

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 258 of 2024

Present Before:

Justice Zafar Ahmed Rajput

Justice Tasneem Sultana

Appellant : Hafeez Murad s/o Murad Bux
through Mr. Hafeezullah Khan, advocate.

Respondent : The State, through Mr. Abrar Ali Khichi,
Additional Prosecutor-General.

Date of hearing : **17.02.2025**
Date of order : **17.02.2025**

J U D G M E N T

TASNEEM SULTANA, J. Through this appeal, appellant, Hafeez Murad s/o Murad Bux, has assailed the judgment, dated 13.03.2024, passed by the learned VIII-Addl. Sessions Judge/Addl. Model Criminal Trial Court, Karachi-West in Sessions Case No. 06 of 2024, arisen out of F.I.R. No. 449 of 2023, registered at Police Station Mochko, Karachi under sections 6/9-2(6) of the Control of Narcotic Substance (Amendment) Act, 2022, whereby the appellant was convicted for the said offence and sentenced to suffer R.I. for seven years and to pay a fine of Rs. 1,25,000/-, in default thereof, he shall undergo S.I. for six months more. The benefit of section 382-B, Cr. P.C. was extended to appellant.

2. It is alleged that, on 14.10.2023 at 1550 hours, a police party headed by SIP Muhammad Yaseen, during course of patrolling, reached main Hub River Road, Rais Goth, Mochko, Karachi, where they stopped a coach bearing Registration No. BSB-649, Al-Habib Coach, coming from Turbat to Karachi, for checking and on being recovered two packets of Ice (*Methamphetamine*) weighing 2000 gram wrapped with Yellow Tap in brown color polythene bag lying under the driver/appellant's seat. The appellant was arrested under

memo of arrest and recovery, prepared in presence of *mashirs* HC Kashif Ali and PC Nisar Ahmed; for that he was booked in the FIR.

3. On conclusion of usual investigation, police submitted the challan against the appellant. After completing the codal formalities, the Trial Court framed the charge against the appellant, to which he pleaded not guilty and claimed to be tried. In order to substantiate the charge, prosecution examined four witnesses. **PW-1**, SIP Muhammad Yaseen, complainant, examined at Ex.3, who produced entry No. 47, memo of arrest and recovery, FIR, entry No. 25 and memo of place of incident at Ex.3-A to 3-E, respectively; **PW-2**, HC Kashif Ali examined at Ex.4; **PW-3**, SIP Muhammad Mumtaz, Investigating Officer, examined at Ex.5, who produced entries No. 54, 57, 6, letter to Chemical Examiner along with receipt, Chemical Examiner's Report, Entry No. 32, CRO of accused, Entry of Book No. 19, Letter to Incharge Malkhana for depositing property to City Court Malkhana, releasing of vehicle order, dated 18.10.2023, seizing report of bus, Entry No. 37, dated 24.01.2024 at Ex. 5-A to 5-M, respectively, and **PW-4**, H.C Shahbaz Ahmed Khan, Head Moharrir, examined at Ex.7. Statement of the appellant under section 342, Cr. P.C. was recorded at Ex.9, wherein he denied the recovery of Ice from his possession and deposed that police arrested him from Coach, wherein around 45 passengers were traveling with two conductors Salah and Salal and another driver Alauddin. He further deposed that PWs had deposed against him falsely. He, however, neither examined himself on oath, nor even led any evidence in his defence. The trial Court after hearing the learned counsel for the appellant as well as DDPP for the State, convicted the appellant and sentenced him as mentioned above, vide impugned judgment.

4. We have heard the learned counsel for the appellant as well as Addl. P.G and perused the material available on record with their assistance.

5. It is case of the prosecution, as unfolded in his deposition by the P.W-1 complainant, SIP Muhammad Yaseen (Ex.03) that he got the coach stopped at Mochko Check Post and found the coach driver/appellant alone in the coach without any passenger and during checking he recovered alleged Ice lying under the seat of driver/appellant. PW. 2, HC Kashif Ali, *mashir* (Ex. 4) has corroborated the evidence of the complainant. P.W-4, Shahbaz Ahmed Khan, *Head Moharrir* (Ex.07) has deposed that on 14.10.2023, he received one sealed packet of Ice weighing 2 Kg and coach bearing No. BSB-649, thereby he made such entry in book No. 19, Mud No. 258 of 2023, and kept the case property in *malkhana* and parked the coach in the premises of police station. P.W-3, SIP Muhammad Mumtaz, I.O. (Ex-05) has deposed that, on 15.10.2023, he received investigation; visited place of incident at 0650 hours on the pointation of complainant and prepared memo of site inspection; recorded statements of PWs under section 161, Cr. P.C.; on 15.10.2023, he collected case property from Head Moharrir and on 16.10.2023, he deposited the same in the office of Chemical Examiner for chemical analysis.

6. It is matter of record that the alleged bus/coach has not been produced before the Trial Court at the time of recording evidence of P.Ws. PW-3, SIP Muhammad Mumtaz, I.O. visited the place of incident on the pointation of complainant and prepared such memo (Ex. 3/E) but he did not bother to inspect the coach in order to verify as to whether was there sufficient space under the driver seat to keep the alleged recovered Ice. Non-rodution of alleged coach at the time of examination of P.Ws. casts serious doubts in prosecution case.

7. As per prosecution claim, and to utter surprise, the alleged coach reached the pointed place from Turbat, Baluchistan without any passenger,

co-driver and conductor. In his cross examination, PW-3, I.O. showed unawareness about any other driver and conductor in the coach. He responded a question by replying that he did not remember if the appellant being single driver had driven the coach from Turbat to Karachi. It does not appeal to a prudent mind that a passenger carriage would start its travel from Turbat to Karachi without boarding any passenger and having no other co-driver or conductor and would not be stopped at any police, customs and excise posts in its route of more than 650 kilometers for checking purpose.

8. Aforementioned facts of the case lead to inference that the entire exercise of arrest of appellant and recovery of the Ice from his possession in the instant case is highly doubtful. It is now well-settled principle that there is no need to be multiple circumstances creating doubt. If a single circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then accused will be entitled to such benefit not as a matter of grace and concession, but as a matter of right. In the case of Muhammad Akram v. The State (2009 SCMR 230), the Apex Court has held, as under: -

“It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.”

9. For the foregoing facts and circumstances, we are of the considered view that the prosecution has failed to prove its case against the appellant beyond a reasonable doubt by producing reliable, trust worthy and

confidence inspiring evidence, therefore, we allow this appeal. Resultantly, the conviction and sentence awarded to appellant vide impugned judgment, dated 13.03.2024, are set aside and he is acquitted of the charge.

10. Above are the reasons of our short order dated 17.02.2025, whereby the instant appeal was allowed.

J U D G E

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Dated: _____
Faheem/PA