IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 29 of 2026

Present Before:
Mr. Justice Shamsuddin Abbasi
Mr. Justice Miran Muhammad Shah

Appellant	:	Muhammad Arsalan S/o Peer Bux, Through Mr. Zahid Abbas Malik, Advocate.
Respondent	:	The State Through Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh.
Date of hearing	:	**23.10.2026.**
Date of judgment	:	**06.11.2026.**

J U D G M E N T

MIRAN MUHAMMAD SHAH, J. The appellant was tried by the learned IVth Additional Sessions Judge / Special Judge, Control of Narcotic Substances Act, Malir, Karachi ***("the Trial Court")*** in Sessions Case No.680 of 2024, arising out of Crime No.58 of 2024, registered under Section 6/9(1)-(3)(c) of the Control of Narcotic Substances Act, 1997 ***("the Act")*** at Police Station Steel Town, Karachi. After a full-fledged trial, the Trial Court vide judgment dated 24.12.2025 convicted the appellant for the said offence and sentenced him to suffer rigorous imprisonment for twelve (12) years and to pay fine of Rs.300,000/-, and in default thereof to undergo simple imprisonment for three (3) months more. It is against that judgment that the instant Criminal Appeal has been preferred by the appellant.

2. Succinctly, the facts of the prosecution case as narrated in the FIR are that on 28.01.2024 at 2130 hours, the appellant was arrested from Katcha Rasta, Al-Khidmat Hospital to Soomar Goth, Karachi, by a police party of P.S. Steel Town headed by SIP Dilshad Ali, on being found in possession of 1100 grams of charas in contravention of Section 6 of the Act, in presence of mashirs. For that, he was booked in the aforesaid crime.

3. After usual investigation, police submitted report under Section 173 Cr.P.C. The Trial Court framed formal charge against the appellant as Exh.2, to which he pleaded not guilty and claimed to be tried vide plea recorded at Exh.2/A. At the trial, the prosecution in order to substantiate the charge examined four witnesses, namely, P.W-1 Rajab Ali Khoso (Investigating Officer) at Exh.3, who produced documents at Exh.3/A to 3/I respectively; P.W-2 SIP

Dilshad Ali (complainant) at Exh.4, who also produced documents at Exh.4/A to 4/D respectively; P.W-3 PC Ali Gohar Chandio (mashir) at Exh.5; and P.W-4 ASI / WHC Shoaib Baloch (In-charge Malkhana) at Exh.6. The statement of the appellant under Section 342 Cr.P.C. was recorded at Exh.8, wherein he denied the allegations against him and pleaded innocence. He, however, neither opted for examination on oath under Section 340(2) Cr.P.C. nor led evidence in his defence. On assessment of the evidence on record, the Trial Court convicted and sentenced the appellant as mentioned above.

4. The matter has come before this Court for the second time. The appellant was earlier convicted on the same set of evidence by the learned Trial Court vide judgment dated 06.08.2024. He preferred Criminal Appeal No.576 of 2024 before this Court, which was disposed of vide order dated 19.11.2025, whereby this Court set aside the conviction and remanded the matter to the learned Trial Court with directions to record the statement of the accused afresh strictly in accordance with law, and to write the certificate in his own hand as required under Section 342 Cr.P.C. In compliance with the said directions, the learned Trial Court recorded the statement of the appellant afresh, completed the requisite formalities, and after re-appraisal of the evidence passed the impugned judgment dated 24.12.2025, maintaining the same conviction. Hence this appeal.

5. Learned counsel for the appellant contends that the impugned judgment is against law, facts and equity, hence not sustainable in law; that all the prosecution witnesses examined in this case are police officials, and not a single private or independent witness was associated at the time of alleged recovery, arrest or proceedings, despite the fact that public persons were available; that the appellant has been convicted on weak, shaky and unreliable evidence, which is unsafe to base a conviction under the Control of Narcotic Substances Act; that the learned Trial Court discarded the defence version without assigning cogent reasons, which shows that the learned Trial Court was sitting with a biased mind having already settled to convict the appellant; and that the conviction and sentence awarded to the appellant are liable to be set aside. In support of his contentions, learned counsel relies upon the case of Muhammad Abid Hussain vs. The State and another (2025 SCMR 721).

6. On the other hand, learned Addl. P.G. fully supports the impugned judgment. He maintains that no enmity has been alleged by the appellant with the police to implicate him falsely in the case; that all the four prosecution witnesses have given an un-contradicted and trustworthy account of the alleged

recovery of charas in huge quantity; and that the appellant has a criminal record, which further corroborates the prosecution case.

7. We have heard the learned counsel for the appellant as well as the learned Additional Prosecutor General for the State and, with their assistance, have examined the material available on the record.

8. The first question which requires consideration is with regard to the effect of the remand order dated 19.11.2025. The earlier conviction was set aside not on the ground that the prosecution evidence was insufficient or unreliable, but solely on the ground of a procedural irregularity in recording the statement under Section 342 Cr.P.C. Once that defect was cured by the Trial Court in strict compliance with the directions of this Court, the evidence which was already on record was required to be re-appraised on merits. The Trial Court has done so, and has recorded cogent reasons for maintaining the conviction. Therefore, the mere fact that the conviction has been recorded for the second time on the same evidence does not, by itself, vitiate the impugned judgment.

9. In cases involving narcotics, one of the principal questions requiring consideration, in the light of the guidelines laid down by the Hon'ble Supreme Court, is the safe custody and safe transmission of the recovered contraband. This includes its timely deposit in the malkhana after recovery and the subsequent transmission of the case property for chemical analysis. Any break in the chain of custody, unexplained delay, or doubt about tampering / substitution would be fatal to the prosecution case.

10. In the present case, the evidence of the Malkhana In-charge and the Investigating Officer, when examined, reveals no material contradiction regarding the safe custody and transmission of the case property. Both witnesses established that on 28.01.2024, the Malkhana In-charge received the case property in a sealed parcel and deposited the same in the malkhana vide Entry No.5/24 of Register No.19. Thereafter, on 30.01.2024, the Investigating Officer retrieved the sealed parcel for the purpose of chemical examination. The said parcel was deposited with the Chemical Examiner on the same day. After completion of the chemical examination and issuance of the report, the case property was returned to the malkhana in its sealed condition. Subsequently, it was produced before the learned Trial Court, where it was duly unsealed in presence of the parties.

11. Thus, no delay or irregularity occurred during the entire process that could give rise to any suspicion regarding the safe custody of the case property. Even the defence failed to raise any objection or point out any instance of tampering, manipulation, substitution or alteration of the recovered property or its sealed parcel, either during cross-examination or at the time of recording of statement under Section 342 Cr.P.C. Consequently, the appellant has failed to establish any defect in the safe custody or safe transportation of the recovered contraband from the place of recovery to the Chemical Examiner.

12. The original entry of Register No.19 was also produced before the learned Trial Court, which establishes that the case property was duly deposited in the malkhana and subsequently transmitted to the Chemical Examiner. Therefore, the chain of safe custody remained intact throughout the entire process. Furthermore, the Chemical Examiner's report confirms that the seals on the parcel were intact at the time of its receipt and that the chemical analysis yielded a positive result for charas. The prosecution, in order to establish the unbroken chain of safe custody, produced the Malkhana In-charge as a witness, whose testimony supports the prosecution's case regarding the deposit and subsequent transmission of the recovered contraband. The Investigating Officer has also fully corroborated him on this aspect, and no discrepancy of a material nature could be extracted from their cross-examination.

13. Reliance may be placed upon the judgments of the Hon'ble Supreme Court in Muhammad Iqbal v. The State (2025 SCMR 704) and Irshad Khan v. The State (2026 SCMR 87), besides numerous other recent judgments, wherein the importance of safe custody and safe transmission of narcotics case property has been reiterated and strict compliance with the relevant legal requirements has been emphasized. In the present case, the prosecution has fully satisfied the said test. The seals remained intact throughout, the transmission was prompt, and the chemical analysis report was positive.

14. The question regarding the non-association of private mashirs at the time of recovery of narcotics is no longer a sustainable ground, by itself, to discard the prosecution's case. Learned defence counsel placed considerable emphasis on this aspect during his arguments and while cross-examining the prosecution witnesses. However, in the facts and circumstances of the present case, this contention does not carry sufficient weight to discredit the otherwise confidence-inspiring evidence produced by the prosecution. It is well settled that the testimony of police officials cannot be discarded merely on the ground of

their official status. Their evidence is to be examined with the same yardstick as that of any other witness, and if it is found to be trustworthy, consistent and confidence-inspiring, conviction can safely be based upon it. In the present case, the complainant and the mashir are both police officials, but their evidence has remained consistent on all material particulars, i.e., time, place, mode of recovery, quantity of contraband, sealing at the spot, and preparation of mashirnama.

15. As regards the reliance placed by learned counsel for the appellant on Muhammad Abid Hussain vs. The State and another (2025 SCMR 721), the said judgment is distinguishable on its own facts. In that case, the Hon'ble Supreme Court found serious breaks in the chain of custody, material contradictions in the statements of witnesses, and delay in transmission of the case property to the Chemical Examiner, which created doubt about the prosecution case. In the present case, as discussed above, no such defect, contradiction or delay exists. The prosecution has proved an unbroken chain of custody, and the witnesses have remained consistent. Therefore, the said precedent does not advance the case of the appellant.

16. Furthermore, the statements of all four prosecution witnesses, namely, the Investigating Officer, the complainant, the mashir of recovery and the Malkhana In-charge, have remained unshaken and materially consistent on all essential aspects of the prosecution case. Their evidence is mutually corroborative and establishes the factum of recovery as well as the safe custody of the recovered contraband. Despite searching cross-examination, the defence has failed to bring on record any material contradiction, inherent improbability or circumstance sufficient to discredit their testimony. The appellant has also failed to establish any previous enmity, animosity or ill will on the part of the police officials which could reasonably furnish a motive for his false implication. Although the absence of enmity cannot be treated as conclusive proof of guilt, no plausible circumstance has been brought on record to suggest why the police officials would falsely implicate the appellant by foisting 1100 grams of charas upon him. The plea of false implication, therefore, remains a bald assertion, unsupported by any tangible material and is insufficient to dislodge the otherwise trustworthy prosecution evidence. We have also examined the impugned judgment and find that the learned Trial Court has duly considered the defence plea and discarded the same through cogent and plausible reasoning. Nothing has been brought to our notice demonstrating any bias, prejudice or pre-determination on the part of the learned Trial Court. The impugned

judgment, insofar as it relates to the conviction of the appellant, is founded upon a proper appraisal of the evidence available on record and does not call for interference. However, while examining the legality of the conviction and sentence, we have noticed that the alleged occurrence took place on 28.01.2024 when the Control of Narcotic Substances (Sindh Amendment) Act, 2021 was in force despite the learned Trial Court proceeded to convict and sentence the appellant under the Control of Narcotic Substances Act, 1997, as amended by the Federal Amendment Act, 2022. The legal position concerning the applicability of the two enactments operating simultaneously in the Province of Sindh has already been examined and settled by this Court in Criminal Jail Appeal No.392 of 2025 *[Muhammad Ali v The State]* wherein, after an elaborate consideration of the relevant statutory provisions, this Court has held that the Sindh Amendment Act, 2021 and the Federal Amendment Act, 2022 operate in their respective fields and are not mutually inconsistent. It was further held that in cases registered and investigated by the Provincial Police in the Province of Sindh, the provisions of the Sindh Amendment Act, 2021 would apply, whereas the Federal Amendment Act, 2022 would govern cases investigated by the relevant Federal Agencies such as the Anti-Narcotics Force and Pakistan Customs. Consequently, where the offence is investigated by the Provincial Police, the conviction and sentence are required to be examined in the light of the applicable provisions of the Sindh Amendment Act, 2021. In the case in hand, the recovery was effected by the Provincial Police and the matter was neither registered nor investigated by any Federal Agency. Accordingly, the applicable penal provision is Section 9 of the Control of Narcotic Substances (Sindh Amendment) Act, 2021. The conviction of the appellant, therefore, requires modification to the extent of its statutory provision without disturbing the finding of guilt recorded by the learned Trial Court.

17. As regards the quantum of sentence, we are mindful of the principle enunciated by the Honourable Supreme Court in the case of *State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v Mujahid Naseem Lodhi* (PLD 2017 SC 671), wherein it has been observed that in a case possessing special features relevant to the question of sentence, the Court may depart from the ordinarily prescribed norms and standards provided that sufficient reasons are recorded for doing so. The object of punishment is not confined to retribution alone, it also encompasses deterrence, rehabilitation and the possibility of reformation of the offender. The sentencing discretion, therefore, has to be exercised judiciously keeping in view the nature and gravity of the offence, the quantity of narcotics recovered, the antecedents of the

accused and the attending circumstances of the case. In the case in hand, the appellant has been found in possession of 1100 grams of charas. Although the recovery is undoubtedly a serious circumstance, the material available on record does not disclose that the appellant was previously convicted in any criminal case or had any established history of involvement in narcotics trafficking. Keeping in view the particular circumstances of the case, the possibility of his reformation and the principle of proportionality in sentencing, we are persuaded to take a lenient view in the matter of quantum of sentence. We are conscious that such consideration cannot dilute the seriousness of the offence nevertheless punishment must remain proportionate to the circumstances of the individual case. We are, therefore, of the considered view that the ends of justice would adequately be served if the substantive sentence of imprisonment awarded to the appellant is reduced from twelve (12) years to five (05) years' rigorous imprisonment. Consequently, while maintaining the conviction of the appellant, we modify the same by bringing it under the relevant provision of Section 9 of the Control of Narcotic Substances (Sindh Amendment) Act, 2021 instead of the corresponding provision of the Federal Amendment Act, 2022. The sentence of imprisonment awarded to the appellant is, therefore, reduced from twelve (12) years to five (05) years' rigorous imprisonment. The amount of fine and the sentence of imprisonment awarded in lieu thereof shall remain unaltered. The appellant shall also be entitled to the benefit of Section 382-B, Cr.P.C., and remissions, if any, admissible under the law.

18. Subject to the above modification in the statutory provision and quantum of sentence, the conviction of the appellant is maintained. The appeal is accordingly disposed of in the above terms.

JUDGE

JUDGE

Naeem/PA