

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

**BEFORE:
MR. JUSTICE MAHMOOD AHMAD KHAN
MR. JUSTICE MUHAMMAD HASAN (AKBER)**

Criminal Jail Appeal No.D-28 of 2023

Appellant: Mir Muhammad son of Gul Bahar b/c Peecho, through Mr. Muhammad Saad Qureshi Advocate.

Respondents: The State, through Mr. Agha Abdul Hadi, Special Prosecutor ANF.

Date of hearing: 04.03.2025
Date of decision: 04.03.2025

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- Apprehended by ANF officers on spy information on 18.01.2022 at about 1330 hours from near Fazal Sun-City Road, Hala Naka, Hyderabad with 51-kilogram *charas*, the Appellant was booked in F.I.R. No.02/2022 under section 6, 9(c) of the CNS Act 1997, at ANF Police Station. After detailed trial in Special case No.21 of 2022 vide Judgment dated 23.02.2023, wherein the Appellant was ultimately convicted for life imprisonment and fine of Rs.800,000/-. Benefit of section 382-B Cr.P.C. was extended by the learned Model Criminal Trial Court-II/ Special Judge Control of Narcotics Substances (CNS) Act Hyderabad, which Judgment is assailed in this appeal.

2. Learned counsel for the appellant *inter alia* contends that alleged recovery of *charas* was doubtful for the reason that, recovery was not made in the presence of public witnesses since association of public witnesses was necessary when the proceedings were conducted on prior information; and that no photos or videos were taken at the time of alleged recovery; there was no mention of the paper cutter '*tokka*' in FIR or memo of recovery nor was the same produced in evidence; the spy informer was not made a witness; the subject vehicle was not in the name of the accused; Call Dialing Record CDR was not obtained; that statements of prosecution witnesses were contradictory which creates serious doubts regarding the alleged recovery; site map without scale does not show the exact point / location where the police party was present on duty at the time of alleged recovery; the samples of *charas* were not taken properly according to law while

sending for chemical examination; the impugned judgment of learned Court below is based on surmises and conjectures; learned trial Court has failed to appreciate the evidence of prosecution in its true prospective and has prayed that instant appeal be accepted and impugned judgment be set-aside. Reliance was placed on 2023 YLR Note 36.

3. Learned State Counsel vehemently supported the impugned judgment and contended that physical recovery of contraband has been effected from the appellant; that it was kept in safe custody following its recovery until the time it was sent and received in the office of Chemical Analyzer for examination; that the report of Chemical Analyzer is positive; that the applicability of Section 103, Cr.P.C has been expressly excluded under Section 25 of CNSA, 1997; that there is no enmity of any of the prosecution witnesses to depose against the appellant; that prosecution has fully proved its case beyond any shadow of doubt; and that the learned trial Court passed the impugned judgment after appreciating the evidence available on record in its true perspective. Under these circumstances, he prays that the instant appeal be dismissed. He also relied upon section 51 of the CNS Act 1997 and pleaded that cases of narcotics have larger implications being a crime against society. He placed reliance on 2022 SCMR 1145.

4. Heard arguments and perused the record. Prosecution case was that on 18.01.2022, the complainant SI Munir Ahmed of police station ANF Hyderabad received spy information that well-known provincial drug peddler Meer Muhammad is coming in a Mehran car, Registration Number BAP-517 with huge quantity of narcotics and would deliver the same to his customer and he would cross in between 12:30 hours to 13:30 hours from Hala Naka Road towards Fazal Sun City, District Hyderabad and an immediate action would cause his arrest so also recovery of huge narcotics. Upon having such information, the complainant SI Munir Ahmed of ANF police station Hyderabad constituted a raiding party, consisting upon PC Asim Salim, PC Simenon, PC shahid Ahmed, PC Liaqat and driver Imad Ali and left the police station ANF Hyderabad on government vehicle vide Roznamcha Entry No.10 at about 12:30 hours. The raiding party reached at the pointed place Hala Naka Road towards Fazal, Sun-city, District Hyderabad at about 13:10 hours. The said car was found coming and the complainant SI Munir Ahmed gave signal to stop the said car and the car was stopped at the left side of the road. The driver of the car was apprehended with the help of subordinate staff of ANF, Hyderabad by the complainant SI Munir, Ahmed. Passerbys were requested to act as witnesses, but they excused hence from the raiding party of ANF, Hyderabad, PC Asim Salim and PC Simenon were nominated as witnesses of the arrest and recovery proceedings. On enquiry, the apprehended man

disclosed his name as Meer Muhammad son of Gul Bahar Pecchu, and resident of Peecho Dera Jamali, Naseerabad. On further enquiry about the narcotics, he admitted the presence of two white sacks, lying on the backside seat of the floor of the car and he himself produced the same to the complainant SI Munir Ahmad. The complainant opened and checked, both the sacks and in one white sack, he found 25 multi-colour foil pack packets of *charas*, and in the other white sack, he found 26 multi-colour white packets of *charas* therein. Each packet of the *charas* was checked and found two slabs in each packet of *charas*. Each packet was weighed on the electronic scale which became 1 kg of each packet. The total weight of 51 packets became 51 kg. From each packet 10/10 grams of *charas*, total 20 grams *charas* from each packet were separated in 51 brown (*khaki*) envelopes for chemical examination and marked as envelope No.1 to 51 and the sample envelopes were put in white cloth bag and sealed forthwith. After completing legal formalities on the spot, the accused Meer Muhammad along with his property was brought to the police station, ANF Hyderabad, where SI Munir Ahmad lodged FIR No.02/2022 under section 6/9 of the CNS Act 1997 against him.

5. After completing usual investigation, the Investigation Officer submitted charge sheet against the accused Meer Muhammad for his trial, where after R&P of the case were transferred from the court of Sessions Judge Hyderabad to the Model Criminal Trial Court One/Special Judge Control of Narcotics Substance Act Hyderabad for trial. After supply of copies (Exhibit 01), a formal Charge was framed against the appellant on 10.06.2022 (Exhibit 02) to which he did not plead guilty and claimed trial vide his plea (Exhibit 02/A). At the trial, the prosecution examined the following witnesses:

- i. PW-1 Muhammad Aslam Saleem, (who produced memo of arrest and recovery) (Exhibit 03/A);
- ii. PW-2 PC Ameer Hamza (who produced entries, letter address to chemical examiner and road certificate (Exhibit 4/A to 4/D);
- iii. PW-3 S.I. Muneer Ahmad (Exhibit 5) who produced entries, FIR and chemical examiner report (Exhibit 5/A to 5/E);
- iv. PW-4 Inspector Naeem Khan (Exhibit 6).

6. Statement of the appellant under Section 342 of Cr.P.C was recorded on 31.01.2023 after closure of prosecution evidence, wherein all the incriminating material figuring against him at the trial was put to him. The accused pleaded innocence, claiming that the entire prosecution story was fabricated as he was dragged into this false case under *mala fide* intention and that all the prosecution witnesses were officials and were interested. As recorded at Question No.2 in his statement u/s 342 Cr.PC., the appellant admitted that at the time of recovery, the

running paper of the subject car, photocopy of CNIC of one Ghulam Murtaza son of Sain Bux and Suzuki Mehran car, bearing registration No.BAP-517 was also recovered from his possession, because he was a *bona fide* taxi driver and was not carrying any narcotics. The accused neither opted to enter into the witness box as required under Section 340(2), Cr.PC., nor produced defense evidence.

7. Learned Judge Special Court (CNS), Hyderabad after hearing the arguments of learned counsel for both the parties and examining the evidence available on record, convicted and sentenced the appellant / accused, as stated above vide impugned judgment, culminating into this appeal. Detailed facts and evidence have been thoroughly discussed by the learned trial Court. The prosecution case hinges upon statements of PW-1 Muhammad Aslam Saleem, produced memo of arrest and recovery as Exhibit 03/A. PW-2 PC Ameer Hamza produced entries, letter address to chemical examiner and road certificate as Exhibit 4/A to 4/D respectively. PW-3 S.I. Muneer Ahmad as Exhibit 5 produced entries, FIR and chemical examiner report as Exhibit 5/A to 5/E respectively and, PW-4 Inspector Naeem Khan as Exhibit 6. After the closure of prosecution evidence, the statement of accused was recorded under section 342 Cr.P.C. as Exhibit 08. Prosecution has produced 02 witnesses of the occurrence as well as witnesses regarding the safe custody of carrying samples to the office of Chemical Analyzer. The appellant was apprehended on 18.01.2022 while carrying 51-kilogram *charas*. ANF officials separated the samples from each packet in a prescribed manner and sent the same to the Director Laboratories & Chemical Examiner, Government of Sindh. Prosecution has also produced letter to the Chemical Examiner dated 19.01.2022 with Memorandum No.71 and the analysis Report dated 01.02.2022 from Director Laboratories & Chemical Examiner, Government of Sindh, wherein it is concluded that the submitted samples contain “*charas*” (Narcotics) as defined in Section 2 of CNS Act, 1997 on the basis of test(s) performed and protocols of the same are also mentioned on such Report of Chemical Analyst in detail. These witnesses have narrated the prosecution story in a natural manner and remained consistent throughout and their testimony which could not be shattered by the defence despite lengthy cross-examination. No material, document, to establish alleged enmity of the said witnesses with the appellant was brought on record to falsely implicate him in the present case, in absence whereof, such an allegation of foisting of such a huge quantity of 51-kilogram *charas* upon the appellant, could not be accepted.

8. The appellant / accused has not taken any specific defense plea in his statement recorded under section 342, Cr.P.C and in reply to Question as to why PWs have deposed against him, he claimed stated that the entire prosecution

story was fabricated as he was dragged into this false case under *mala fide* intention and that all the prosecution witnesses were officials and were interested. He further pleaded that as recorded at Question No.2 in his statement u/s 342 Cr.PC., the appellant admitted that at the time of recovery, running paper of the subject car, photocopy of CNIC of one Ghulam Murtaza son of Sain Bux and Suzuki Mehran car, bearing registration No.BAP-517 were recovered from his possession, because he was a *bona fide* taxi driver and was not carrying any narcotics. However, neither the accused opted to enter into the witness box as required under Section 340(2), Cr.PC., nor produced defense evidence, nor any material to substantiate his claims. That with respect to the ground of non-association of private witnesses in the recovery process, section 25 of CNS Act specifically excludes applicability of section 103, Cr.P.C. Such conscious exclusion of section 103 Cr.P.C. by the legislature in the cases of narcotics, actually highlights lack of willingness and cooperation from private witnesses to be associated in the process of recovery which, as the casual conduct, symptomatic of social apathy towards their civic responsibility. Such concerns were also expressed by the Supreme Court in '*Salah-ud-Din v. State*' (2010 SCMR 1962) in the following words:

"Reluctance of general public to become witness in such like cases has become judicially recognized fact and there was no way out to consider statement of official witness, as no legal bar or restriction has been imposed in such regard. Police officials are as good witnesses and could be relied upon, if their testimony remained un-shattered during cross-examination."

9. In the case of '*Muhammad Noman Munir*' (2020 SCMR 1257) it was reiterated by the Supreme Court that members of the State functionaries are second to none in their status, and their acts statutorily presumed, *prima facie*, were *intro vires*. Likewise, in '*Zafar v. The State*' (2008 SCMR 1254), police employees were considered as competent witnesses like any other independent witness and it was held that their testimony cannot be discarded merely on the ground that they are police employees. Moreover, on the count of false implication, neither any reason nor any specific allegation of animosity against the raiding party has been provided which could even remotely suggest enmity or ill-will of the force for falsely involving the applicant, as alleged. This satisfactorily responds to the appellant's objection to non-association of private witnesses in the process of arrest and recovery in the present case. As far as the ground of taxi driver is concerned, there was no presence of any passenger in the vehicle at the time of the raid nor any details of any such person were provided by the appellant. Suffice it to say that with regards to minor contradiction alleged regarding time of arrest and recovery from the accused are concerned, the occurrence took place on 18.01.2022, whereas the statements of PWs-1 to 3 in

the Court were recorded on 01.08.2022, 04.08.2022 whereas PW-4 was examined on 12.12.2022 i.e. after around 11 months of the occurrence, hence it cannot be naturally expected that witnesses will give the timing etc. of acts done by them in a very perfect/ accurate manner. Moreover, minor contradictions or improvements in the statement of witnesses, not pointing out towards any material contradictions, would not materially affect prosecution evidence and the same can be over-looked. Reliance in this regard is placed upon '*Anwar Shamim and another v. The State*' (2010 SCMR 1791). Also, in '*Muhammad Shabbir and others v. The State*' (2020 SCMR 1206) the same concerns were expressed by the Supreme Court in the following words:

"It is established law that if the discrepancies are shattering the prosecution story on salient feature then it has substance to intervene on the subject otherwise it has no impact on the veracity of the prosecution story."

10. It is also to be noted that special care and caution is required while dealing with the cases of narcotics, which is not only a menace and a serious crime against the society, but such crime money becomes the back bone and financial source for multiple other crimes in the society including terrorism and anti-state activities which has engulfed the entire country since past decades, in addition to bringing bad reputation to the country in the comity of countries on the global canvass. The Supreme Court of Pakistan has been consistently observing and declaring the menace of drugs as a great threat to the peaceful society and affecting many lives especially those of youngsters, '*Faisal Shahzad v. The State*' (2022 SCMR 905) being one of such efforts.

11. When the prosecution is able to prove its case on its salient features, then unnecessary technicalities should not be allowed to hamper the very purpose of law on the subject. Close analysis of the whole prosecution evidence i.e. recovery of huge quantity of narcotics, separating the samples from each packet in a prescribed manner and sending them to the Chemical Examiner, report of the Chemical Examiner and statements of the prosecution witnesses, when evaluated conjointly, leave no room to come to a different conclusion than what has been arrived at by the learned Court below. The Supreme Court of Pakistan has consistently upheld convictions and sentences awarded in identical cases, including the cases of '*Ajab Khan v. The State*' (2022 SCMR 317), '*Matti Ullah v. The State*' (2020 SCMR 1222), '*Aijaz Ali Rajpar v. The State*' (2021 SCMR 1773) '*Mian Khalid Pervaiz v. The State through Special Prosecutor ANF and another*' (2021 SCMR 522) and '*Shazia Bibi v. The State*' (2020 SCMR 460).

12. Based upon the above analysis, we are of the considered view that the prosecution has successfully proved its case against the appellant beyond any shadow of reasonable doubt. The defense has miserably failed to extract any material discrepancies or contradictions from statements of the prosecution witnesses which could shatter their evidence. Accordingly, instant appeal is dismissed and the Judgment passed by the learned Model Criminal Trial Court-I/ Special Judge Control of Narcotics Substances (CNS) Hyderabad in Special case No.21 of 2022, is upheld. The case property shall be dealt with as directed by the learned trial Court. The record of the learned trial Court be sent down immediately.

13. The above are the reasons for our short order dated 04.03.2025, which was as follows:

"For reasons to follow, the instant appeal is dismissed."

14. Before parting with this Judgment, a word of appreciation for the learned Special Prosecutor ANF, who has ably and professionally pleaded his case before us, with due preparation.

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