

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Criminal Jail Appeal No. D- 03 of 2025.
(Rashid Ali Makol Vs. The State)

Before:-
Mr. Justice Riazat Ali Sahar,
Mr. Justice Ali Haider 'Ada'

Applicant: Rashid Ali son of Ali Gohar Makol, *through*
Mr. Habibullah G. Ghouri, Advocate.

The State: *Through,* Mr. Nazir Ahmed Bangwar,
Deputy Prosecutor General, Sindh.

Date of hearing: 05.08.2026.

Date of Order: 05.08.2026.

Date of Reasons: 11.08.2026.

JUDGMENT

Ali Haider 'Ada', J:- Through the instant Criminal Jail Appeal, the appellant has assailed the judgment dated 21.01.2025, passed by the learned Sessions Judge/Special Judge, Control of Narcotic Substances (CNS), Larkana, in Special Case No.116 of 2024, arising out of FIR No.59 of 2024, registered at Police Station Taluka, District Larkana, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. By the impugned judgment, the appellant was convicted and sentenced to undergo Rigorous Imprisonment for twelve (12) years, to pay a fine of Rs. 240,000/-, and, in default thereof, to suffer Simple Imprisonment for six (06) months. The benefit of Section 382-B of the Cr.P.C was also extended to him. Feeling aggrieved by the said judgment, the appellant has preferred the instant appeal.

2. Briefly stated, the prosecution case is that while a police party was conducting routine patrolling, the present appellant was allegedly apprehended carrying a black-coloured shopping bag

containing 3000 grams of Charas in six pieces, besides cash amounting to Rs.100/- comprising two currency notes. After completing the prescribed legal formalities, the complainant lodged the instant FIR. Upon completion of the investigation, the challan was submitted before the learned trial Court. After taking cognizance, the learned trial Court supplied copies of the relevant documents to the appellant in compliance with Section 265-C, Cr.P.C, and framed a charge against him on 24.08.2024, to which he pleaded not guilty and claimed trial.

3. In support of its case, the prosecution examined Riaz Hussain, In-charge Malkhana, who produced a plain paper purportedly showing the relevant entry of Register No.19. It further examined the complainant, who produced the departure and arrival entries, memo of arrest and recovery, and copy of the FIR. Thereafter, P.C. Khadim Hussain, the mashir of arrest and recovery, was examined, who also produced the memo of inspection of the place of incident. The prosecution further examined Passand Khan, the dispatch rider, who produced the relevant departure entry and road certificate relating to the transmission of the case property. The first Investigating Officer was also examined, who produced the relevant roznamcha entry and forwarding letter addressed to the Chemical Examiner. Lastly, the second Investigating Officer was examined, who produced the report of the Chemical Examiner. After closing the prosecution side, the statement of the appellant under Section 342, Cr.P.C. was recorded, wherein he denied the prosecution allegations, professed his innocence, and claimed false implication. Thenafter, the learned trial Court convicted and sentenced the appellant through the impugned judgment.

4. Learned counsel for the appellant contended that the prosecution case suffers from material contradictions and serious legal infirmities. He argued that the prosecution failed to establish the safe custody and safe transmission of the alleged narcotics,

particularly because the original Register No.19 was never produced and only a plain paper was tendered in evidence. It was further contended that these defects strike at the very root of the prosecution case and create serious doubt regarding the integrity of the recovered narcotics. He, therefore, prayed that the appellant is entitled to the benefit of doubt and consequent acquittal.

5. Conversely, the learned Deputy Prosecutor General supported the impugned judgment and argued that the recovery was effected from the exclusive possession of the appellant, the prosecution witnesses remained consistent on all material particulars, and the discrepancies pointed out by the defence are merely minor in nature, which do not affect the substance of the prosecution case. He thus prayed for dismissal of the appeal.

6. We have heard the learned counsel for the parties and have minutely examined the entire record with their able assistance.

7. The first glaring aspect emerging from the record relates to the place of occurrence. The prosecution itself has admitted during cross-examination that the alleged recovery was effected near Tharo Dero Curve, which is admittedly a busy public place. Once it stands established that the alleged recovery was effected at a place where independent persons were naturally available, the prosecution was under a legal obligation to associate respectable private witnesses or, at the very least, furnish a plausible explanation for their non-association. The prosecution has failed to offer any such explanation. Although there is no absolute rule of law that evidence of police officials must invariably be discarded in the absence of independent witnesses, yet where the availability of independent witnesses is admitted, and no effort is shown to have been made for their association, such omission assumes considerable significance and adversely affects the credibility of the prosecution version. Reliance in this regard is placed upon **Niaz Ali v. The State (2026 MLD 215)**, **Muhammad Aslam v. The State (2011 SCMR 820)**, **Ghulam Shabir**

and another v. The State (2023 YLR 153), and Arshad Ali and another v. The State (2024 PCr.LJ 1183).

8. Another serious infirmity pertains to the custody of the alleged narcotics. The prosecution sought to establish safe custody of the case property through the evidence of the In-charge Malkhana, who merely produced a plain paper allegedly containing an entry of Register No.19. The original register, maintained in the prescribed official format, was admittedly never produced before the trial Court. Such mode of proof is wholly unsatisfactory and fails to inspire confidence. Recently, the Honourable Supreme Court of Pakistan, in **Irshad Khan v. The State (2026 SCMR 87)**, has specifically deprecated the practice of proving Register No.19 through plain papers instead of producing the original official register. The Apex Court has categorically observed that such irregularity substantially weakens the evidentiary worth of the prosecution case as it creates doubt regarding the actual custody and movement of the case property.

9. The cumulative effect of the above irregularities clearly demonstrates that the prosecution failed to establish an unbroken chain of safe custody and safe transmission of the alleged narcotics from the time of recovery until their receipt by the office of the Chemical Examiner. In narcotics cases, where conviction primarily rests upon the recovered contraband, the prosecution must prove every link in the chain of custody beyond any shadow of doubt. Any missing link or unexplained discrepancy is sufficient to cast serious doubt upon the prosecution case. Reference in this respect may safely be made to **Muhammad Iqbal v. The State (2025 SCMR 704)**, **Abdul Haq v. The State (2025 SCMR 751)**, **Asif Ali and another v. The State (2024 SCMR 1408)**, **Javed Iqbal v. The State (2023 SCMR 139)**, **Qaisar Khan v. The State (2021 SCMR 363)**, **Mst. Sakina Ramzan v. The State (2021 SCMR 451)**, and **Zubair Khan v. The State (2021 SCMR 492)**.

10. There is yet another circumstance creating serious doubt in the prosecution story. According to the prosecution, the recovered Charas weighed 3000 grams and consisted of six separate pieces. Surprisingly, neither the recovery memo nor the oral evidence specifies the individual weight of each piece. Likewise, the report of the Chemical Examiner reveals that the entire contraband was received collectively in one sealed parcel, without explaining whether the six pieces were separately wrapped or packed together in one plastic bag before sealing. The prosecution has also failed to clarify whether the alleged six slabs remained separately identifiable throughout the chain of custody. These unexplained discrepancies create uncertainty regarding the identity and integrity of the recovered substance and render the prosecution version doubtful. Similar views have been expressed in **Bahawal Shaikh v. The State (2025 MLD 840)**, **Sadam Khan v. The State (2025 YLR 327)**, **Ahmed Khan v. The State (2025 PCr.LJ 756)**, **Qalandar Shah v. The State (2021 YLR 2349)**, and **Ansar Abbas alias Pakori v. The State and another (2021 PCr.LJ 138)**.

11. It is a cardinal principle of criminal administration of justice that the prosecution is under a bounden obligation to establish its case beyond reasonable doubt through cogent, confidence-inspiring, and legally admissible evidence. If any single circumstance creates a reasonable doubt in the prosecution case, the accused becomes entitled, to the benefit of such doubt. In this regard, reliance is placed upon the celebrated judgment of the Honourable Supreme Court in **Ahmed Ali v. The State (2008 SCMR 781)**.

12. In the light of the foregoing discussion, we are of the considered view that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The material defects discussed above, when considered cumulatively, create serious doubt regarding the genuineness of the alleged recovery and the

integrity of the chain of custody of the narcotics. Consequently, the appellant is entitled to the benefit of doubt.

13. Accordingly, this appeal is allowed. The conviction and sentence recorded against the appellant by the learned trial Court through the judgment dated 21.01.2025 are set aside, and the appellant is acquitted of the charge by extending him the benefit of doubt. The appellant shall be released forthwith, if not required to be detained in any other case. These are the detailed reasons in support of our short order dated 05.08.2026.

JUDGE

JUDGE

S.Ashfaq/-