

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD,**  
**(JUDICIAL DEPARTMENT).**

**Criminal Appeal No. 233 of 2021**

Rashid Mehmood

***Versus***

The State.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
	24.08.2022	Mr. Shanzeb Khan, Advocate for the appellant / accused. Makhdoom Syed Fakhar Imam Ali Shah, learned State Counsel. Azhar Hussain, S.I, P.S. Sihala, Islamabad.

**TARIQ MEHMOOD JAHANGIRI, J:**

By this criminal appeal, the appellant Rashid Mehmood has assailed the legality and propriety of the judgment dated 07.12.2021, passed by learned Additional Sessions Judge / Judge Special Court CNSA, East-Islamabad arising out of a case vide F.I.R No. 115/21, dated 01.03.2021, offence under Section 9-C, CNSA, 1997 registered at Police Station Sihala, Islamabad, whereby, the appellant has

been convicted under Section 9-C, CNSA 1997 and sentenced to undergo Rigorous Imprisonment for 04 (four) years and 06 (six) months with fine of Rs. 20,000/- (Rupees twenty Thousand only). In default of payment of fine, to further undergo five (05) months Simple Imprisonment. Benefit of Section 382-B Cr.P.C is also extended to him.

02. Brief facts of the case are that on 01.03.2021, Muhammad Hassan A.S.I/PW-01, alongwith other police party was on routine patrolling on private vehicle within the jurisdiction of police station; he received the spy information that a person namely Rashid who deals with narcotics is standing near Sui Gas Office Sawan Camp, if a raid is conducted, huge quantity of narcotics contraband can be recovered. Believing the said information, at about 03:00 pm when the police party reached at motor cycle parking of Sui Gas office, a person on seeing the police party tried to

run away but was overpowered. The said person disclosed his name as Rashid Mehmood son of Muhammad Riaz R/o Rajwal P.O Humak, Islamabad; upon search, blue shopping bag carried out by him in his right hand, charas Ex.P-1 in shape of "round" wrapped in yellow color insulation tape was recovered. Upon weight, it came out 1375 grams; I.O/PW-01 separated 10 grams of charas for chemical analysis and prepared two parcels i.e. one sample parcel and other remaining recovered charas with the stamp of MM and secured it vide memo of recovery Ex.PA. Asad Inayat No. 3509/HC and Qaiser Abbas 4759/c attested the said memo as marginal witnesses. PW-01 (Muhammad Hassan ASI) conducted the personal search of accused, mobile phone Infinix touch screen, driving license, I.D Card, cash Rs. 1240/- were recovered. All these articles were secured by PW-01 vide memo Ex.PC. He drafted the complaint

Ex.PB and sent the sme through Tabraiz/c (PW-05) for registration of FIR. Thereafter Muhammad Manzoor S.I came to the place of occurrence with the copy of FIR and original complaint. He handed over the case property i.e. charas, other documents as well as custody of the accused to Muhammad Manzoor S.I.

03. After drafting FIR Ex.PD, PW-04 Muhammad Manzoor S.I visited the spot, received the custody of accused, case property and other relevant material. He also recorded the statements of witnesses u/s 161 of Cr.P.C., prepared site plan Ex.PE, produced the accused before learned Judicial Magistrate and deposited the sample parcel through Muhammad Hassan ASI (PW-01) in office of NIH, Islamabad. After conducting the investigation he got prepared report u/s 173 Cr.P.C. and submitted the same in the Court.

04. Formal charge was framed against

the accused for which he pleaded not guilty and claimed trial.

05. The prosecution was asked to lead evidence in support of its allegation. Prosecution has produced followings witnesses:

- i. **PW-1 Muhammad Hassan ASI.**  
Eye-witness, complainant of the case and scribe of Ex.PA, Ex.PB and Ex.PC.
- ii. **PW-2 Asad Inayat 3509/HC.**  
Eye-witness and marginal witness of the recovery memos.
- iii. **PW-3 Sajid Hussain 6437/HC**  
Muharrar Malkhana.
- iv. **PW-4 Muhammad Manzoor S.I**  
Investigating Officer and scribe of FIR Ex.PD and site plan Ex.PE.
- v. **PW-5 Tabraiz Rasool 6143/c**  
took complaint Ex.PB to P.S for registration of FIR Ex.PD.

06. Statement of appellant / accused was recorded u/s 342 Cr.P.C., wherein he denied the prosecution allegations leveled

against him and professed his innocence. He opted not to make statement on oath u/s 340(2) Cr.PC. whereas produced defense evidence in shape of snaps of CCTV footage Ex.DA and Ex.DB.

07. Learned Additional Sessions Judge / Judge Special Court CNSA, East-Islamabad after hearing the arguments of learned counsel for the parties and examining the evidence available on record, convicted and sentenced the appellant as stated above, hence the instant appeal.

08. Learned Trial Court in the impugned judgment has already discussed the facts of the case and evidence in detail, there is no need to repeat the same to avoid duplication and unnecessary repetition.

09. Learned counsel for appellant *inter alia* contends that the prosecution case is highly doubtful, as the alleged recovery was effected from public place, yet none from public was joined to witness the recovery and arrest of the appellant; there

are material contradictions in the prosecution evidence; prosecution story is false; nothing has been recovered from the possession of accused; material questions have not been put to the appellant / accused in statement recorded u/s 342 Cr.P.C; all the witnesses of this case are police witnesses, it is clear violation of section 103 Cr.P.C. Prosecution has miserably failed to prove the case against the accused, hence has prayed that instant appeal be allowed and the impugned judgment be set aside.

10. Learned State Counsel fully supported the impugned judgment and in particular contended that the recovered contraband item had been in safe custody following its recovery until the time it was sent and received in the office of Chemical Analyzer for chemical examination, coupled with the report of Chemical Analyzer which is positive; prosecution has fully proved its case beyond any shadow of doubt; the

learned trial Court has passed the impugned judgment after appreciating the evidence available on record in its true perspective; therefore, under these circumstances, he prayed that the instant appeal be dismissed.

11. We have heard the arguments advanced by learned counsel for the appellant, learned State Counsel and perused the record with their able assistance.

12. To prove the factum of recovery of narcotics substance from the possession of accused, complainant / Muhammad Hassan ASI, appeared as PW-1 and reiterated prosecution's story as narrated in complaint Ex.PB. Recovery witness namely Asad Inayat/Pw-2 also got recorded his statement in line with the statement of complainant/PW-01.

13. So far as the safe custody and safe transmission of the sample parcel and parcel of remaining case property said to

contain Charas is concerned, it is proved from evidence of prosecution witnesses that sample parcel and parcel of remaining case property were kept in safe custody and the same were safely transmitted to the office of NIH Islamabad.

14. Sealed parcels were handed over to Sajid Hussain, Muharrar/PW-3 on 01.03.2021; he handed over one sealed sample parcel to Muhammad Hassan ASI for onward transmission to NIH Laboratory Islamabad alongwith road certificate No. 126/21. Prosecution has not furnished any explanation about sending parcels after a considerable delay of more than eight days.

15. PW-01 Muhammad Hassan, ASI has stated that he prepared two parcels i.e. one sample parcel and one remaining recovered charas with the stamp of MM; also prepared recovery memo Ex.PA and handed over recovered contraband, recovery memo and custody of the accused

to Manzoor S.I. In cross-examination he has stated that:

*"It is correct that recovered charas Ex.P1 when opened same was not wrapped in a blue color shopping bag."*

Further stated that:

*"It is correct that Charas Ex.P-1 when open is found wrapped in white color transparent shopping bag."*

Whereas, in complaint Ex.PB, it is mentioned that charas was found wrapped in yellow color isolation tape and was kept in shopping bag of blue color.

16. PW-2 Asad Inayat / HC, stated that I.O Muhammad Manzoor / PW-4 weighed the charas, prepared the parcels of sample and recovered charas and recovery memos.

17. Question regarding keeping contraband in safe custody in police station has not been put up to the appellant / accused in his statement recorded under section 342 Cr.P.C. In question No.2 of

statement recorded u/s 342 Cr.P.C., it is mentioned that charas Ex.P-1 weighing 1375 grams in shape of Gola was recovered from the possession of the appellant / accused, whereas, actual weight of charas Ex.P-1 after the separation of parcels was 1365 grams.

18. Appellant / accused has been apprehended by the police red handedly; it is broad daylight occurrence and report of recovered contraband is also positive.

19. Appellant / accused has not been able to show any malafide / enmity on behalf of police that why he has falsely been involved in the case. As there are minor discrepancies in the statements of witnesses but the prosecution case is further strengthened from positive report Ex.PF of NIH Laboratory, Islamabad.

20. In this way, the impugned judgment, resulting into conviction of the appellant for offence under Section 9(c) of the Control of Narcotic Substances Act

1997, is not open to any exception. Consequently, the conviction of the appellant recorded through the impugned judgment is **maintained**. As far as quantum of sentence of the appellant is concerned, while considering nature of the substance being less harmful and dangerous as compared to the other narcotic substance like heroin etc, quantity of the recovered substance and other aspects that the appellant is the first offender, remained behind the bar from the date of arrest/occurrence i.e. 31.03.2021, then released on bail after arrest but did not misuse the concession and again was arrested at the time of pronouncement of impugned judgment on 07.12.2021 and is behind the bar till to day. According to jail report, he has already served out, the substantive portion of his sentence. Further, the appellant has expressed remorse and repentance with an assurance not to deal

with narcotics in future. He should be given an opportunity to mend his ways, hence, the sentence of the appellant is reduced to the period already **undergone** by him, which would meet the ends of justice. Reliance is also placed upon case titled as **Khuda Bakhsh v. The State** (2015 SCMR 733).

21. In a case titled as "*The State through Deputy Director (Law) Regional Directorate, Anti-Narcotics Force v. Mujahid Naseem Lodhi (PLD 2017 SC 671)*", it has been held by the Hon'ble Supreme Court of Pakistan that:

*"....the exercise of jurisdiction and discretion in the matter of the respondent's sentence by the trial Court and the High Court have not been found by us to be open to any legitimate exception, particularly when the reasons recorded for passing a reduced sentence against the respondent and for making a departure from the above mentioned sentencing policy guidelines have been found by us to be proper in the peculiar circumstances of this case...."*

22. It has also been held by the Hon'ble Supreme Court of Pakistan in a case titled

as "*Naseem Khan vs. The State*" (**2021 SCMR 1771**) that:

*"Purpose of administration of criminal justice is to ensure that majesty of law reigns supreme with peace and equilibrium in the society, it is not designed to wreak vengeance; it must provide opportunity to the errant to possibly reform himself so as to rejoin mainstream life as a useful member thereof. Prosecution's reliance upon a single consolidated sample instead of dispatching three separate samples from each bag brings petitioner's case within the purview of clause (b) of the section ibid and, thus, a corresponding reduction in his sentence is an option most conscionable in circumstances. Consequently, petitioner's sentence is reduced to already undergone by him with reduction in fine to Rs.5000/- or to undergo two months SI in the event of default. Petition is converted into appeal and partly allowed."*

Further reliance is also placed on the following case laws, wherein sentence awarded to the accused of CNSA has been reduced to sentence undergone by the accused:

- i. **Zulfiqar alias Zulfa vs. The State** (2021 SCMR 531)
- ii. **Mst. Sughran and another vs. The State** (2021 SCMR 109)
- iii. **Shaukat Ali alias Billa vs. The State** (2015 SCMR 308)
- iv. **Gulshan Ara vs. The State** (2010 SCMR 1162)

22. The appellant / accused is directed to be released forthwith, if not required in any other case. Instant criminal appeal is **disposed of** in the above terms.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**