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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Before:

Mr. Justice Omar Sial

Mr. Justice Khalid Hussain Shahani

Criminal Jail No.D-21 of 2023

Gul Bahar Jattak

V/S

The State

Appellant: Gul Bahar son of Rahim Bux Jattak
Through Mr. Rukhsar Ahmed M. Junejo,
Advocate.

State: Through Mr. Ali Anwar Kandhro, Additional
Prosecutor General, Sindh a/w Naeem
Ahmed Sahito, Deputy Secretary (Admn-I),
Excise, Taxation and Narcotics Control
Department and Habibullah Qazi,
Complainant, AENCO of P.S Excise Town,
Shikarpur.

Date of Hearing: 18.03.2025

Date of Decision: 20.03.2025

JUDGMENT

Omar Sial, J.- On 05.09.2018, a team of the Excise police, acting upon spy information, stopped and checked a Datsun vehicle being driven by Gul Bahar. Seventeen kilograms of charas were recovered from the vehicle. Gul Bahar was arrested, and F.I.R. No. 2 of 2018, under section 9(c) of the Control of Narcotic Substances Act, 1997, was registered at the Excise Town police station in Shikarpur.

2. Gul Bahar pleaded not guilty and claimed to be tried. The prosecution examined Habibullah Qazi (the complainant) and Qadir Bux Awan (who witnessed the arrest and recovery) at trial. In his section 342 Cr.P.C. statement, Gul Bahar professed innocence and denied any wrong done.

3. At the end of the trial, the 1st Additional Sessions Judge, on 07.08.2023, convicted Gul Bahar for an offense under section 9(e) of the Control of Narcotic Substances Act, 1997, and sentenced him to life imprisonment and a fine of Rs. one million. The appellant professed

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innocence in his section 342 Cr.P.C. statement and stated that he had been picked up by the police three days before his arrest was shown. He had been detained by witness Habibullah, who demanded a bribe to release him. The false case was registered because he did not have the requisite money. Noor Shah and Ahmed Nawaz appeared as a witness for him.

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

5. At the outset, the learned counsel submits that the conviction cannot be sustained as the prosecution had failed to prove an unbroken chain of safe custody and transmission.

6. The seizure was made at 2:00 p.m. on 05.09.2018 and put in the maalkhana. The testimony of witness Qadir Bux Awan shows that the case property was given to E.C. Riaz Ali on 06.09.2018 to take to the laboratory. He traveled on buses with the case property, and the chemical report shows that the laboratory received the property on 07.09.2018. Neither the maalkhana in charge (who remained unidentified) nor E.C. Riaz Ali was examined. Neither was the original Register 19 produced at trial. The learned Additional Prosecutor General conceded that neither the in charge of the maalkhana where the narcotics were deposited, nor the courier was examined at trial. However, his stance was that the non-appearance at the trial of the maalkhana in charge and the courier would not adversely impact the prosecution case. He relied on a judgment reported as **Zain Ali vs The State (2023 SCMR 1669)**. The learned prosecutor is correct that the Supreme Court took a different view in this case. With much respect and humility, however, we are swayed towards the series of judgments passed by the Supreme Court before and after the judgment in the *Zain Ali* case. Reference may be made to **Sarfaraz Ahmed vs The State (2024 SCMR 1571)**, **Asif Ali vs. The State (2024 SCMR 1408)**, **Said Wazir vs. The State (2023 SCMR 1144)**, **Javed Iqbal vs. The State (2023 SCMR 139)**. We have not mentioned judgments passed before the *Zain Ali* case for brevity. All these judgments are referred to in the decisions mentioned above.

7. In the present case, neither safe custody nor secure transmission was demonstrated, as the maalkhana in charge and the courier did not come in as a witness. In the *Sarfaraz Ahmed* case (*supra*), it has been held that:



9. In order to prove the safe custody of the parcels of the contraband, Moharrar (Abdul Qayyum) of PS Kalat has not been produced at the trial by the prosecution. In the cases of "Said Wazir v. The State", "Muhammad Shoaib v. The State" and "Ishaq v. The State" it has been held that due to non-appearance of the Moharrar at the trial, the safe custody of the parcel of the contraband as well as the sample parcel has not been established by the prosecution. In the case of "Zahir Shah v. The State" it has been laid as follows by this Court:

"This court has repeatedly held 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. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspecting, safe and secure. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analysis, thus, rendering it incapable of sustaining conviction."

8. Being guided by the wisdom of the Supreme Court and as an unbroken chain of safe custody and transmission was not established by the prosecution at trial, the impugned judgment is set aside. The appeal is allowed, and the appellant acquitted of the charge. He may be released forthwith if not required in any other custody case.

Judge

Judge