

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Jail Appeal No. D-74 of 2024

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Imdadullah s/o Muhammad Shahmir, Phulphoto
Through Ms. Rizwana Jabeen Siddiqui, Advocate

The State : *Through Mr. Aftab Ahmed Shar, Addl.P.G*

Date of hearing : 25.11.2025

Date of Judgment : 17.12.2025

JUDGMENT

KHALID HUSSAIN SHAHANI, J. – The appellant Imdadullah has preferred this special criminal jail appeal challenging the judgment dated 03.06.2024 passed by the learned Additional Sessions Judge-I/Special Judge for CNS, Khairpur in Special Case No.286 of 2023, arising out of FIR No.85 of 2023, for offence under section 9(c) of the Control of Narcotic Substances Act-1997, registered at Police Station Baberloi, whereby the appellant was convicted and sentenced to suffer rigorous imprisonment for twelve years and to pay fine of Rs.200,000/ and in default to further undergo simple imprisonment for six months, with benefit of section 382-B Cr.P.C.

2. The prosecution case, as set up in the FIR and unfolded at trial, is that on 05.07.2023 at about 1400 hours, a police party of Police Station Baberloi, headed by ASI Imdad Ali Jagirani, while on patrol duty in government mobile vehicle No.SPE-345 along the link road from Sim Nali Therhi to village Palh, near Grid Station, district Khairpur, allegedly saw one person emerging on the road from the northern side holding a brown shopper, who on seeing the police became confused and attempted to retreat. He was apprehended at a distance of about 10 to 15 paces and, upon enquiry, disclosed his identity as Imdadullah. The shopper was taken from him and found to contain eight slabs/*patties* and one piece of *charas*; on personal search, a currency note of Rs.500 was also recovered from his shirt pocket. The *charas* was weighed on a

computerized weighing scale allegedly available in the investigation bag and its weight was recorded as 4140 grams. The contraband was sealed at the spot in presence of police mashirs PC Ihsan Ali and PC Zamir Hussain, both members of the same patrol, and a memo of arrest and recovery was prepared. The accused and the case property were then brought to the police station, where the FIR was lodged at 1530 hours.

3. After registration of the case, investigation was entrusted to SIP Nazir Ahmed Bhayo, who received the accused in custody and the sealed parcel of charas, entered the same in the roznamcha and handed it over to WHC Hakim Ali for safe custody in the malkhana, where entry No.35 of register No.19 was made. On the same day, the investigating officer visited the place of incident on the pointation of the complainant in the presence of the same mashirs and prepared a memo of site inspection. On the following day, 06.07.2023, the investigating officer dispatched the sealed parcel to the Chemical Examiner, Sukkur at Rohri through PC Meesam Rasool under proper road certificate and letter of reference. The chemical laboratory acknowledged receipt of one sealed parcel bearing three seals, found the seals satisfactory, and after analysis reported that the sample contained charas, recording a gross weight of 4190 grams and net weight of 4140 grams. On completion of investigation, the investigating officer submitted challan before the Magistrate, from where the case was sent to the Special Court for CNS at Khairpur. The learned trial court framed a formal charge under section 9(c) of the CNS Act, to which the appellant pleaded not guilty and claimed trial. The prosecution examined five witnesses: the mashir PC Zamir Ahmed, the investigating officer SIP Nazir Ahmed, the carrier constable PC Meesam Rasool, the complainant/recovery officer SIP (then ASI) Imdad Ali, and the malkhana incharge WHC Hakim Ali, and produced the documentary record including roznamcha entries, malkhana entry, road certificate, sample receipt, chemical examiner's report, FIR, and the memos. The appellant in his statement under section 342 Cr.P.C denied the

allegations, claimed false implication on account of alleged enmity and prior harassment, termed the chemical report as managed, but neither examined himself on oath nor produced any defence witness. The learned trial court, finding the prosecution evidence confidence-inspiring and the chain of custody unbroken, convicted and sentenced the appellant as noted above.

4. Learned counsel for the appellant, while attacking the impugned judgment, repeated the submissions advanced at trial and supplemented them with reliance on a line of precedents. It was argued that the entire case rests upon interested police testimony, as both mashirs and the complainant are officials of the same police station, and that no private mashir from the vicinity was associated despite the admitted fact that the place of occurrence was a busy road near the Grid Station and adjacent to populated areas, thus amounting to violation of section 103 Cr.P.C and rendering the recovery doubtful; in this connection reliance was placed on (2004 P.Cr.L.J 843) to contend that the deliberate omission to associate independent witnesses in a recoveries case undermines the prosecution version. Learned counsel further contended that there are material contradictions between the prosecution witnesses: the mashir described the brown shopper as made of plastic whereas the parcel in court was of hard paper, the times of departure and return, and the distances between the police station, Therhi Sim Nali and the place of incident, differed in the evidence of the mashir, the investigating officer and the complainant; it was also emphasized that the memos do not mention serial number of the recovered Rs.500 note; that the monograms on the charas patties presented in court differ, and that individual weights of each slab were not mentioned, thereby creating serious doubt regarding safe custody and identity of the narcotics. To fortify the argument that such contradictions and procedural lapses in narcotics cases can not be brushed aside as minor, learned counsel cited (2009 P.Cr.L.J 1792) and (2012 P.Cr.L.J 138) urging that where the prosecution fails to prove an unbroken chain of custody and strict compliance with statutory safeguards,

benefit of doubt must be extended and conviction cannot be maintained merely on the basis of official assertions.

5. Learned counsel also argued that the appellant had, prior to this case, moved a written application to the Senior Superintendent of Police, Khairpur on 09.12.2021, complaining of threats of false implication at the hands of local police, which, according to counsel, shows a pre-existing grudge and indicates that the present case is a result of that mala fide. It was submitted that this prior application, coupled with the defence plea of enmity with one Hafiz Phulpoto, was sufficient to place on record a plausible defence which the prosecution did not successfully rebut. Counsel asserted that the appellant is about 55 years of age and a patient of heart disease, supported by a medical prescription placed with the suspension application, which should have weighed with the court when evaluating whether the police would foist such a large quantity against him. It was urged that the learned trial court adopted a prosecution-oriented approach, failed to appreciate the above contradictions and defence material, and convicted the appellant on conjectures. Placing reliance on (2016 SCMR 707), learned counsel contended that where the prosecution evidence is not free from reasonable doubt and the chain from seizure to analysis is not of such quality as required in special statutes, the conviction is unsustainable and a single circumstance creating doubt is enough to entitle the accused to acquittal. On the strength of these submissions and authorities, it was prayed that the appeal be allowed, conviction set aside, and the appellant be acquitted.

6. Conversely, the learned Additional Prosecutor General appearing for the State supported the impugned judgment and opposed the appeal. He submitted that the prosecution has, through the consistent testimonies of the complainant, mashir and investigating officer, established the presence of the appellant at the place of occurrence, his apprehension red-handed with the shopper, recovery of 4140 grams of *charas*, and recovery of Rs.500 from his

person. He argued that the FIR was promptly lodged, that the times and sequence of events from patrol to arrest, to return to the police station, to handing over of the case property, and to deposit in malkhana and dispatch to the chemical laboratory are all supported by contemporaneous roznamcha entries and documents, and that the chemical examiner's report clearly identifies the sample as *charas* with net weight 4140 grams, matching the prosecution case. The learned Addl. P.G contended that the minor discrepancies pointed out in cross-examination regarding estimates of distance, minor timing variations or description of the shopper do not go to the root of the matter and are the natural result of lapse of time and the human faculty of observation; such variances, in view of the positive chemical report and overall consistency, cannot be treated as material contradictions. He further submitted that section 25 of the CNS Act has excluded the strict application of section 103 Cr.P.C. to narcotics cases and that the non-association of private witnesses, especially where public reluctance to join such proceedings is well-known, is not fatal so long as the official witnesses appear truthful and are not shown to be inimical or biased. In support of his contentions, learned Addl. P.G placed reliance on (2020 SCMR 905) and (2020 SCMR 1773) to argue that where the chain of custody is satisfactorily established, the seals on the parcels are found intact by the chemical examiner, and the report is positive, the courts are slow to interfere with convictions merely on the basis of technical or speculative objections. He also referred to (2025 SCMR 1359) to reinforce the principle that in cases under special laws like the CNS Act, courts are required to adopt a dynamic approach and cannot overlook the social menace of narcotics, and that minor irregularities which do not create a reasonable doubt should not result in acquittal. The learned law officer submitted that the defence did not lead any evidence to prove previous enmity with the complainant party, did not produce any official record to substantiate the plea of prior harassment in connection with the SSP application, and did not bring any material to show that the parcel received by

the chemical examiner was different from that sealed at the spot. The appellant's bare denial under section 342 Cr.P.C, in the face of clear, coherent prosecution evidence and documentary support, could not rebut the presumption arising from the recovery and the positive laboratory report. It was, thus, prayed that the appeal be dismissed and the conviction and sentence be maintained.

7. Having considered the rival submissions, examined the evidence with the care required in prosecutions under the CNS Act, and kept in view the principles emerging from the case-law cited at the bar, we are of the view that the impugned conviction does not suffer from such legal or factual infirmity as would justify interference. The complainant SIP Imdad Ali and mashir PC Zamir Hussain have furnished a uniform narrative of the patrol, sighting of the appellant, his suspicious conduct, apprehension with the brown shopper, recovery of eight patties and one piece of charas and a Rs.500 note, weighing of the contraband as 4140 grams, sealing of the case property at the spot and preparation of memo of arrest and recovery. Their evidence is corroborated by the FIR lodged without delay, the roznamcha entries reflecting the patrol departure, the arrest, and the handing over of the accused and case property to the investigating officer, and by the memo of site inspection showing that the place of incident was revisited. The investigating officer, in turn, supports the receipt of the sealed parcel, its deposit in the malkhana with proper entry, its dispatch through PC Meesam Rasool to the chemical laboratory, and later receipt of the chemical examiner's report. WHC Hakim Ali confirms the deposit of the sealed parcel in the malkhana vide entry No.35 and its withdrawal for dispatch. PC Meesam Rasool confirms that he carried the sealed parcel and obtained the road certificate and sample receipt. The chemical examiner's report records receipt of one sealed parcel bearing three seals, found the seals satisfactory, examined the contents and concluded that the sample contains *charas*, noting net weight of 4140 grams. All these links, read together, present an uninterrupted chain from seizure to analysis and back to court.

8. The contradictions pointed out by the learned counsel for the appellant have been carefully considered. The description of the brown shopper as plastic by one witness and the production of a hard-paper shopper at a later stage, the lack of mention of the serial number of the Rs.500 note, the absence of separate slab-wise weight in the memos, marginal differences in approximated distances and timings between the police station, Therhi and the place of occurrence, or the detail whether the site memo was written on the bonnet or with the aid of a clipboard, are all matters that do not affect the essential question whether charas was in fact recovered from the possession of the appellant in the manner alleged and whether the same contraband reached the laboratory. No suggestion was put to the chemical examiner, nor is there any material on record, to show that the seals were tampered with, that the seals on the parcel did not tally with those allegedly applied at the spot, or that the weight discrepancy, if any, is beyond what would be expected after consumption of a small quantity for analysis. The chemical report explicitly records the seals as satisfactory and reflects the same net weight of 4140 grams as claimed in the FIR and evidence.

9. As regards the reliance on decisions like *Muhammad Hanif v. The State* (2004 P.Cr.L.J 843) and *Abdul Hameed v. The State* (2016 SCMR 707) by learned counsel for the appellant, those authorities exemplify situations where either the chain of custody was demonstrably broken, the identity of the narcotics parcel was doubtful, or material contradictions struck at the root of the prosecution case. In the present matter, however, there is no missing link in the chain of safe custody and transmission; the steps from seizure, sealing, deposit in *malkhana*, dispatch under road certificate, receipt by the laboratory with seals intact, analysis and report, are all contemporaneously documented and supported by oral evidence.

10. The argument regarding violation of section 103 Cr.P.C. also does not avail the appellant. The offence is under the CNS Act, in which the legislature, through section 25, has diluted the requirement of associating private witnesses, keeping in view the notorious reluctance of citizens to join narcotics raids. The evidence of police officials is not inherently suspect and cannot be discarded merely on account of their official status, in the absence of proof of malice or animus; here, no cogent evidence has been brought to show that the complainant party bore personal enmity towards the appellant at the time of occurrence. The prior application to the SSP, even if accepted as having been filed, does not by itself show that this particular case was fabricated against the appellant, especially when he chose not to examine the author of that application, any family member, or any other witness in defence to connect that prior grievance to the instant incident. The bare plea of false implication on account of an alleged grudge with one Hafiz Phulpoto, taken at a late stage in the statement under Section 342 Cr.P.C, is unsubstantiated and cannot override the positive, consistent evidence of recovery and the corroborative documentary record.

11. The age and medical condition of the appellant, though relevant for considerations of mercy or sentence modulation, do not constitute a defence to the charge when the prosecution has discharged its burden. The quantity of narcotics recovered is substantial. The appellant was apprehended on the spot with the contraband and there is no plausible explanation offered by him for his presence at that time and place with the shopper. His denial remains a mere assertion unsupported by evidence. Under the settled principle that while the prosecution must prove its case beyond reasonable doubt, such doubt must be real and not fanciful; it must arise from the record and not be imported from outside. On a holistic appraisal of the evidence, we do not find any such doubt that would entitle the appellant to acquittal.

12. For these reasons, the appeal is dismissed. The conviction of the appellant under section 9(c) of the Control of Narcotic Substances Act, 1997 and the sentence of twelve years' rigorous imprisonment and fine of Rs.200,000/, with six months' simple imprisonment in default, as awarded by the learned trial court, are maintained, with the benefit of section 382-B Cr.P.C already extended to him. The appellant shall continue to serve out the remaining part of his sentence as per law.

J U D G E
J U D G E