

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Spl. CrI. Appeal No. D-22 of 2025

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Nadeem Ali son of Hamzo Khan Banbhan  
Through Mr. Zaheer Ahmed Ujjan

Respondent : The State through Mr. Mansoor Ahmed  
Shaikh, DPG

Date of hearing : 13.08.2025  
Date of short order : 13.08.2025  
Reasons recorded : 15.08.2025

## JUDGMENT

**KHALID HUSSAIN SHAHANI, J**— This appeal has been preferred under Section 48 of the Control of Narcotic Substances Act, 1997, read with Section 410 of the Code of Criminal Procedure, 1898, challenging the conviction and sentence dated 12.03.2025, passed by the learned Additional Sessions Judge (MCTC), Mirwah in Special Case No. 58/2024, whereby the appellant, Nadeem Ali Banbhan, was convicted for offence under Section 9(3)(b) of the Control of Narcotic Substances Act, 1997 and sentenced to undergo five (05) years rigorous imprisonment with a fine of Rs. 50,000/- and in default thereof, three (03) months simple imprisonment.

2. As per prosecution theory, on 09.07.2023, ASI Liaquat Ali of Police Station Mirwah, accompanied by PC Altaf Hussain, PC Nazir Ahmed, and driver DPC Muhammad Siddique, departed their station at 16:30 hours vide daily diary entry No. 18 for routine patrolling and snap checking. The prosecution narrative alleges that after patrolling at Nandhi Thari, the police party proceeded to Liaquat Abad Bridge where they commenced snap checking operations. During this purported checking, the police party observed a person approaching on a motorcycle from the direction of Tarko. Upon seeing the police, this individual allegedly attempted to turn back, whereupon he was apprehended at about 1730 hours. The complainant claimed to have discovered a black shopping bag positioned on the fuel tank of the motorcycle in the lap of the accused. Upon search of this bag, one slab and one piece of charas, collectively weighing 550 grams, were allegedly recovered. Additionally, a

personal search of the accused yielded currency notes totaling Rs. 150/- and a knife with wooden handle.

3. The FIR was subsequently registered at 1900 hours bearing crime No. 148/2023, offence under Section 9(3)(b) of the CNSA, with completion at 1930 hours. The following day, the place of incident was inspected, and the investigation proceeded through the statutory channels culminating in the submission of the final challan.

4. The trial court, after supplying copies of police papers to the accused, framed charge under Section 9(3)(b) CNSA at Exhibit 5, to which the appellant pleaded not guilty at Exhibit 6. The prosecution, in support of its case, examined four witnesses including PW-1 ASI Liaquat Ali (Complainant) testified comprehensively regarding the circumstances of arrest and recovery. He produced documentary evidence including daily diary entries, memo of arrest and recovery, and the FIR. His testimony formed the cornerstone of the prosecution case, detailing the sequence of events from departure from the police station to the registration of the FIR. PW-2 PC Altaf Hussain (Mashir) corroborated the complainant's version and additionally produced the memo of visiting the place of incident. His role as an official witness was crucial given the absence of private witnesses. PW-3 ASI Iran Ali (Warehouse Incharge) testified to receiving the case property in sealed condition and maintaining it in the police malkhana under register No. 19 at S.No. 40. PW-4 SIP Ashique Ali (Investigating Officer) deposed regarding the investigation conducted, statements recorded from witnesses, the alleged confession of the accused, and the submission of samples for chemical examination. He produced the chemical examiner's report and other investigation related documents. Following the closure of prosecution evidence, the statement of the accused was recorded under Section 342 Cr.P.C. at Exhibit 12, wherein he denied all allegations and claimed false implication by the police. The accused neither examined himself on oath nor produced any defense evidence. The learned trial court, after evaluating the evidence and hearing arguments, convicted the appellant, finding the prosecution witnesses to be "trustworthy, straightforward, and convincing." The court dismissed the defense contentions regarding contradictions as "minor in nature" and held that the absence of private witnesses was not fatal to the prosecution case. The conviction was based on

the court's assessment that the prosecution had successfully proved the recovery of 550 grams of charas from the appellant's possession.

5. The learned counsel for the appellant has assailed the impugned judgment on multiple grounds, contending that the conviction is based on fundamentally flawed evidence and violates established legal principles. The principal arguments advanced are that the appellant's counsel has highlighted irreconcilable contradictions in the testimony of prosecution witnesses, particularly regarding the duration of the personal search of the accused. PW-1 stated that the personal search was "completed within 20/25 minutes," while PW-2 testified that the "ASI had conducted personal search of accused within 2/3 minutes." This stark contradiction on a material procedural step undermines the credibility of both witnesses and raises serious questions about the veracity of their testimony. The complainant's admission that the "hand writing of daily diary is different from the hand writing of memo of arrest and recovery" suggests potential fabrication or ex post facto preparation of documents. Furthermore, discrepancies in register entries (S.No. 38 versus S.No. 40) and the failure to record serial numbers of recovered currency notes demonstrate a compromised chain of custody. Relying on the Supreme Court's pronouncement in *Imam Bakhsh* (supra), the appellant contends that the chemical examiner's report lacks the mandatory "full protocols" required under Rule 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001. The report merely states a positive result without detailing the testing methodology, rendering it legally inconclusive and unreliable. The investigation suffers from multiple deficiencies including failure to conduct medical examination of the accused, non recording of statements from local residents regarding the accused's character; inadequate verification of motorcycle ownership; absence of independent corroboration despite the public nature of the alleged incident location; the examination of the accused under Section 342 Cr.P.C. was perfunctory and failed to confront him with material evidence, including the case property, motorcycle ownership issues, and circumstances of arrest. This violates the accused's fundamental right to fair trial under Article 10-A of the Constitution.

6. The learned Additional Prosecutor General, defending the conviction, has submitted that the prosecution witnesses, being police officials with no demonstrated animosity toward the accused, are entitled to the same

credence as private witnesses. Their testimony regarding the material facts of arrest and recovery remained consistent despite extensive cross-examination; the contradictions highlighted by the defense are minor and do not affect the core prosecution narrative. Such trivial discrepancies are natural in human testimony and do not vitiate the prosecution case when witnesses corroborate each other on material particulars. All requisite procedures for recovery, sealing, and transmission of case property were followed. The chemical examiner's report confirms the presence of charas, and any procedural lapses are not fatal to the prosecution case. Citing *Faisal Shahzad v. The State* (2022 SCMR), the State contends that courts should adopt a dynamic approach and not acquit accused persons on mere technicalities when the prosecution has established its case on salient features.

7. Having carefully considered the arguments of both parties and meticulously examined the evidence on record, this Court finds itself constrained to conclude that the prosecution has failed to discharge its burden of proof beyond reasonable doubt. The conviction cannot be sustained in light of the manifold defects and irregularities that permeate the prosecution case. The case presents a paradigmatic example of the prosecutorial challenges inherent in narcotic offenses, where the entire edifice of conviction rests upon the testimony of police officials, the integrity of the chain of custody, and the reliability of scientific analysis. The instant appeal compels this Court to examine whether the prosecution has discharged its burden of proof beyond reasonable doubt in accordance with the stringent standards established by the superior judiciary.

8. The contradiction regarding the duration of personal search is not a minor discrepancy but a fundamental flaw that strikes at the heart of the prosecution case. The difference between 2-3 minutes and 20-25 minutes for the same procedural step is so material and substantial that it renders the testimony of both witnesses unreliable. As held by the Supreme Court in *Arshad Hussain v. The State* (2011 SCMR 1400), "material contradictions in the testimony of prosecution witnesses create reasonable doubt which must be resolved in favor of the accused."

9. The inability of prosecution witnesses to recall basic facts such as the time of arrival at the place of incident and duration of stay raises serious questions about whether their testimony is based on actual recollection or

manufactured evidence. The Honourable Supreme Court of Pakistan in different cases had been pleased to observe that witnesses who claim to recall minute details while failing to remember basic facts often betray the artificial nature of their testimony.

10. The landmark judgment in this context is placed upon case of *Muhammad Amir and others V. The State (2020 MLD 1777)*, wherein the Division Bench of this Court has held as under:-

*“13. It is further observed that as per record, the weapons allegedly recovered from the appellants on 29.06.2019, but the same were received to the office of the Assistant Inspector General of Police, Forensic Division, Sindh, Karachi, on 02.07.2019 after delay of about two (2) days for which no explanation has been furnished by the prosecution. Moreover, the pistols and bullets were retained by whom during this intervening period has also not been explained by the prosecution. For the sake of arguments, if it is assumed that the case property was lying in the Malkhana then no report/entry of the Malkhana has been produced to corroborate the version of prosecution. No official from Forensic Division has been examined in this case. I.O. nowhere has deposed about safe custody of the empties and pistol at Police Station and their safe transmission to the Ballistic Expert, as such positive report of FSL would not improve the case of prosecution. Law is well-settled by now that prosecution is under legal obligation to prove the safe custody of the recovered weapon and its safe transmission to the Forensic Science laboratory as held by the honourable Supreme Court in the case of *Kamal Din alias Kamala v. The State (2018 SCMR 577)*. In the present case appellant Amir received injury whereas neither any police personnel or police mobile received any bullet when it is asserted by P.W PC Mubarak Ali that accused made straight fires upon them from front side. Based on the evidence led, we are of the view that the prosecution story regarding a police encounter does not appeal to logic and the benefit of the doubt must go to the accused.”*

11. In the instant case, the chain of custody is demonstrably compromised. The admission by PW-1 that the handwriting of the daily diary differs from that of the recovery memo raises the serious possibility of ex post facto document preparation. This is further compounded by the contradictory register entries (S.No. 38 by the IO versus S.No. 40 by the WHC) and the failure to record serial numbers of currency notes. Such irregularities render the chain "suspicious" within the meaning of Imam Bakhsh. The evidence fails to establish a clear, unbroken chain from recovery to chemical examination. The discrepant register entries alone are sufficient to cast doubt on the safe custody

and transmission of samples, as required by the Supreme Court in *Zahir Shah v. The State* (2019 SCMR 2004).

12. The IO's admission that the accused was not medically examined represents a significant investigative failure. Medical examination serves as an independent safeguard to establish the accused's condition at the time of arrest and can corroborate or contradict claims of voluntary confession or physical evidence. The failure to record statements from local residents about the accused's character, despite the IO's admission that this was not done, represents a fundamental investigative lapse. In cases where the entire prosecution rests on police testimony, character evidence becomes crucial for a complete investigation. The superficial investigation into motorcycle ownership, particularly when the actual owner (Allah Dad Banbhan) was acquitted in absentia, raises questions about the thoroughness of the investigation and the circumstances of the alleged arrest.

13. The examination of the accused under Section 342 Cr.P.C. was fundamentally defective. The accused was not confronted with the case property allegedly recovered from him; questions about motorcycle possession and ownership; the circumstances of his alleged confession to the IO; material contradictions in prosecution witnesses' testimony. This violates the principle established in *Tariq Pervez v. The State* (1995 SCMR 1345) that the accused must be given a fair opportunity to explain incriminating evidence. The perfunctory examination denies the accused his constitutional right to fair trial under Article 10-A.

14. The prosecution's case rests entirely on the testimony of police officials with no independent corroboration. While police testimony is not per se inadmissible, the Supreme Court in number of cases had held that such testimony must be scrutinized with greater care, particularly when it suffers from internal contradictions and procedural irregularities as in the present case.

15. The overall discussion arrived at conclusion that the prosecution has miserably failed to prove the guilt against present appellant beyond shadow of any reasonable doubt and it is a well-settled principle of law that for creating the shadow of a doubt, there should not be many circumstances. If a single circumstance creates reasonable doubt in the prudent mind, then its benefit is always extended in favour of the accused not as a matter of grace or concession,

but as a matter of right. In this respect reliance is placed on the case of *Muhammad Mansha v. The State (2018 SCMR-772)*, wherein the Hon'ble Supreme Court of Pakistan has held that:-

*“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)”.*

16. The claim that Liaquat Abad Bridge is a public place where no private witnesses were available is contradicted by the IO's own admission that it is a "busy road." The failure to secure any independent witness in such circumstances raises further suspicions about the genuineness of the alleged recovery. The individual defects identified above might, in isolation, be capable of explanation or excuse. However, their cumulative effect creates such reasonable doubt as to render the conviction unsafe. As held in *Javed Iqbal v. The State (2023 SCMR 139)*, "a broken chain of custody is by itself sufficient to extend the benefit of doubt to the appellant."

17. In the present case, we have the fundamental testimonial contradictions; Compromised chain of custody; legally deficient chemical report; Investigative failures; Procedural violations and the absence of independent corroboration. The confluence of these defects renders the prosecution case fundamentally unreliable. In *Asif Ali and another v. The State (2024 SCMR 1408)*, the Supreme Court reiterated:

*"In the cases under CNSA, 1997 it was the duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of sample parcels to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing, the benefit of the same has to be extended to the accused."*

18. After exhaustive analysis of the evidence and applicable legal principles, we conclude that the prosecution has comprehensively failed to prove its case against the appellant beyond reasonable doubt. The conviction is

based on evidence that is internally contradictory on material facts i.e. procedurally defective in violation of established safeguards, legally insufficient under mandatory requirements, investigatively flawed due to multiple omissions and constitutionally problematic in terms of fair trial rights.

19. The principle that "it is better that ten guilty persons escape than one innocent person suffers" remains a cornerstone of our criminal justice system. When the prosecution case suffers from such fundamental defects as are present in this case, the only course consistent with justice is acquittal. The trial court's characterization of these defects as "minor contradictions" represents a fundamental error in law and fact. The court failed to apply the stringent standards mandated by the Supreme Court for CNSA prosecutions and overlooked the cumulative effect of the prosecution's failures.

20. The Special Criminal Appeal was allowed, vide short order dated 13.08.2025 and impugned judgment of conviction and sentence dated 12.03.2025, passed by the learned Additional Sessions Judge (MCTC), Mirwah in Special Case No.58/2024, set-aside. The appellant, Nadeem Ali Banbhan, acquitted of the charge under Section 9(3)(b) of the Control of Narcotic Substances Act, 1997 with directions to be released forthwith if not required in any other custody case vide short order dated 13.08.2025. These are the detailed reasons thereof.

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