**THE HIGH COURT OF SINDH BENCH**
**AT SUKKUR**

**Special Criminal Jail Appeal No.D-140 of 2016**
[*Siraj Khan Vs. The State*]

**Before:**
**Mr. Justice Muhammad Faisal Kamal Alam**
**Justice Ms. Tasneem Sultana**

| | | |
|---|---|---|
| Appellant | : | Siraj Khan son of Khalil Khan Arain, through Mr. Shahid Ali Memon, Advocate |
| State | : | Through Mr. Aftab Ahmed Shar, Additional Prosecutor General, Sindh |
| Date of Hearing | : | **08.10.2026** |
| Date of Decision | : | **11.11.2026** |

# JUDGMENT

**MUHAMMAD FAISAL KAMAL ALAM, J.**-This Criminal Jail Appeal is directed against the Judgment dated 03.08.2016, passed by the learned Sessions Judge/Special Judge (CNSA), Ghotki, in Special CNSA Case No.21 of 2014, arising out of Crime No.01 of 2014, registered at Police Station Excise, Ubauro, under Section 9(c) of the Control of Narcotic Substances Act, 1997 (the Act). By the impugned Judgment, the Appellant, Siraj Khan Arain, was convicted under Section 9(c) of the said Act and sentenced to rigorous imprisonment for life, with a fine of Rs.100,000/-, and in default of payment thereof, to suffer simple imprisonment for one year, with the benefit of Section 382-B Cr.P.C. However, co-accused Ameer Hussain was acquitted of the charge for want of evidence.

**2.** The prosecution case is that on 31.03.2014, at about 10:00 p.m., Excise Inspector Hassan Ali Dashti, the complainant and Investigating Officer, along with other Excise Department personnel, was on duty at the check post when they intercepted a speeding truck near the Excise Check Post at the Sindh–Punjab border, Ubauro. The appellant was allegedly driving the truck, with co-accused Ameer Hussain accompanying him. Upon search, 480 packets of charas, weighing 480 kilograms, were allegedly recovered from secret cavities in the truck. Excise Inspector Hussain Bux Larik and Excise Constable Hussain Bux Soomro acted as mashirs. According to the prosecution, 100 grams were separated from each packet and separately sealed for chemical examination, while the remaining charas was sealed in 24 gunny bags, each containing twenty packets. The Chemical Examiner's report dated 07.04.2014 was received with a positive result.

Following investigation, the Appellant and co-accused were sent to face trial, culminating in the impugned Judgment.

**3.** Formal charge was framed against the Appellant and co-accused Ameer Hussain at Exh.06 for the offence punishable under the Act. Both accused pleaded not guilty and claimed trial through their respective pleas recorded at Exhs.07 and 08. In order to prove its case, the prosecution examined complainant Excise Inspector Hassan Ali Dashti as PW-1 at Exh.10, who produced the mashirnama, FIR, relevant roznamcha entries, correspondence relating to the Chemical Examiner, documents concerning verification of the truck and the Chemical Examiner's report at Exh.10/I. Thereafter, Excise Inspector Hussain Bux Larik was examined as PW-2 at Exh.11. A report dated 14.04.2014 concerning correction of the engine and chassis numbers of the truck was also produced through a statement of the prosecutor.

Upon completion of the evidence, the prosecution closed its case through a statement recorded at Exh.12.

**4.** Thereafter, the statements of the Appellant and co-accused were recorded under Section 342, Cr.P.C., at Exhs.13 and 14, respectively. Both denied the allegations, pleaded innocence and maintained that nothing had been recovered from them. They declined to examine themselves on oath under Section 340(2), Cr.P.C., and also declined to produce any evidence in their defence.

**5.** Learned counsel for the Appellant contends that the prosecution evidence suffers from material contradictions regarding the alleged recovery. He points out discrepancies in the registration, engine and chassis numbers of the truck, the unusually prolonged search and seizure process of approximately ten hours, and the non-association of any private mashir despite the alleged recovery having taken place on the National Highway. He further questions the non-production of Register No. XIX and the non-examination of the Malkhana Incharge, arguing that the prosecution has failed to establish safe custody and safe transmission of the alleged narcotics. He maintains that these defects, when considered cumulatively, create reasonable doubt regarding the prosecution case. Reliance is placed upon *Abdullah @ Adoo v. The State* (2001 YLR 2436) and *Sanaullah @ Haji Sardar v. The State* (2015 YLR 2711).

**6.** Conversely, the learned Additional Prosecutor General supports the impugned Judgment and argues that both prosecution witnesses have consistently supported the recovery of a substantial quantity of charas from the truck. He contends that the discrepancies pointed out by the defence are minor and do not undermine the substance of the prosecution case. He further submits that the positive Chemical Examiner's report corroborates the recovery and that no enmity or motive for false

implication has been established. Accordingly, he prays for dismissal of the appeal. In support of his arguments, he cites *Murad Ali v. The State* (2021 YLR 984).

**7.** We have carefully examined the evidence available on record. PW-1 testified and, besides producing the case property before the Court, identified the truck brought to the Court premises. One of the mashirs, Hussain Bux son of Hazari Khan, testified as PW-2 and supported the version of PW-1 regarding the alleged recovery.

**8.** The alleged recovery took place at about 10:00 p.m. on the National Highway. PW-1 admitted that the proceedings, including the search, extraction of charas from the secret cavities, weighing and preparation of the recovery memo, took approximately ten hours. The torch allegedly used at night was also not produced before the Court. However, the mashirnama, Exh.10/A, is dated 01.04.2014 at 8:00 a.m., and PW-2 states that they returned to the police station at about 10:00 a.m. the following day. The duration of the proceedings is thus consistent with the recorded chronology. In view of the alleged quantity and its concealment in cavities, the duration of the search and the mere non-production of the torch do not, by themselves, discredit the alleged recovery.

**9.** There are also discrepancies in the identification particulars of the truck. Its registration number appears as RIN-7538 in the recovery memo, whereas the FIR also contains a reference to RIN-7838. The engine and chassis numbers recorded in the recovery memo differ from the particulars subsequently verified by the Motor Registration Authority. The record, however, contains a report dated 14.04.2014 explaining that the engine and chassis numbers were initially misread owing to dust and rust and that, after cleaning, they corresponded with the registration book and official verification. The verified engine

number is 894321 and the chassis number is CJQ619875. PW-2 also acknowledges discrepancies and attributes the erasures to a mistake. These discrepancies must, therefore, be considered with the explanation and verification available on record and do not, by themselves, establish that the truck produced before the Court was different from the one allegedly intercepted.

**10.** The most serious infirmity in the prosecution case relates to the safe custody and safe transmission of the samples after their separation from the recovered narcotics. The alleged recovery commenced on 31.03.2014, and the recovery proceedings continued into the following morning. PW-1 states that the samples were sent for chemical examination to the laboratory at Rohri through Excise Constable Imtiaz under entry No.03, produced at Exh.10/E. The Chemical Examiner's report, Exh.10/I, records their receipt through Imtiaz Ahmed on 01.04.2014. The samples were thus received at the laboratory on the same day that the Excise party returned to the police station. However, Imtiaz Ahmed was not examined by the prosecution.

The complainant, while appearing as PW-1, did not state that the sealed samples were deposited in the Malkhana, nor did he identify the person to whom they were handed over for safe custody. PW-2 also did not account for their custody after arrival at the police station. The relevant entry of Register No. XIX was not produced in evidence. Furthermore, the Malkhana Incharge was not examined to establish whether the samples were received in the Malkhana, remained there in safe custody or were subsequently handed over for transmission to the Chemical Examiner. Thus, the prosecution failed to establish the deposit and safe custody of the samples throughout the intervening period before dispatch. Non-examination of the carrier also left unexplained when and

from whom he received the sealed samples and whether they remained in safe custody during transmission to the laboratory.

**11.** The above deficiency assumes greater significance in view of the law laid down by the Honourable Supreme Court in *Jeehand v. The State* (2025 SCMR 923). In the said judgment, the Supreme Court, while examining the requirements of safe custody and transmission of narcotics, discussed Rule 22.70 of the Police Rules, 1934, which requires articles placed in the Malkhana, except those already included in Register No. XVI, to be entered in Register No. XIX and their removal to be recorded. The Court further observed that it is the duty of the prosecution to establish that the case property was kept in safe custody and that its subsequent transmission to the laboratory was duly accounted for. Applying Article 129(g) of the Qanun-e-Shahadat Order, 1984, the Court also drew an adverse inference from non-production of the relevant register in the circumstances of that case. The principle concerning proof of safe custody and safe transmission applies to the present case. Neither the relevant entry of Register No. XIX was produced nor the Malkhana Incharge examined, and the complainant did not explain where the sealed samples were kept or who retained their custody before dispatch. Furthermore, the official who carried the samples to the laboratory was not examined. These omissions leave the safe custody and safe transmission of the samples unproved.

**12.** The Chemical Examiner's report, Exh.10/I, recording that the samples were received with intact seals corresponding with the specimen sent, establishes their condition at the time of receipt by the laboratory; however, it does not establish how the samples remained in safe custody before their dispatch. The dispatch entry and laboratory receipt establish their recorded movement but do not establish their deposit and retention

in safe custody at the police station in the absence of the relevant Malkhana record or other reliable evidence accounting for that custody. Nor was the carrier examined to establish when and from whom he received the sealed samples and their safe transmission to the laboratory. Consequently, an essential link in the chain of custody remains unproved. The positive chemical report, therefore, cannot cure this fundamental deficiency.

**13.** The aforesaid defect is not an isolated procedural omission but goes to the root of the prosecution case. The prosecution has failed to establish the safe custody of the sealed samples after arrival at the police station and their safe transmission to the Chemical Examiner. This failure leaves a material link between the alleged recovery and the samples examined by the Chemical Examiner unproved and creates reasonable doubt in the prosecution case. It is settled law that the prosecution must prove its case beyond reasonable doubt and that even a single circumstance creating reasonable doubt entitles the accused to its benefit as a matter of right. The Appellant is, therefore, entitled to such benefit.

**14.** Consequently, this Criminal Jail Appeal is allowed. The impugned Judgment dated 03.08.2016, passed by the learned Sessions Judge/Special Judge (CNSA), Ghotki, in Special CNSA Case No.21 of 2014, is set aside to the extent of the Appellant, Siraj Khan Arain. He is acquitted of the charge by extending him the benefit of doubt and shall be released forthwith if not required to be detained in any other case.

**15.** The appeal is disposed of accordingly.

JUDGE

JUDGE