

## IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Before:

**Mr. Justice Khalid Hussain Shahani**

**Mr. Justice Muhammad Jaffer Raza**

Criminal Jail Appeal No. D-50 of 2021

Appellant: Salman Brohi,  
Through, Mr. Syed Fida Hussain,  
Advocate.  
Respondent: The State  
Through Mr. Nazeer Ahmed Bhangwar, DPG  
Date of hearing 08-07-2025  
Date of judgment 22-07-2025

### **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J:** -- This Criminal Jail Appeal calls into question the judgment of conviction and sentence dated November 24, 2021, rendered by the learned 1<sup>st</sup> Additional Sessions Judge/MCTC/Special Judge for CNSA Kambar in Special Case No.82 of 2021. The Appellant, Salman S/O Shah Muhammad Brohi, stands convicted for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997 (hereinafter referred to as "the CNSA, 1997"), and has been sentenced to Life Imprisonment (Rigorous Imprisonment) along with a fine of Rs. 200,000/-. In default of payment of the fine, he is to undergo further simple imprisonment for two years. The learned trial court, however, rightly extended the benefit of Section 382-B Cr.P.C to the Appellant.

2. The prosecution's case, as unfolded before the trial court, posits that on August 3, 2021, at 7:10 PM, Inspector Saeed Ahmed Jumani (PW-01), the SHO and Investigating Officer, along with his subordinate staff, departed from P.S. Waggan for patrolling. At about 8:00 PM, near Achanak Hotel on Waggan-Kambar Road, they encountered the appellant alighting from a coach with a bag. Upon seeing the police, he attempted to escape but was apprehended. In the presence of official mashirs, the Appellant was

identified as Salman S/O Shah Muhammad Brohi. From the bag, 10,233 grams of charas were recovered, along with Rs. 300/- cash from his personal search. The recovered charas was then sealed into separate parcels, and a memo of arrest and recovery was prepared on the spot. Subsequently, the FIR (No. 61/2021) was lodged at 9:00 PM. A sealed parcel of 2 KGs of charas was dispatched to the Chemical Examiner on August 13, 2021, and a positive chemical report, dated October 6, 2021, confirmed the substance to be charas.

3. The investigation culminated in the submission of the final report (challan) on October 16, 2021. Following the supply of necessary documents, the case was transferred to the learned Special Judge for CNSA Kambar. On November 3, 2021, the charge was formally framed against the Appellant, to which he pleaded "not guilty" and claimed trial. The prosecution, to substantiate its allegations, produced four witnesses during the trial on November 20, 2021. Inspector Saeed Ahmed Jumani (PW-01): The complainant, author of the FIR, and Investigating Officer, who deposed about the entire operation and tendered crucial documentary evidence, including the memo of arrest and recovery, the FIR, and the positive Chemical Examiner's report. PC/409 Aijaz Ahmed Bughio (PW-02): An eye-witness and official mashir, who corroborated the recovery proceedings and signed the memo. WHC Gul Bahar Gopang (PW-03): The Malkhana In-charge, who produced the relevant Malkhana records pertaining to the deposit and dispatch of the case property. PC/1354 Abdul Hafeez Waggan (PW-04): The dispatch official, who testified about carrying the sealed charas parcel to the Chemical Laboratory. Upon the closure of the prosecution's evidence, the Appellant's statement under Section 342 Cr.P.C. was recorded, wherein he denied the allegations and asserted false implication at the instance of his opponents, but did not opt to produce defense evidence or state on oath.

4. Learned Advocate for the Appellant, presented a multi-pronged attack on the impugned judgment. The primary contentions are that the Appellant was innocent, and the case was a fabrication, stating that Inspector Saeed Ahmed Jumani demanded a bribe of Rs. 2 lacs, and upon the Appellant's inability to pay, he was maltreated and falsely implicated. It was contended that the charas was sent to the laboratory after an inordinate delay of 10 days, which cast serious doubt on the integrity of the case property and the prosecution's truthfulness. The learned counsel emphasized that the alleged scene of the incident was a busy public place, yet the complainant failed to associate any private individuals as mashirs, relying exclusively on police officials, thus violating established legal norms and making the recovery doubtful. It was argued that the prosecution's case was riddled with material contradictions in the evidence of police witnesses, who were inherently "interested" parties, thereby rendering their testimonies unreliable and the entire prosecution narrative highly suspect. Finally, a plea was made for the Appellant's acquittal on humanitarian grounds, highlighting his poverty, helplessness, youth, and status as a first offender.

5. Conversely, learned DPG robustly defended the trial court's judgment. He submitted that the prosecution had successfully established every ingredient of the offence through cogent and confidence-inspiring evidence. The ocular accounts of PW-01 and PW-02, coupled with the corroborative testimonies of PW-03 and PW-04, consistently proved the Appellant's apprehension and the recovery of charas. The chain of custody and safe transmission of the case property to the Chemical Laboratory was meticulously proven, and the positive Chemical Examiner's report provided conclusive proof of the nature of the recovered substance. The delay in sending the charas to the laboratory was not fatal, as the relevant provision is directory, not mandatory. He stressed that police officials are credible

witnesses, and in the absence of any proven malice or ill-will, their testimony cannot be discarded. He specifically referred to Section 25 of the CNSA, 1997, which excludes the application of Section 103 Cr.P.C. in narcotic cases, thereby legitimizing the reliance on official mashirs. He also clarified that there is no legal prohibition for a police officer to be both the complainant and the Investigating Officer, as long as no prejudice is caused to the accused. The appellant's defense was a mere denial without any substantive evidence, and his vague allegations of false implication were unsubstantiated. He concluded by urging the Court to uphold the conviction and dismiss the appeal.

6. We have given our anxious consideration to the arguments advanced by the learned counsel for the Appellant and the learned DPG for the State. We have also meticulously re-examined the entire record of the trial court, including the evidence of the prosecution witnesses and the impugned judgment. Our independent assessment leads us to the following conclusions that the prosecution has successfully established the core of its case the apprehension of the appellant and the recovery of 10,233 grams of charas from his possession. The detailed account provided by Inspector Saeed Ahmed Jumani (PW-01), corroborated by the testimony of PC Aijaz Ahmed Bughio (PW-02), is coherent and consistent. Despite lengthy cross-examination, nothing material could be extracted to shatter their credibility regarding the factum of recovery. As observed in *Roshan v. The State*, 2018 P.Cr.L.J Note 26 (Sindh), the evidence of prosecution witnesses, when confident-inspiring, reliable, and trustworthy, especially when supported by a positive chemical report, effectively connects the accused with the commission of the offence.

7. The Appellant's assertion of false implication due to a demanded bribe is a mere allegation, devoid of any concrete proof.

There is no evidence on record to suggest any ill-will, motive, or animosity on the part of the police officials to falsely implicate the Appellant. The prosecution witnesses have withstood cross-examination, and the defense has failed to bring on record any material to establish mala fide against them. This aligns with the principle in *Roshan V. The State (supra)*, where the absence of proven mala fide on the part of ANF officials negated allegations of false implication. The contention regarding the non-association of private mashirs is squarely addressed by the specific provisions of the CNSA, 1997. Section 25 of the CNSA, 1997, explicitly excludes the application of Section 103 Cr.P.C. in cases falling under this Act. Furthermore, as reiterated in *Roshan v. The State (supra)*, and drawing support from cases like *Muhammad Arif @ Mama Vs. The State* (2002 MLD 1933) the non-citing of public witnesses is not fatal to the prosecution's case, especially when private persons refuse to act as witnesses or no mala fide is shown against official witnesses. The evidence of police officials, when credible, is sufficient for conviction.

8. The argument concerning the 10-day delay in sending the charas to the laboratory does not, in our view, undermine the prosecution's case. The law consistently holds that the provision for dispatching narcotic substances to the laboratory within a specific timeframe (e.g., 72 hours) is directory and not mandatory. What is paramount is the integrity of the chain of custody and the authenticity of the chemical report. In the present case, the testimonies of the Malkhana In-charge (PW-03) and the dispatch official (PW-04) convincingly established the safe custody and untampered transmission of the sealed parcel. The positive Chemical Examiner's report (Exh-3/G), which was neither questioned nor disputed in its worth or legality, definitively confirms the substance to be charas. This is consistent with the judicial view in *Roshan v. The*

*State (supra)*, where a positive chemical report significantly corroborated the recovery. Despite the claims of material contradictions, a close scrutiny of the testimonies reveals no major discrepancies that would be fatal to the prosecution's narrative. The witnesses have largely deposed in line with each other, supporting the prosecution case. The defense's failure to make any significant dent in the prosecution story through lengthy cross-examination further fortifies the reliability of their evidence. As held in *Roshan v. The State (supra)*, if not a single major contradiction is brought on record, the testimony of ANF officials cannot be discarded.

9. The contention that the complainant (Inspector Saeed Ahmed Jumani) also acted as the Investigating Officer is legally untenable. As pronounced by the Honourable Supreme Court in *Zafar v. The State (2008 SCMR 1254)*, and affirmed in *Roshan v. The State (supra)*, there is no prohibition in law for a police officer to investigate a case lodged by himself, so long as it does not prejudice the accused. No such prejudice has been demonstrated in this case. The Appellant's statement under Section 342 Cr.P.C., wherein he admits being arrested by the police at the specified time and location, inadvertently corroborates a crucial aspect of the prosecution's case. His general denial and unsubstantiated claim of false implication at the instance of unnamed "opponents" are improbable and appear to be an afterthought, lacking any supporting evidence.

10. As for the sentence, the recovery of 10,233 grams of charas falls squarely within the ambit of the proviso to Section 9(c) of the CNSA, 1997, which mandates that if the quantity of narcotic exceeds ten kilograms, the punishment shall not be less than imprisonment for life. The sentence awarded by the learned trial court is, therefore, in strict conformity with the law. The plea for

reduction on humanitarian grounds, while understood, cannot override the mandatory provisions of the law, especially considering the grave nature and societal impact of narcotics offences, as guided by sentencing policies laid down by superior courts.

11. In light of the foregoing comprehensive analysis, we find that the learned trial court has meticulously appreciated the evidence, correctly applied the law, and reached a well-reasoned and unassailable conclusion. The impugned judgment does not suffer from any illegality, gross irregularity, or infirmity warranting interference by this Court. The Appellant has failed to make out a case for acquittal or reduction of sentence.

12. For the reasons articulated above, the Criminal Jail Appeal No. D-50 of 2021 filed by Salman S/O Shah Muhammad Brohi is hereby dismissed. The judgment of conviction and sentence dated November 24, 2021, passed by the learned 1st Additional Sessions Judge/MCTC/Special Judge for CNSA Kambar, is maintained in its entirety. The Appellant shall serve out the remainder of his sentence as per law. Let a copy of this judgment be immediately transmitted to the Superintendent, Central Prison, Correctional Facility Larkana, for compliance and record. The original record and proceedings shall be returned to the trial court forthwith.

**JUDGE**

**JUDGE**