

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

Criminal Appeal No.168 of 2026

Appellant : *Abdullah* through Mr. Sajeel Rehman,
advocate

The State : Through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General, Sindh

Date of hearing: 06.05.2026

Date of Judgment: 14.05.2026

JUDGMENT

Omar Sial J. A police party of the Quaidabad police station, led by A.S.I. Ali Nawaz Siyal, on 05.07.2024, acting on spy information, arrested Abdullah when 1020 grams of charas and a pistol were recovered from him. F.I.R. No. 396 of 2024 was registered against him under sections 6 and 9(3)(c) of the CNS Act, 1997.

2. The appellant pleaded not guilty and claimed to be tried. The prosecution examined PW-1 S.I. Ali Nawaz Siyal (complainant); PW-2 P.C. Jahangir (witness to the arrest and recovery); PW-3 Inspector Saleh Mohammad Marwat (investigation officer); PW-4 A.S.I. Saleem Akhtar Mughal (maalkhana in charge). In his section 342 Cr.P.C. statement, the appellant denied wrongdoing and stated that the refusal to pay a bribe to Ali Nawaz Siyal was the reason for the false case.

3. At the end of the trial, the learned Sessions Judge, Malir, on 12.02.2026, convicted the appellant and sentenced him to nine years' imprisonment and a fine of Rs. 80,000/- or a further period of three months' imprisonment.

4. The appellant's learned counsel has focused his argument on breach of safe custody and transmission, while the learned Additional Prosecutor General has supported the

impugned judgment. Our observations and findings are as follows.

5. The memo of arrest and seizure was purportedly made on the spot by PW-1, S.I. Ali Nawaz Siyal. It was witnessed by P.C. Jahangir and P.C. Shah Zaib. The memo records that the one charas packet weighing 1020 grams was recovered from the appellant. Both PW-1 S.I. Ali Nawaz Siyal and P.C. Jahangir, in their examination-in-chief, testified that one piece of charas in a “*block condition*” was recovered from the appellant. PW-1 S.I. Ali Nawaz Siyal, however, acknowledged at the trial that the property seized in Court contained one extra piece of charas which did not find mention in the memo of arrest or the F.I.R. The laboratory report reflects that what was sent to the laboratory for analysis was “*dark brown pieces*”; subsequently opined to be charas. PW-1 S.I.P Ali Nawaz acknowledged in his cross-examination that the large slab of chars that came out from the packet when desealed in court was wrapped in a “*golden/orange color plastic*”. He also acknowledged that a transparent plastic bag had emerged from the desealed parcel, which, like the packing of the charas, also did not find mention in the memo of seizure, or the F.I.R. The transparent plastic shopping bag is unusual because what was sent to the laboratory was charas in a green plastic shopping bag. PW-1 S.I. Ali Nawaz Siyal, while claiming that he authored the F.I.R. and the memo of arrest and recovery, acknowledged at trial that both were in different handwriting. He also acknowledged that his signatures on the memo of arrest and recovery and the memo of site inspection were different. Yet, he claimed that both were his.

6. In **Bahawal Shaikh vs The State (2025 MLD 840)**, it was held by a Division Bench that :

“An accurate description of the commodity seized must be written in the recovery memo. The color and description of the narcotics seized, as well as the description of the packing and any visible marks, signs, photos, logos, and numbers on the seized articles, should be written in the recovery memo. This

description should tally with the description noted by the chemical laboratory when the package is sent to it and then with the case property produced at trial. We are guided by the wisdom of the Supreme Court in the Ameer Zeb case (supra) when it noted, "We, reverently and respectfully, tend to agree with the latter view and would like to add that the rule of thumb for safe administration of criminal justice is: the harsher the sentence, the stricter the standard of proof." Safe custody and transmission will be compromised if the seizure descriptions do not match."

7. PW-4 A.S.I. Saleem Akhtar Mughal (maalkhana in charge) did not produce the original Register XIX at the trial. Instead, an extract from the Register (purporting to be the correct copy) was produced. The extract shows that the case property was deposited on 05.07.2024 and taken out on 08.07.2024. Mughal acknowledged that the deposit and taking-out entries produced in court were unsigned and that he had mistakenly stated in his section 161 Cr.P.C. statement that he had been given the property for safekeeping on 06.07.2024. This does not seem to be a correct record because the case property was produced before the magistrate from which a remand was sought on 06.07.2024. Either the case property was not deposited in the maalkhana by 06.07.2024 (and incorrectly written in the Register XIX as 05.07.2024 or there is no record available that the property was taken out for remand purposes on 06.07.2024 and re-deposited in the maalkhana.

8. Given the above, we are of the view that safe custody and transmission of the case property were not satisfactorily proved at the trial. It is well settled now that a conviction cannot be sustained if the chain of safe custody and transmission is broken. For the safer administration of justice, the appeal is allowed, and the appellant is acquitted of the charge. He may be released if not required in any other custody case.

JUDGE

JUDGE