IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Shamsuddin Abbasi

Criminal Appeal No.180 of 2026

Appellant	:	*Abdul Samad* through Mr. Mallag Assa Dashti, advocate
The State	:	Mr. Pervaiz Ahmed Memon, Special Prosecutor Customs a/w I.O Sardar Muhammad Zahid of Collectorate of Customs (Exports) Karachi

Date of hearing: 20.08.2026

Date of Judgment: 16.11.2026

JUDGMENT

Omar Sial J. On 04.02.2023, acting on specific intelligence, a Customs team comprising Naeem Memon (Examiner/PW-1), Sepoy Muhammad Wasim (PW-2), Sepoy Basit Kaleem, and officials of the Customs Enforcement Cell examined export salt containers (including Nos. MEDU-1528459 and MSCU-6974797) declared by M/s Arham Enterprises at KICT, Karachi.

2. Container No. MEDU-1528459 contained 480 salt bags (50 Kgs each); upon examination, six bags yielded 12 packets containing a brown powder that tested positive for "Heroin" (gross weight of 24 Kgs). At the scene, PW-1 prepared 36 samples of 10 grams each, sealed them in PVC zip bags within a white cloth bag, separately sealed the bulk case property, and arrested co-accused Ubaid Khalid Kiyani and Muhammad Ali.

3. Subsequent investigation by Appraising Officer Sardar Mohammad Zahid (PW-6) revealed that the salt consignment had been released from a warehouse at Plot No. B-354, P&T Employees Co-operative Housing Society, Sector 13-A, Scheme-33, Karachi. The warehouse owner, Abdul Rauf (PW-

3), along with his brother Abdul Qadir Patel (PW-4), executed an agreement to sell/hand over possession of the warehouse to co-accused Yasin Ghazi on 26.12.2022.

4. Truck driver Nasrullah (PW-5) identified accused Abdul Samad Ghazi as the person who oversaw the loading of the salt consignment onto his truck (No. TKN-992) at the warehouse. Furthermore, call detail records (CDR) dated 04.02.2023 indicated communication between accused Abdul Samad Ghazi and Ubaid Khalid Kiyani, while financial records showed a transaction of Rs. 400,000 transferred from Abdul Samad Ghazi to Ubaid Khalid Kiyani on 09.01.2023.

5. Police arrested the accused, Ubaid Khalid Kiyani and Muhammad Ali, at the spot on 04.02.2023. Accused Abdul Samad Ghazi joined the investigation on 15.03.2023 after obtaining pre-arrest bail. The dates of arrest of Yasin Ghazi and Shah Sajjad are not clear.

6. All the accused pleaded not guilty and claimed a trial. At the trial, the prosecution examined:

PW-1: Naeem Memon (Examiner, Collector of Customs, Karachi)

He testified that on 04.02.2023, following spy information and under the Collector's directions, he, along with Sepoy Mohammad Wasim, Sepoy Basit Kaleem, Enforcement Cell officials, and clearing agent Intikhab, examined containers MEDU-1528459 and MSTU-6974797 at KICT. From container MEDU-1528459, officials recovered 6 salt bags containing 12 packets of light brown "Heroin" powder. The powder was tested (positive); 36 samples (10g each) were extracted and sealed in PVC zip bags inside a white cloth bag; the bulk was sealed; employees Ubaid Khalid Kiyani and Mohammad Ali were arrested; and an FIR was lodged on 05.02.2023. On 06.02.2023, 1 set of samples was forwarded to the Chemical Lab, and the bulk/remaining property was deposited at the State Warehouse under a CGO.

The stated spy information came via Assistant Collector Madam Rabel Khokar. Examination started around 1900 hours and lasted 4–5 hours; the accused admitted that the recovery memo does not mention the presence of private laborers. The KICT office (located 50–60 paces away) prepared the arrest memo. Confirmed the exporter was M/s. Arham Enterprises. Clarified that after recovery, he sealed the Heroin back into the container, later brought it out himself on 06.02.2023, dispatched samples to the chemical lab, and deposited the rest at the State Warehouse.

PW-2: Wasim / Mohammad Wasim (Sepoy, Customs Karachi)

Accompanied PW-1 and Sepoy Basit Kaleem to the inspection yard at 1900 hours on 04.02.2023. Verified recovery of 6 salt bags containing 12 packets of brown powder (gross weight 24 Kgs) from container MEDU-1528459. Witnessed testing, sampling of 36 envelopes (10g each), sealing, and arrest of Ubaid Khalid and another person.

Clarified that 4 persons (including 1 laborer) were present initially. Stated the recovery memo has his full signature while the sample envelopes bear his initials. Stated inspection proceedings were completed around 2300 hours, and the complainant prepared the recovery memo at the KICT office over 1.5 hours.

PW-3: Abdul Rauf (Realtor & Warehouse Owner)

Owned a warehouse on Plot No. B-354, Sector 13-A, Scheme-33, Karachi. Agreed to sell the warehouse to Yasin Ghazi by oral agreement for Rs. 6,10,000/-. Received Rs. 11,50,000/- in installments (22.08.2022 to 11.12.2022) into his brother Abdul Qadir Patel’s bank account, and Rs. 1,38,50,000/- in cash on 11.12.2022. Handed over physical possession of the warehouse to Yasin Ghazi on 26.12.2022.

Admitted IO called him on 15.02.2023. Confirmed the police statement omits details of several oral agreements/installments.

Confirmed the agreement to sell does not bear Yasin Ghazi's signature or the Notary Public's attestation.

PW-4: Abdul Qadir Memon / Patel (Retired Bank Employee)

Brother of PW-3 (Abdul Rauf). Confirmed warehouse sale deal with Yasin Ghazi for Rs. 6,10,000/. Produced bank statement (Meezan Bank, Gulzar Hijri Branch, A/C No. 6253) showing receipt of Rs. 11,50,000/- from Yasin Ghazi.

Visited IO with PW-3. Stated that the neighbor called on 04-05 February 2023 about the Customs team visiting the warehouse. Stated the agreement to sell was signed on 22.08.2022 at Abdul Rauf's office but lacks a date on the face. Stated that the remaining Rs. 6,00,00,000/- in the agreement was a typing mistake.

PW-5: Nasrullah (Trailer Driver)

Employer/master Sanaullah instructed him on 01.02.2023 to pick up an empty container from TPX Sultanabad and proceed to Sohrab Goth warehouse. At midnight, the truck was parked inside the warehouse. At 0500–0530 hours, loaded the container with salt bags. The truck broke down near HBL / Nauras Chowrangi en route to KICT port. The truck was repaired, reached KICT, and was unloaded. Identified the accused, Abdul Samad Ghazi, via video link screen from jail as the person who directed/loaded the containers at the Sohrab Goth warehouse.

Visited IO twice. Confirmed IO showed him two pictures (one filtered, one original) of the accused, Abdul Samad, for identification. Signed Urdu statement at IO's office.

PW-6: Sardar Mohammad Zahid (Investigating Officer)

Assigned investigation on 08.02.2023. Interrogated Ubaid Khalid Kiyani and Mohammad Ali. Ubaid stated that Abdul Samad Ghazi supplied the salt consignment for export. Examined Weboc ID details (belonging to Ahram Enterprises / Shah Sajjad, used via broker Khurram). Tracked the warehouse

to Abdul Rauf/Abdul Qadir and verified the transfer of possession to Yasin Ghazi on 26.12.2022. Interrogated Yasin Ghazi and Abdul Samad Ghazi (who joined after pre-arrest bail on 15.03.2023). Collected the bank statement of Ubaid Khalid Kiyani (Meezan Bank, Two Swords Clifton Branch) showing Rs. 400,000/- received from Abdul Samad Ghazi on 09.01.2023. Collected the CDR for 04.02.2023 showing calls between Abdul Samad Ghazi and Ubaid Khalid Kiyani, and obtained a positive chemical report.

Admitted he did not produce Ubaid Khalid for a judicial confession. Did not obtain a search warrant for the warehouse visit on 13.02.2023. Confirmed that mobile number 0309-0922217 (used for CDR) was registered under Mohammad Siddiq and allegedly used by Abdul Samad Ghazi. Admitted to showing a photo of Abdul Samad (obtained from Facebook) to PW-5 (Nasrullah) before identification, and did not conduct a formal identification parade before a Judicial Magistrate.

PW-7: Mohammad Anas (Contractor). During his examination-in-chief by the Special Public Prosecutor for Customs, Anas states that his neighbor, the accused Yasin Ghazi, hired him on 26 December 2022 to carry out structural alterations on a newly purchased warehouse at Plot No. B-354, Sector-13/A, Post Office Cooperative Housing Society, Scheme-33, for which he was paid Rs. 45,000 in cash.

Anas confirmed that he gave his police statement on 15 February 2023 after another neighbor, Abdul Rauf (the real estate dealer who handed over possession of the warehouse to Yasin Ghazi), asked him to appear. He admits that his written police statement omits the specific date of 26 December 2022, that he has no contractor license, and that no written contract or receipt exists for the Rs. 45,000 cash payment. Finally, Anas notes that he previously built Yasin Ghazi's house in Memon Nagar for Rs. 1,87,00,000—of which Rs. 12,00,000 remains unpaid—and denies the defense's suggestion that Ghazi never assigned him any construction work.

PW-8: Marium Mukhtar (Receiving Officer, State Warehouse, Customs House Karachi)

Deposed that on 06.02.2023, PW-1 (Naeem Memon) brought case property (brown powder: 11 PP bags @ 2 Kgs each, 1 PP bag @ 1 Kg, total 23-24 Kgs) and 24 sealed sample envelopes. Received property under CGO (Exh.12/G) and registered it in the Stock Register under Entry No. SWH-04/2023-N under safe custody.

Received case property in the second half of 06.02.2023. Stated property remained undisturbed. Did not weigh the case property net; weighed it gross. Confirmed both recovery witnesses signed the CGO in her presence.

7. In their section 342 Cr.P.C. statements, the accused professed innocence and denied wrongdoing. At the end of the trial, the learned Special Judge (CNS) No. 2 at Karachi convicted Abdul Samad Ghazi and Yasin Ghazi and sentenced them to life imprisonment and the period spent in jail, respectively. Shah Sajjad, Abdul Qadir, Ubaid Khalid Kayani, and Mohammad Ali were acquitted. Only Abdul Samad Ghazi has challenged his conviction and sentence.

8. We have heard the appellant's learned counsel and the learned Special Prosecutor, Customs. We have also re-appraised the evidence. Our findings and observations are as follows.

OBSERVATIONS AND FINDINGS

9. PW-6 (Sardar Mohammad Zahid) stated at the trial that "*...Khalid Kiyani disclosed that Abdul Samad Ghazi had supplied the consignment of salt for export and they had also exported similar consignment.*" Apart from this statement of a co-accused, no documentary evidence was produced at the trial to show that Ghazi was in any manner connected with the consignment. In fact, it was admitted that the consignment was of Arham Enterprises, with whom no connection of Ghazi was

established. Who, when, where, and from whom the salt consignment was procured was not established at the trial.

10. The prosecution relied heavily on the testimony of PW-5 Nasrullah. Nasrullah testified that the first two containers of salt were loaded on the road outside the warehouse. At the same time, his truck was asked to be parked inside the warehouse, where one person, who was later identified by him through a picture as Abdul Samad Ghazi, along with two laborers, loaded the salt consignment in container No. MEDU-1528459 on his truck No. TKN-992. The identification is sketchy. For one, Nasrullah stated that he had gone to sleep but had seen a person he could not identify directing the loading of the container. The identification came when the investigating officer showed him a photo of a person he had downloaded from Facebook and asked Nasrullah if he was the person, and Nasrullah said yes. No identification parade was held for Nasrullah to identify Ghazi. How did the investigating officer know that Ghazi was the person loading the container? Locating him on Facebook was not satisfactorily explained. How the investigating officer reached and downloaded only one photo of Ghazi amidst the many that must have existed on Facebook was also not satisfactorily explained. No witness described the person loading the consignment. Two other drivers and several labourers were also present at the time, but the investigating officer admitted that, although he recorded section 161 Cr.P.C. statements, they were not made witnesses. The investigating officer made no effort to have those witnesses identify and confirm whether Ghazi loaded the consignment. No reason was given for his absence. Article 129, Illustration (g) would apply here: had the mechanic been examined, he would not have supported the prosecution story.

11. PW-5 Nasrullah’s testimony is also meaningful in another aspect. Nasrullah said that "*...at Nauras Chowrangi near HBL, the axle of my truck broke. I got my truck repaired, and in the evening I drove to the port where I unloaded a container with*

salt bags." The breakdown occurred en route to KICT port near Nauras Chowrangi near HBL Excel on 04.02.2023. The truck and the consignment remained unattended for many hours after loading and before reaching the port. The breakdown in itself is suspicious. No evidence was produced at the trial that the container was sealed. The mechanic who ostensibly repaired the truck was not cited as a witness; however, the investigating officer admitted that he had recorded his section 161 Cr.P.C. statement. No reason was given for his absence. Article 129, Illustration (g) would apply here: had the mechanic been examined, he would not have supported the prosecution story.

12. According to the investigating officer, he had also found a call data record showing communication and a bank transaction of Rs. 400,000 between Ghazi and Kayani. While the investigation connected these financial transfers to the overall dealings of the export consignment, Abdul Samad Ghazi claimed during the investigation that the payments were unrelated to the case, stating that he was working as an auto broker. The sole reason Ghazi was brought into this case was Kayani's statement that Ghazi had booked the consignment. The investigating officer made no effort to verify the truth of the matter. He went along with what Kayani – a co-accused – told him. The investigating officer did not verify whether Ghazi sold Kayani a car or whether, as Kayani claimed, Ghazi had exported a shipment earlier. Be that as it may, a co-accused's statement would not suffice to sustain a conviction.

13. The consignment was seized on 04.02.2023, when Customs officials (led by Complainant Naeem Memon) examined the containers at KICT and recovered light brown Heroin powder from the first container (MEDU-1528459). After the recovery of Heroin, the samples and bulk were sealed, and the contraband was kept sealed back inside the container ("...I sealed it back in the same container until I handed it over to the state warehouse..."). The consignment was then deposited in the State Warehouse on 06.02.2023**.** The consignment and the

samples were left in the container overnight. No guard was placed. No evidence was produced at the trial to prove safe custody. On the morning of 06.02.2023, the investigating officer came to retrieve the case property from the container and then did both: deposited the bulk at the State Warehouse and deposited the samples at the laboratory. In Naeem Memon's words, "It is a fact that after recovery of 'Heroin', I sealed it back in the same container until I handed it over *to the state warehouse on 06.02.2023. On 06.02.2023, I alone went to take out recovered 'Heroin' from the container and, taking it, went to deposit the samples with the chemical lab, and then I directly went to the state warehouse and deposited the remaining samples and bulk of 'Heroin' there.*" Memon did not provide any number or description of the seal. It also seems that Memon took the entire property with him, going to the laboratory first and then to the warehouse. No document showing this movement was produced at the trial.

14. Weak identification, inexplicable absence of material witnesses at the trial (two other drivers, labourers and mechanic), the breakdown of the truck and the consignment left unattended, safe custody compromised, exporter of the consignment Arham Enterprises not even made an accused and no evidence linking Ghazi with the consignment, create a doubt the benefit of which must go to the accused. It is also pertinent to note that the learned trial court itself has taken an exception to the investigation conducted by the investigating officer and asked the Collector of Customs to initiate appropriate action against the investigating officer. The Pakistan Customs makes large seizures, but weak and unprofessional investigations lead to acquittals. This is not the first time that this has happened. This Court, on several occasions, has drawn the attention of the higher-ups to this issue; however, the weakness persists.

15. In view of the above, the appeal is allowed. The appellant is acquitted of the charge. He should be released if not required in any other custody case.

JUDGE

JUDGE