019 SCMR 930). These judgments have laid down comprehensive guidelines regarding the mandatory requirements for establishing safe custody and safe transmission of narcotic substances.

13. In the seminal judgment in *Imam Bakhsh's* case (2018 SCMR 2039), the Hon'ble Supreme Court, speaking through the erudite pen of Mr. Justice Asif Saeed Khan Khosa (as His Lordship then was), expounded the law in the following lucid terms:

*"The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic or its representative samples makes the report of the Chemical Examiner fail to justify conviction of the accused."*

14. In the subsequent case of *Zahir Shah alias Shat v. The State* (2019 SCMR 2004), the Supreme Court further emphasized:

*"This court has repeatedly held that safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspicious, safe and secure. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction."*

15. In *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), the Supreme Court again reiterated:

*"The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples of the seized narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. Any break or gap in the chain of custody makes the chemical examiner report unreliable."*

16. Applying the aforesaid principles to the facts of the present case, we find that the prosecution has woefully failed to establish safe custody and safe transmission of the case property through credible and confidence-inspiring evidence. The gaps and lacunae in the chain of custody are so glaring that they render the chemical examiner's report incapable of sustaining the conviction.

17. Additional documentary contradictions abound, including conflicting descriptions regarding the color of the Mehran car, the plastic sacks with contraband, and the actual composition and sizes of sample pieces. The material exhibit, the digital or computerized scale said to be used for weighing, has not been produced at any stage, rendering verification of the claimed recovery weight impossible. The absence of private mashirs where they were both possible and necessary, and the incomplete record of safe custody in malkhana, confirm lapses that are not merely technical but substantive.

18. The cumulative effect of the above brings the prosecution case into serious doubt. The material contradictions between prosecution witnesses, breakage of the chain of custody especially the unexplained one-day delay between the Road Certificate and laboratory receipt as well as non-production of critical evidence, conspire to deprive the prosecution of the certainty required by law. The principle enunciated by the Supreme Court that the benefit of doubt must always be extended to the accused, rather than upholding conviction on conjectural or unreliable evidence, stands squarely attracted in the present case. The prosecution has failed to discharge its burden of proof beyond reasonable doubt, and reliance on the analyst's report, impugned by the broken chain, cannot sustain the conviction. In light of settled jurisprudence, the impugned judgment is/was set aside vide short order dated 29.10.2025. The accused is/was already acquitted from the charge vide short order and these are the reasons followed later on.

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