

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Jail Appeal No. D – 56 of 2024

(Sudheer Ahmed Narejo versus The State)

Present:

Mr. Amjad Ali Bohio, J.

Mr. Ali Haider 'Ada', J.

Date of hearing : **18.06.2025**

Date of decision : **18.06.2025**

Mr. Abdul Ghani Abro, Advocate for the appellant
Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General.

J U D G M E N T

Amjad Ali Bohio, J: This Special Criminal Jail Appeal No.D-56 of 2024 is directed by appellant Sudheer Ahmed S/O Muhammad Budhal Narejo, challenging the judgment dated 16.04.2024, passed by learned Additional Sessions Judge-I / Special Judge (CNS), Khairpur in Special Case No.265 of 2023 (Re: The State versus Sudheer Ahmed), arising from Crime No.14/2023, registered at Police Station Faiz Muhammad Narejo, under Section 9(c) of the Control of Narcotic Substances Act, 1997. By the said judgment, the appellant was convicted and sentenced to undergo Rigorous Imprisonment for ten (10) years with a fine of Rs.100,000/-, and in case of default in payment of fine, to undergo Simple Imprisonment for 06 months, with benefit of Section 382-B Cr.P.C.

2. The facts of the prosecution case, as detailed in the FIR No.14/2023 of Police Station Faiz Muhammad Narejo, are that on 07.07.2023, at about 1230 hours, complainant ASI Ghulam Abbas Bugti along with his subordinate staff, namely HC-2745 Abdullah Shar and PC-943 Abdul Hafeez Channar, duly armed and in uniform, boarded a government vehicle bearing registration No. SPE-938, driven by DPC Fateh Din, and left the police station for routine patrolling within the jurisdiction, vide Roznamcha Entry No.03. During patrolling from different places, they proceeded towards Dung Masjid via link road from Kot Mir Muhammad. At about 1300 hours, when the police party reached near Dung Masjid, they saw one person coming on a 125 motorcycle from Kot Pul side. Upon seeing the police vehicle, the said person appeared confused, lost balance, and stopped the motorcycle to the side. On suspicion, the police party alighted from the vehicle and

apprehended him while he attempted to escape. Due to the non-availability of private witnesses from the locality, the complainant appointed HC Abdullah Shar and PC Abdul Hafeez Channar as mashirs. Upon inquiry, the apprehended person disclosed his name as Sudheer Ahmed S/o Muhammad Budhal Narejo, resident of Village Odho Narejo, Taluka Kingri, District Khairpur. A personal search of the accused was conducted by the complainant, during which one strip of charas was recovered from the front fold of his shalwar, and one currency note of Rs.500/- was recovered from the side pocket of his qamees. Thereafter, the motorcycle was also searched, and one strip of charas each was recovered from both side covers of the motorcycle. All three strips of charas were weighed on the spot and found to be 500 grams each, totaling 1500 grams. From each strip, 10 grams were separated and sealed as samples for chemical examination, while the remaining 1470 grams were sealed in one parcel on the spot. When asked about the motorcycle, the accused could not produce any registration documents, and the same was taken into police possession as case property. During interrogation, the accused admitted that he used to smoke charas and also sold it by concealing it in the motorcycle. A memo of arrest and recovery was prepared on the spot in presence of the mashirs. Thereafter, the arrested accused along with the recovered case property and motorcycle was brought to the police station, where FIR was registered on behalf of the State under section 9(c) of the Control of Narcotic Substances Act, 1997.

3. After due investigation, a charge sheet was submitted. Formal charge under Section 9(c) of CNSA 1997 was framed against the accused/appellant, to which he pleaded not guilty and claimed trial. The prosecution examined four (4) witnesses, including the complainant, mashir, and investigating officer. Upon closure of prosecution evidence, the appellant recorded his statement under Section 342 Cr.P.C, denying the allegations and claiming false implication. However, he neither examined himself on oath under Section 340(2) Cr.P.C, nor produced any witness in his defence.

4. The learned trial Court, after hearing both sides and evaluating the evidence, convicted the appellant as noted above. Hence, the present appeal.

5. Learned counsel for the appellant vehemently argued that the entire prosecution case is false, fabricated, and concocted, and that the appellant has been falsely implicated in this case due to ulterior motives. He submitted that the alleged recovery was shown from a public place i.e. link road near Dang Masjid,

during broad daylight, yet no independent or private person was made a witness to the alleged recovery proceedings. He contended that the non-association of any neutral or public witness casts serious doubt upon the veracity of the prosecution story, particularly when the arresting and recovery witnesses are all police officials, who can be treated as interested witnesses in the absence of corroboration. He further argued that the mandatory safeguard of Section 103 Cr.P.C. was disregarded, and though the prosecution seeks protection under Section 25 of the CNS Act, such exemption does not grant a license to the police to conduct proceedings in a wholly one-sided and opaque manner. Learned counsel contended that the evidence of the complainant and recovery witnesses is riddled with contradictions on certain points. He also pointed out that the prosecution failed to prove the chain of safe custody of the recovered charas and there is an unexplained delay in sending the sample to the chemical examiner, which casts a serious doubt on the integrity of the case property. It was also argued that the prosecution has not alleged any motive against the appellant nor has it provided any reason as to why the appellant, a man of previous clean record, would be in possession of 1500 grams of charas. In view of these serious legal and factual infirmities, learned counsel for the appellant prayed for setting aside the impugned judgment and acquitting the appellant of the charge.

6. The learned Additional Prosecutor General argued that the prosecution proved its case through reliable official witnesses and a positive chemical examiner's report confirming recovery of 1500 grams of charas. He submitted that non-joining of private witnesses does not invalidate the proceedings due to Section 25 of the CNS Act, and no mala fide on part of the police was shown. He asserted that the evidence was consistent, trustworthy, and free from material contradictions. Therefore, the conviction deserved to be upheld.

7. We have considered submissions of parties and perused material available on record. Both the mashirs of recovery are police in this case, therefore, utmost caution is required to consider the evidence brought on record. It is alleged that the police party headed by ASI Ghulam Abbas apprehended the appellant when they reached at Dang Masjid at 1300 hours. It was Zuhar prayer time in the month of July, therefore, availability of private persons particularly the people who used to come for prayer but the complainant as well as mashir have deposed that no private person was available instead they tried, which does not appeal to prudent mind. The complainant during his cross examination admitted that there is no

criminal record against the appellant. The complainant and mashir also contradicted the colour of clothes which the appellant was wearing at the time of arrest. According to complainant, the appellant was wearing white colour clothes whereas mashir deposed that he was wearing blue colour clothes. No doubt the aforementioned contradiction is minor in nature but since the alleged recovery was effected from a public place near Masjid at the prayer time and both the mashirs of recovery are police officials, hence, it cannot be discarded.

8. The mashir as well as complainant have also admitted the difference between their signatures as according to complainant his signature over CNIC is quite different from the signature over memo of recovery and FIR, whereas the mashir admitted that his signature over mashirnama of arrest and recovery and signature over inspection memo is different. In spite admission they failed to give any explanation, therefore, prosecution story does not appeal to prudent mind that alleged recovery of contraband charas was recovered in their presence.

9. The prosecution also failed to corroborate safe custody and safe transmission of the case property as according to complainant he handed the case property to SIP Ameer Ali Mahar who during his examination in chief deposed that he received the case property in sealed condition and it was kept in Malkhana of the P.S but he failed to corroborate the entry No.11 (Ex.05) produced by the HC vide which I.O deposited the case property prior to recording evidence of the I.O. The I.O himself contradicted with regard dispatch and depositing the case property with the Chemical Laboratory at Rohri as he during examination-in-chief deposed that he deposited the same through HC Abdullah by keeping entry No.2 at 0900 hours whereas he during cross examination deposed that he only deposited the sample of case property before the chemical examiner and has also admitted that he deposited the case property with delay of three days.

10. Prior to evidence of I.O, the prosecution has also examined the mashir HC Abdullah on 16.01.2024 when he during evidence failed to deposed about single word as to whether the sample parcel was delivered to him by I.O for its delivery to the chemical examiner but subsequently on an application moved by prosecution he was recalled and reexamined and has deposed that I.O handed over sealed parcel for depositing the case property at chemical laboratory Rohri and after delivery of sealed parcel he returned back.

11. During cross examination of HC Abdullah when he was recalled, deposed that he also took three patties to the chemical laboratory where it was seen and

then he returned the sealed parcel containing three patties of charas, thus, it appears that HC Abdullah had taken both the parcels including the sample parcel and after seen the parcel containing three patties of remaining case property, the said parcel was returned whereas Head Moharrar, I.O as well as R.C does not states about delivery of both the parcels to HC Abdullah, hence, evidence of HC Abdullah disconnects the chain of custody with regard to parcel kept in Malkhana and its delivery to the chemical examiner through him has become doubtful and no implicit reliance could be placed upon such chemical report.

12. The evidence of HC Abdullah, if believed, then, R.C No.47935 referring single sample sealed parcel could not be believed to have been delivered to HC Abdullah because according to HC Abdullah he has received the two parcels including the parcel of remaining case property containing three patties which the chemical examiner returned to him after seeing. HC Abdullah though testified R.C No.47935 (Ex.6/F) but failed to explain the fact about the sealed parcel of the remaining case property mentioned in the said R.C, which according to him was delivered and returned back at P.S.

13. We have also re-assessed the prosecution evidence in respect of safe custody and safe transmission of the seized narcotics to the chemical examiner. It is a settled principle of law that in narcotic cases, the chain of custody must be unimpeachably proven, from the time of recovery until the sample reaches the chemical laboratory. The evidence in the present case, however, discloses serious gaps and contradictions in this regard.

14. According to the complainant, ASI Ghulam Abbas, the recovered charas was handed over to SIP Ameer Ali Mahar, who testified to receiving it in sealed condition and placing it in the malkhana. However, this claim remains uncorroborated by the malkhana entry register (Exh.05), which was produced earlier by a head constable but was never verified by any independent or supervisory officer. Further, the Investigating Officer SIP Ameer Ali made conflicting statements as he initially stated during examination-in-chief that he sent the parcel through HC Abdullah with entry No.2 at 0900 hours, but later admitted in cross-examination that he personally deposited the sample after three days' delay. This unexplained delay directly undermines the reliability of the chemical report.

15. Moreover, the testimony of HC Abdullah, the purported dispatcher, further damages the prosecution's case. In his initial examination, he said nothing about

delivering the sealed sample. It was only on recall and re-examination, upon a prosecution request, that he added this detail. Even then, he claimed to have carried two parcels, one containing three patties of charas of the remaining case property and another sample parcel, whereas the relevant Road Certificate No.47935 (Exh.6/F) refers only to one sealed sample parcel. This contradiction suggests either manipulation or miscommunication, which renders the entire chain of custody doubtful and unsafe. The Hon'ble Supreme Court in Zahir Shah alias Shat v. The State (2019 SCMR 2004) has laid down a binding principle that:

“...safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established... any break in the chain of custody... impairs and vitiates the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction.”

16. This Court in the case of Fayyaz Khan v. The State (Criminal Appeal No.329 of 2022) held that if the prosecution fails to prove who received, stored, and transported the sealed samples, the report of the chemical examiner becomes legally insignificant and insufficient to support a conviction under Section 9(c) of CNSA, 1997.

17. Keeping in view the above principles and the discrepancies, delays, and inconsistencies in the present case, we are of the clear view that the prosecution has failed to prove the safe custody and safe transmission of the seized charas to the chemical examiner in a manner that could inspire judicial confidence. As such, no implicit reliance can be placed upon the chemical examiner's report, which forms the central piece of evidence in cases under the CNSA.

18. In view of foregoing discussion, we are of the view that prosecution has not been able to prove the case against the appellant beyond a reasonable doubt, and he is entitled to its benefit. The appeal in hand is resultantly allowed. Appellant Sudheer Ahmed S/O Muhammad Budhal Narejo is acquitted of the charge. He shall be released from the jail forthwith, if not required in any other custody case.

19. The appeal is accordingly disposed of.

20. These are the reasons for my short order dated 18.06.2025.

JUDGE

JUDGE