

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

## Special Criminal Jail Appeal No. D-75 of 2025

BEFORE:

Mr. Justice Mehmood A. Khan, J.

Mr. Justice Khalid Hussain Shahani, J.

**Appellant** : Imtiaz Ali son of Imam Bux Bhatti  
*Through* : Mr. Shabbir Ali Bozdar, Advocate

**Respondent/State** : *Through* : Mr. Aftab Ahmed Shar,  
Additional Prosecutor General

**Date of Hearing** : 04.03.2026

**Date of Order** : 04.03.2026

**Date of Reasons** : 05.03.2026

### J U D G M E N T

**KHALID HUSSAIN SHAHANI, J.** — The appellant stands convicted at the hands of the learned trial Court in Special Case No. 119 of 2024, emanating from Crime No. 42 of 2024, registered at Police Station Gambat, for an offence falling within the purview of Section 9(c) of the Control of Narcotic Substances Amended Act, 2022 (hereinafter "the Act"). Assailing the said conviction and the sentence consequentially imposed, the appellant has preferred the instant appeal.

2. The prosecution's narrative, shorn of its details, is that on 21.03.2024 at about 0730 hours, a police contingent operating under the command of ASI Ghulam Rasool Junejo intercepted the appellant in the vicinity of a link road connecting Gambat and Ranipur, and recovered from his exclusive possession a plastic bag containing 10,500 grams of hemp, together with a paltry sum of Rs. 150/- in cash. The said recovery was purportedly effectuated in the witnessing presence of mashirs PC Abdullah and PC Altaf Hussain. Upon completion of the recovery proceedings, the contraband was sealed and transmitted to the Chemical Examiner, whose report confirmed the seized substance to be hemp. Formal charge was framed on 10.08.2024. In discharge of its burden, the prosecution examined the complainant ASI, two mashir witnesses, a supplementary police witness, and the Investigating Officer. Documentary exhibits, including the recovery memo, malkhana register entries, forwarding letter, and the Chemical Examiner's report, were also tendered in evidence. In his examination under Section 342 of the Code of Criminal Procedure, 1898, the appellant denied the charge in its entirety,

set up the plea of false implication, declined to lead defence evidence, and further declined to be examined on oath. Upon conclusion of trial, the learned trial Court, vide its judgment dated 28.08.2025, recorded a conviction against the appellant, sentencing him to suffer RI for 07 years and a fine of Rs.100,000/-. In default thereof to undergo SI for 06 months with benefit pursuant to section 382-B Cr.P.C.

3. We have afforded audience to the learned counsel for the appellant as well as the learned Additional Prosecutor General. The submissions advanced at the bar on behalf of both sides are not reproduced herein for the sake of brevity; however, they stand duly reflected in the observations and findings that follow.

4. The pivotal contention urged by the learned counsel for the appellant was directed at the prosecution's conspicuous failure to establish the safe custody and uninterrupted transmission of the seized narcotic substance. It was argued with considerable force that whereas the alleged contraband was ostensibly recovered and deposited in the malkhana on 21.03.2024, no entry reflecting any subsequent movement therefrom appears in Register XIX produced before the trial Court as Exh. 3/A. More critically, the Chemical Examiner's report, exhibited as Exhibit 6/D, discloses that the parcel was dispatched for chemical analysis only on 26.03.2024, a delay of five days, standing in manifest contravention of the prescribed threshold of seventy-two hours stipulated under the relevant rules. The infraction does not rest there; the parcel was received by the Chemical Examiner on 02.04.2024, at the hands of ASI Nazar Hussain, vide RC No. 3042, thereby revealing a further and unexplained lapse of eight days from the date of dispatch. No explanation whatsoever was forthcoming from the prosecution as to in whose custody the contraband remained during this material interval. Of decisive significance is the fact that ASI Nazar Hussain, the bearer who physically conveyed the contraband to the Chemical Examiner, was not produced as a witness and the prosecution has chosen to maintain silence as to the reason for this conspicuous omission. Compounding the irregularity, the evidence of the malkhana in-charge revealed that he had handed over the property for chemical analysis to the Investigating Officer, SIP Allah Dino, creating yet another unexplained lacuna in the chain of custody.

5. Upon a careful and independent perusal of the record, with the able assistance of the learned Additional Prosecutor General, this Court finds

itself in full agreement with the infirmities so meticulously highlighted by the learned counsel for the appellant. It bears recording that although the learned Additional Prosecutor General raised objections in the course of arguments, he was ultimately constrained to concede the factual position as borne out by the record.

6. The law on this point is well-settled and admits of no ambiguity. In a consistent and unbroken line of authority, the Hon'ble Supreme Court of Pakistan and the Division Benches of this Court have held that a conviction under the Act cannot be sustained unless the prosecution affirmatively establishes both the safe custody and the safe transmission of the seized narcotic substance from the place of recovery to the Chemical Examiner. In the present case, the prosecution has dismally failed to discharge this burden: while certain limbs of the transmission stand proved, the chain of custody is irreparably fractured, the bearer was never produced as a witness, inordinate and unexplained delays were committed both in dispatching the parcel for analysis and in its eventual deposit with the Chemical Examiner, and no record evidencing the lawful movement of the property from the malkhana was placed before the Court.

7. Illuminating guidance on this question is furnished by the authoritative pronouncement of the Hon'ble Supreme Court in *Sarfaraz Ahmed v. The State* (2024 SCMR 1571), wherein their Lordships enunciated the governing principle in the following terms:

*"It is a settled proposition of law, reiterated by this Court in a succession of pronouncements, that the prosecution in a case under the Control of Narcotic Substances Act, 1997, bears the unqualified obligation of establishing, to the satisfaction of the Court, both the safe custody of the seized narcotic substance and its safe and uninterrupted transmission from the locus of recovery to the Narcotics Testing Laboratory or Chemical Examiner, as the case may be. The integrity of this chain of custody is not a matter of procedural technicality but goes to the very root of the prosecution's case, inasmuch as the report of the Government Analyst constitutes the primary and, in most cases, the sole forensic foundation upon which a conviction is rested. It is therefore imperative that the prosecution demonstrate, through cogent and reliable evidence, that the chain of custody remained at all material times unbroken, unsuspecting, and free from any reasonable apprehension of tampering or substitution. Any hiatus in that chain — whether in the form of compromised custody or defective transmission — necessarily impairs and vitiates the evidentiary worth and conclusiveness of the Analyst's report, rendering it legally incapable of sustaining a conviction."*

5. The learned Additional Prosecutor General, in endeavouring to salvage the conviction, submitted that the non-production at trial of the bearer of the contraband would not occasion any prejudice to the prosecution case, placing reliance upon the judgment of the Hon'ble Supreme Court reported as *Zain Ali v. The State* (2023 SCMR 1669). It is readily acknowledged that the Hon'ble Supreme Court, in the said case, adopted a divergent view on the question. This Court, however, with the utmost deference and humility, finds itself aligned with the preponderant series of judgments rendered by the Supreme Court both anterior and subsequent to *Zain Ali*. Cognizance is taken, in this regard, of *Asif Ali v. The State* (2024 SCMR 1408), *Said Wazir v. The State* (2023 SCMR 1144), and *Javed Iqbal v. The State* (2023 SCMR 139). It is further noted that the Hon'ble Supreme Court in *Sarfaraz Ahmed* (supra) itself revisited and distinguished the position taken in *Zain Ali*, reaffirming the orthodox principle governing chain of custody.

6. In the foregoing view of the matter, and given the manifest failure of the prosecution to prove the safe custody of the narcotic substance, evidenced by the non-examination of the bearer, the stark and unexplained delays in dispatch and deposit with the Chemical Examiner, and the absence of any record demonstrating lawful movement of the property from the malkhana, the prosecution's case is rendered fatally deficient. The conviction recorded by the learned trial Court cannot, therefore, be permitted to stand. An examination of the remaining aspects of the case is rendered otiose.

7. Accordingly, the appeal was allowed vide short order dated 04.03.2026 and the impugned judgment dated 28.08.2025 passed by the learned trial Court set aside with the directions, the appellant shall be released forthwith, if he was not otherwise required in any other case or detention. These are detailed reasons thereof.

**JUDGE**

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