

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Criminal Appeal No. D-08 of 2026

[Habibullah v. The State]

Before:

Mr. Justice Riazat Ali Sahar

Mr. Justice Ali Haider 'Ada'

Appellant: Through Shahbaz Ali M. Brohi, Advocate.

The State: Through Mr. Aitbar Ali Bullo, D.P.G.

Date of hearing: 03.09.2026

Date of judgment: 03.09.2026

J U D G M E N T

RIAZAT ALI SAHAR, J.- Through the instant Criminal Appeal, the appellant Habibullah son of Abdul Razaq Mahar has called in question the legality, propriety and correctness of judgment dated 20.02.2026 passed by the learned Special Judge for CNS/Sessions Judge, Kashmore at Kandhkot, in Special Case No.27 of 2025, arising out of Crime No.107 of 2025 registered at Police Station B-Section, Kandhkot, for an offence punishable under section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024, whereby he was convicted under section 265-H(2), Cr.P.C. and sentenced to rigorous imprisonment for ten years with fine of Rs.300,000/- and, in default of payment thereof, to further undergo simple imprisonment for two months, with benefit of section 382-B, Cr.P.C. The appellant seeks setting aside of the impugned judgment and his acquittal from the charge.

2. The prosecution case, in brief and in chronological order, is that on 28.07.2025 at 1200 hours SIP Janib Khan, then posted at Police Station B-Section, Kandhkot, left the police station for routine patrolling in a Government vehicle with HC Abdul Khaliq, PC Lehaq

and PC Allah Dad vide departure entry No.16. At about 1400 hours, when the party reached near Akhtiar Laro, SIP Janib Khan allegedly received spy information that a person carrying charas in a blue plastic shopper was present near Allah Wallah Chowk for the purpose of sale. The party reached the pointed place at about 1415 hours and noticed a person holding a blue shopper. On seeing the police, he allegedly ran towards the north but was apprehended after a chase of about 25/30 paces and disclosed his name as Habibullah Mahar. The shopper was searched in the presence of HC Abdul Khaliq and PC Lehaq, who were appointed as mashirs, and two pieces of charas, collectively weighing 1410 grams on a digital scale, were allegedly recovered. A personal search yielded Rs.200/-. The charas was said to have been sealed in one parcel at the spot and a mashirnama of arrest and recovery was prepared.

3. The appellant and the case property were thereafter brought to Police Station B-Section, Kandhkot, where SIP Janib Khan registered FIR No.107 of 2025. At 1600 hours, vide entry No.20, he handed over the appellant, copy of FIR, mashirnama, a sealed parcel said to contain 1410 grams of charas, Rs.200/- and a USB device to SIP Khawand Bux for investigation. The Investigating Officer stated that he delivered the property to WPC Akbar Ali for deposit in the malkhana under serial No.42 of Register No.19. At 1630 hours, vide entry No.21, he proceeded to the alleged place of occurrence; on the pointation of the complainant and in the presence of HC Abdul Khaliq and PC Lehaq, he inspected the place and prepared a mashirnama. Statements under section 161, Cr.P.C. were recorded there and the party returned to the police station at 1830 hours vide entry No.28. The Investigating Officer then addressed a letter to the SSP seeking permission to send the property to the Chemical Examiner. On 30.07.2025 at 0745 hours, vide entry No.30 and road certificate No.104, the parcel was entrusted to PC Muhram Ali for delivery to the Chemical Laboratory at Rohri. He returned at 1950 hours vide entry No.31 and delivered the acknowledged road certificate to the Investigating Officer. A positive Chemical

Examiner's report was subsequently collected and, on completion of investigation, challan was submitted before the competent Court.

4. Upon submission of challan, copies of the relevant documents were supplied to the appellant, receipt whereof is at Exh.01. On 16.10.2025, charge was framed at Exh.02 under section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024, to which the appellant pleaded not guilty and claimed trial through his plea at Exh.02/A. The prosecution examined five witnesses.

PW-1 SIP Janib Khan, complainant and head of the patrolling party, was examined at Exh.03. He narrated the departure at 1200 hours, receipt of spy information near Akhtiar Laro, apprehension of the appellant at about 1415 hours near Allah Wallah Chowk, recovery of two pieces of charas weighing 1410 grams from the blue shopper, recovery of Rs.200/-, sealing of the charas and preparation of the mashirnama. He produced roznamcha entries Nos.16, 18 and 19, the mashirnama of arrest and recovery and the FIR collectively at Exhs.03/A to 03/C. In cross-examination, he stated that the FIR was written by WHC Abdullah within twenty minutes and the mashirnama was prepared by him within twenty minutes; the appellant was first seen from 10/12 paces; the investigation bag was brought by PC Lehaq; and the police remained at the spot for about fifty minutes. He admitted that the place of information and arrest was a busy area and that the appellant was a resident of District Shikarpur. Regarding the USB, he stated that he had recorded a video on his mobile phone but did not remember who converted it into the USB, who purchased the USB, or whether it was sealed; he also admitted that the manufacturer's name was not mentioned. He denied that the appellant had been taken by Police Station Rustum on 22.05.2025, that his custody was later handed over to the Kashmore police, or that the charas had been foisted upon him.

PW-2 PC Lehaq, a member of the police party and mashir of arrest and recovery, was examined at Exh.04. He supported the prosecution version regarding departure for patrolling, receipt of spy information, apprehension of the appellant after a chase, recovery of two pieces of charas weighing 1410 grams and Rs.200/-, sealing of the parcel and preparation of the mashirnama already produced at Exh.03/B. He further deposed that at about 1700 hours SIP Khawand Bux inspected the place in his presence and prepared the mashirnama of place of incident, which he produced at Exh.04/A. In cross-examination, he stated that the appellant was first seen from about fifteen paces; the information was received through a cellular phone; the place of arrest was busy; the property was sealed within twenty minutes; the mashirnama was prepared within thirty minutes; and the party remained there for about fifty minutes. He described a vacant plot to the north, a water canal to the south, a road towards Jhoolay Lal to the east and Allah Wallah Chowk to the west. He admitted that the appellant belonged to District Shikarpur but denied the defence suggestions of prior detention, foisting and preparation of documents at the police station.

PW-3 SIP Khawand Bux, the Investigating Officer, was examined at Exh.05. He deposed that on 28.07.2025 at 1600 hours he received the appellant, papers, a sealed parcel said to contain 1410 grams of charas, Rs.200/- and one USB device from SIP Janib Khan under entry No.20; handed the property to WPC Akbar Ali for deposit in the malkhana; inspected the place of occurrence; recorded statements under section 161, Cr.P.C.; obtained permission from the SSP; sent the parcel to the Chemical Laboratory through PC Muhram Ali on 30.07.2025 under road certificate No.104; collected the positive report and submitted challan. He produced the relevant roznamcha and Register No.19

entries, permission letter, road certificate and Chemical Examiner's report collectively at Exhs.05/A to 05/F, and the USB at Exh.05/G. In cross-examination, he admitted that he did not reweigh the charas; the place of occurrence was a busy area; no statement of an independent person was recorded; the appellant was not previously involved in a similar case; and, significantly, the date and time were not mentioned in entry No.42 of Register No.19. He also admitted that the manufacturer's name of the USB was absent from the entry and met the suggestion regarding later insertion of the USB in the register by denying it. He denied the defence case of prior detention and foisting.

PW-4 WPC Akbar Ali, malkhana in-charge, was examined at Exh.06. He stated that on 28.07.2025 he received from SIP Khawand Bux a sealed parcel of charas, Rs.200/- and one USB device, deposited them in the malkhana and recorded serial No.42 in Register No.19. He referred to the entry already produced at Exh.05/B and identified the property before the Court. In cross-examination, however, he admitted that neither the time of deposit nor the time of delivery of the property to the parcel bearer was recorded in Register No.19. His examination-in-chief did not state when, by what entry, or to whom he released the parcel from the malkhana for dispatch to Rohri.

PW-5 PC Muhram Ali, parcel bearer, was examined at Exh.07. He stated that on 30.07.2025 the Investigating Officer handed him the parcel with road certificate No.104; he left the police station vide entry No.30 at 0745 hours, deposited the parcel with the Chemical Examiner at Rohri, obtained acknowledgment and returned vide entry No.31 at 1950 hours. He referred to road certificate No.104 already at Exh.05/D and identified the property. In cross-examination, he stated that he travelled by Hiace, reached Rohri at about 1100 hours, left there at about 1230 hours

and had received Rs.1,500/- as fare from the Investigating Officer. He denied that he had not deposited the parcel.

5. The prosecution closed its side through statement at Exh.08. The appellant was examined under section 342, Cr.P.C. at Exh.09, where he denied the prosecution allegations and professed innocence. He did not examine himself on oath under section 340(2), Cr.P.C. He, however, produced DW-1 Mst. Hayatan, his aunt, at Exh.10. She stated that on 22.05.2025, between 4:00 and 5:00 p.m., the appellant, together with one other family member, was taken from her house by SHO Police Station Rustum and others on the pretext of inquiry in a theft matter; that they remained concealed at different police stations; and that on 16.07.2025 she filed an application under section 491, Cr.P.C. before the Sessions Court at Shikarpur. According to her, after notices were issued, their custody was passed to the police of District Kashmore and a false case was registered against the appellant on 28.07.2025. She produced the section 491 application at Exh.10/A and the withdrawal statement dated 31.07.2025 at Exh.10/B. In cross-examination, she admitted that the appellant was her nephew but denied that she had filed a false application or was deposing merely to save him. The defence initially closed at Exh.11; its application for reopening at Exh.12 was allowed on 23.12.2025 through order at Exh.13, whereafter it again closed its side through statement at Exh.14 without producing further evidence.

6. By the impugned judgment dated 20.02.2026, the learned trial Court accepted the testimony of the official witnesses as consistent on the material features of recovery and held that PW-3 to PW-5 had established safe custody and transmission of the parcel. It held that section 103, Cr.P.C. stood excluded by section 20 of the Sindh Act; treated video recording as merely advisable and section 17 as confined to pre-planned raids; and rejected the plea of prior detention principally because the section 491 application had been withdrawn and no Court had declared the detention illegal. Holding

conscious possession of 1410 grams of charas proved, the Court convicted and sentenced the appellant as stated in paragraph 1 above, took him into custody, extended section 382-B, Cr.P.C., directed destruction of the contraband according to law and confiscation of Rs.200/- upon expiry of the appeal period.

7. Learned counsel for the appellant contended that the prosecution failed to prove a lawful and genuine recovery beyond reasonable doubt. He submitted that the alleged seizure was conducted by a police Sub-Inspector who, on 28.07.2025, was not shown to possess the rank or authorisation required by sections 17 and 18 of the Sindh Control of Narcotic Substances Act, 2024; the amendment expressly empowering authorised police Sub-Inspectors had not then come into force. He further argued that the admitted busy location supplied ample opportunity to associate a private person, yet none was asked; the alleged video did not satisfy section 17(2) or the law governing electronic evidence because the original mobile device was withheld, the process of copying was unknown, the USB was not shown to have been sealed, and its entry in Register No.19 bore no date, time or identifying particulars. He pointed out that Register No.19 recorded neither the time of deposit nor the release of the parcel, PW-4 did not testify to handing it out, whereas PW-5 claimed receipt directly from the Investigating Officer, thereby leaving a break in malkhana custody. He also relied upon the prior section 491 proceedings instituted on 16.07.2025, twelve days before the shown arrest, and submitted that their subsequent withdrawal could not erase the contemporaneous allegation of police detention. The contradictions regarding distances, timing and eastern boundary of the place, coupled with non-examination of HC Abdul Khaliq, the second mashir, further weakened a recovery resting entirely on official testimony. He prayed that the conviction be set aside and the appellant be acquitted by extending benefit of doubt.

8. Conversely, learned D.P.G. for the State supported the impugned judgment and contended that PW-1 and PW-2 furnished a natural, consistent and confidence-inspiring account of apprehension

and recovery; their minor variations were the ordinary result of truthful recollection. He argued that section 20 of the Sindh Act excludes section 103, Cr.P.C.; official witnesses are competent witnesses and no animus against them was proved; the parcel was deposited through PW-4, dispatched through PW-5 within two days and received by the Chemical Examiner; and the positive report scientifically established that the substance tested was charas. He further submitted that the USB at Exh.05/G corroborated the proceedings, while the defence allegation of detention was belated, interested and unsupported by any judicial finding because the section 491 application had been withdrawn. He accordingly prayed for dismissal of the appeal.

9. We have heard the learned counsel for the appellant as well as the learned D.P.G. for the State and have carefully perused the impugned judgment, evidence available on record and the entire record and proceedings with their able assistance.

10. The prosecution was required first to establish the foundational facts of a lawful seizure, conscious possession, identity of the recovered substance and its unbroken custody up to chemical analysis. A statutory presumption, where attracted, does not relieve the prosecution of that initial burden. In *Ameer Zeb v. The State* (PLD 2012 SC 380), the Honourable Supreme Court emphasized that, because narcotics offences carry severe punishments, the prosecution evidence must be subjected to correspondingly strict scrutiny and the foundational facts must be proved before any reverse burden can operate. The present appeal must be examined against that standard.

11. The first defect goes to the legal competence of the officer who effected the seizure. On the date of occurrence, 28.07.2025, section 17(1) of the Sindh Control of Narcotic Substances Act, 2024 empowered an officer not below the rank of Inspector of Narcotics Control, or an equivalent officer authorised by the Director General Narcotics Control Sindh, to exercise the stipulated powers without

warrant. Section 18, which governs seizure and arrest in a public place, could be exercised only by an officer authorised under section 17. The words later inserted by Sindh Act No.XVII of 2025, empowering a police officer not below the rank of Sub-Inspector when authorised by the Inspector General of Police or the concerned Deputy Inspector General, came into force on 15.08.2025. They were therefore not law on the alleged date of recovery and cannot retrospectively validate an earlier act. SIP Janib Khan was a police Sub-Inspector; no notification or authorisation by the Director General Narcotics Control Sindh, nor any material showing that he was an authorised equivalent officer under the unamended provision, was produced at trial. His exhibits comprised diary entries, the recovery memo and FIR, not the indispensable authority. The learned trial Court did not advert to this temporal and jurisdictional question. The very statutory foundation of the alleged seizure thus remained unproved.

12. The treatment of video recording by the learned trial Court is likewise unsustainable. Section 17(2) uses mandatory language and provides that video recording of all raids, seizures, inspections and arrests shall be made by the officer in-charge of such operations. Section 18 entrusts the public-place power to an officer authorised under section 17. Even if the application of subsection (2) to every spontaneous public-place arrest were assumed in favour of the prosecution to admit of debate, the prosecution itself asserted that a video was made and relied upon the USB at Exh.05/G. It therefore had to prove that electronic record in accordance with law. In *Ishtiaq Ahmed Mirza and others v. Federation of Pakistan and others* (PLD 2019 SC 675), the Honourable Supreme Court held, inter alia, that an audio or video recording must be shown to be genuine and untampered, its source and safe custody must be proved, the person who made it should produce it, and it must be played and properly identified before the Court. *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934) further stressed the value of

contemporaneous video or photographic documentation in narcotics searches and seizures.

13. Here, PW-1 said that he recorded a video on his cellular phone but could not say who transferred it to the USB, who purchased the USB, or whether the device was sealed. The mobile phone containing the original recording was not produced. No witness described the copying process, integrity check, metadata, date or time of the recording, nor does the evidence show that the USB was played and its contents identified in Court. PW-3 admitted that the manufacturer's name of the USB was absent from Register No.19 and faced the specific suggestion that reference to the USB had been added later; more importantly, the same entry contained no date or time. Mere physical production of an unidentified USB could neither establish compliance with the statutory safeguard nor corroborate the disputed recovery. The trial Court treated the very existence of a USB as sufficient while failing to test its authenticity and continuity.

14. It is correct that section 20 of the Sindh Act excludes the application of section 103, Cr.P.C., and absence of a private mashir is not by itself fatal. Nor can the testimony of police officials be rejected merely because of their official status. **Aijaz Ali Rajpar (2021 SCMR 1773), Ajab Khan (2022 SCMR 317), Shazia Bibi v. The State (2020 SCMR 460)** and similar authorities rest upon official evidence which was found trustworthy and whose forensic chain was satisfactorily established. The converse is equally true: statutory exclusion of section 103 does not exempt police evidence from ordinary judicial scrutiny or supply corroboration where its reliability is otherwise in doubt. PW-1, PW-2 and PW-3 each admitted that the alleged place was busy, yet no independent person was examined and no explanation of any attempt to procure one was offered. This circumstance gains relevance, not in isolation, but because the recovery is already clouded by want of authority, a defective electronic record and a documented allegation of prior custody.

15. The chain of custody also contains a material gap. PW-3 claimed that he handed the sealed property to PW-4 for deposit in the malkhana on 28.07.2025. PW-4 supported receipt and deposit, but admitted that Register No.19 recorded neither the time of deposit nor the time when the property was delivered to the parcel bearer. His examination-in-chief did not say that he released the parcel on 30.07.2025, identify the person to whom it was released or refer to any contemporaneous release entry. PW-5, on the other hand, stated that the Investigating Officer directly handed him the parcel. The Investigating Officer did not explain when and under what recorded process he retrieved it from PW-4. Thus, although the relevant office-holders entered the witness box, their evidence did not connect the crucial movement from the malkhana back to the Investigating Officer and then to the courier. The omission is accentuated by PW-3's admission that entry No.42 itself bore no date or time and by the absence from the evidence of any description of the seal impression or custody of the seal after the alleged sealing at the spot.

16. The governing law on this subject is settled. In *Ikramullah and others v. The State (2015 SCMR 1002)* and *The State through Regional Director, ANF v. Imam Bakhsh and others (2018 SCMR 2039)*, the Honourable Supreme Court held that the prosecution must establish safe custody and safe transmission of the seized drug from recovery to the testing laboratory. *Mst. Razia Sultana v. The State and another (2019 SCMR 1300)*, *Zahir Shah alias Shat v. The State (2019 SCMR 2004)*, *Gulzar v. The State (2021 SCMR 380)*, *Mst. Sakina Ramzan v. The State (2021 SCMR 451)*, *Qaiser Khan v. The State (2021 SCMR 363)*, *Javed Iqbal v. The State (2023 SCMR 139)*, *Muhammad Hazir v. The State (2023 SCMR 986)*, *Asif Ali and another v. The State (2024 SCMR 1408)*, *Sarfaraz Ahmed v. The State (2024 SCMR 1571)*, *Muhammad Iqbal v. The State through P.G. Sindh (2025 SCMR 704)* and *Abdul Haq v. The State (2025 SCMR 751)* consistently reiterate that every link must

be affirmatively proved and that an unexplained or undocumented break impairs the reliability of the analyst's report. The present record does not satisfy that requirement.

17. The variations between PW-1 and PW-2 regarding whether the appellant was first seen from 10/12 or fifteen paces, whether sealing took twenty minutes and the memo twenty or thirty minutes, or whether the eastern side led towards Manoo or Jhoolay Lal, would ordinarily be minor and insufficient on their own to discredit an otherwise proved recovery. Their agreement on the broad narrative is also acknowledged. However, their common account cannot cure the distinct legal and evidentiary defects identified above. HC Abdul Khaliq, the second mashir, was not examined, although non-examination of every member of the party is again not independently fatal. It assumes limited cumulative significance because the prosecution case depended exclusively upon official witnesses and the objective recording said to exist was not proved.

18. The defence material deserved a more balanced appraisal than it received. Exh.10/A, an application under section 491, Cr.P.C., was instituted on 16.07.2025, twelve days before the appellant's shown arrest on 28.07.2025. DW-1 entered the witness box, produced that document and was subjected to cross-examination. The document did not conclusively establish illegal detention, and no Court had recorded such a declaration; nevertheless, its evidentiary significance lay in its anterior date. It was not a story devised after the narcotics case. Its withdrawal on 31.07.2025, after the appellant had surfaced in the present FIR, did not erase the fact that a judicial proceeding alleging his prior police custody had already been initiated. The learned trial Court treated withdrawal as nullifying the allegation and treated kinship as making DW-1's evidence inherently suspect. Neither approach was justified. The defence was not required to prove innocence beyond doubt; it needed only to be weighed with the prosecution evidence. PW-3's admission that the appellant had no previous involvement in

a similar case also deprived the prosecution of any antecedent circumstance capable of neutralising this doubt.

19. The positive Chemical Examiner's report at Exh.05/F proves that the substance actually received and tested at the laboratory was charas. It does not, without a secure connecting chain, prove that the tested parcel was the identical parcel allegedly recovered from the appellant. Nor could the appellant's denial under section 342, Cr.P.C., his decision not to testify on oath, or the alleged disclosure to police that he possessed charas for sale fill gaps in the prosecution case. The rule in *Aijaz Ali Rajpar and Ajab Khan* becomes applicable only after the prosecution has produced reliable foundational evidence. The learned trial Court, however, shifted the practical burden to the appellant, regarded the absence of a judicial declaration in the section 491 proceedings as destructive of the defence, and treated the positive report as curing defects that preceded its receipt. The prosecution must stand on its own evidence; weakness of the defence is no substitute for proof.

20. The cumulative position is therefore that the seizure was led by a police Sub-Inspector whose authority under the law then in force was not proved; the mandatory statutory emphasis upon contemporaneous video recording was not met by a legally authenticated electronic record; the original recording device and transfer process were withheld; the malkhana entry bore no date or time and did not document release of the parcel; the oral evidence left unexplained how the parcel moved from PW-4 to the Investigating Officer and then to PW-5; no private person was associated despite the admitted busy place; and a section 491 application alleging the appellant's police detention predated the shown arrest by twelve days. These defects touch the legality and genuineness of the alleged seizure and the identity and continuity of the corpus of the offence. They are mutually reinforcing, not isolated technical irregularities.

21. It is a cardinal principle of criminal jurisprudence that the prosecution must establish guilt beyond reasonable doubt and that even one circumstance creating reasonable doubt entitles the accused to its benefit as a matter of right, not grace. This principle was stated in **Tariq Pervez v. The State (1995 SCMR 1345), reiterated in Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Mansha v. The State (2018 SCMR 772)**, and applied with equal force in narcotics cases through the chain-of-custody authorities discussed above. **Mst. Asia Bibi v. The State (PLD 2019 SC 64)** likewise reaffirms that the burden remains upon the prosecution and that suspicion, however strong, cannot replace legal proof. In the present case there is substantially more than a single doubtful circumstance. The prosecution consequently failed to prove the charge against the appellant beyond reasonable doubt, and the conviction cannot safely be maintained.

22. For the foregoing reasons, the Criminal Appeal was allowed vide my short order dated 03.09.2026, whereby the impugned judgment of conviction and sentence dated 20.02.2026 passed by the learned Special Judge for CNS/Sessions Judge, Kashmore at Kandhkot, in Special Case No.27 of 2025 was set aside and the appellant Habibullah son of Abdul Razaq Mahar was acquitted of the charge by extending to him the benefit of doubt. Since he was in custody, he was ordered to be released forthwith, if not required to be detained in any other custody case.

Above are the reasons for the short order dated 03.09.2026.

JUDGE

JUDGE