

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO
Cr. Jail Appeal No. D-18 of 2023

Date	Order with signature of Judge
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For hearing of main case.

06-03-2025

Mr. Rafique Ahmed K. Abro, advocate for the appellant

Mr. Ali Anwar Kandhro, Additional Prosecutor General for the
State

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Heard arguments of learned counsel for the parties. Reserved
for judgment.


Judge


Judge

Abdul Salam/P.A

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Before:

Mr. Justice Omar Sial

Mr. Justice Khalid Hussain Shahani

Criminal Jail Appeal No.D-18 of 2023

Saddam Brohi

V/S

The State

Appellant: Saddam son of Khud Bux Brohi
Through Mr. Rafique Ahmed K. Abro
Advocate.

State: Through Mr. Ali Anwar Kandhro, Additional
Prosecutor General, Sindh.

Date of Hearing: 06.03.2025

Date of Decision: 11.03.2025

J U D G M E N T

Omar Sial, J.- On 13.08.2022, a police party from the A-Section police station in Shahdadkot was on patrol duty when it stopped and searched Saddam Hussain and recovered three kilograms of charas from his possession. Saddam was arrested and F.I.R. No. 117 of 2022 under section 9(c) of the Control of Narcotic Substances Act, 1997 was registered on the complaint of A.S.I. Ghulam Shabbir. The A.S.I. was the first prosecution witness at trial. The second witness to testify was P.C. Afaq Wadho, who witnessed the arrest and recovery. W.A.S.I. Sher Mohammad, the maalkhana in charge was the third witness at trial. The case's investigating officer, S.I. Altaf Hussain was the fourth witness. P.C. Fayyaz Khoso was the last prosecution witness. He had taken the narcotics from the police station to the chemical analyst. In his section 342 Cr.P.C. statement, the appellant denied any wrong and said he was innocent. He did not appear as his witness or wanted any other person to be a witness to support his stance of innocence.

2. We have heard the learned counsel for the appellant and the learned Additional Prosecutor General. Our observations and findings are as follows.



3. Learned counsel argued that the case was false and that the appellant had been nominated only because he did not pay a bribe to A.S.I. Ghulam Shabbir. He, however, frankly acknowledged that no evidence was led at trial to establish such an allegation. Neither the circumstances nor the reason for the A.S.I. to do so could be elaborated upon.

4. Learned counsel argued that the appellant remained unrepresented at trial and that he had been in prison for nearly five years, and that if the appeal is dismissed on merits, then as an alternate prayer, he sought reduction in sentence.

5. We have considered the fact that the appellant was unrepresented at trial. According to the learned counsel, the appellant was not in a position to engage a private counsel, and he remained unaware that a counsel at state expense could have been provided to him. Article 10(1) of the Constitution provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice. Right to be represented at trial would also constitute an ingredient for a fair trial as envisaged in Article 10-A of the Constitution. We note from the impugned judgment that the appellant was asked whether he would engage a counsel but had declined to do so. The judgment, or any other part of the record, does not indicate whether the appellant also declined to be represented by a counsel appointed at the expense of the State. It would have been appropriate that the appellant's desire to not engage a counsel or have one at State expense act for him was recorded in writing and made part of the record. In the interest of justice, and with the consent of the appellant's counsel and the Deputy Prosecutor General, the case is remanded back to the learned trial court for a *de novo* trial. If the appellant again does not engage a private counsel, one at State expense should be provided to him. If he does not want a counsel at all and wants to himself conduct the trial, he shall be warned of its consequences and then asked to submit his request in writing to the learned Judge. The learned trial court is requested to try its best to conclude the trial expeditiously.

The appeal is disposed of in the above terms.


Judge


Judge 11/3/25

Manzoor