IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Jail Appeal No. 29 of 2022
Jahangir Khan vs The State, etc.

Date of hearing: **03.03.2025**
Appellant by: Malik Muhammad Ajmal Khan, Advocate.
The State by: Rana Zulfiqar Ali, Special Prosecutor for ANF.

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JUDGMENT

ACTING CHIEF JUSTICE: The instant Criminal Appeal is directed against the judgment dated 09.11.2021, passed by learned Judge Special Court (Control of Narcotics Substances), Islamabad in FIR No.78/2019 dated 13.04.2019 offence under section 9(c)/15 of Control of Narcotic Substances Act 1997, registered with Police Station ANF-RD North Rawalpindi whereby the appellant was convicted for an offence punishable under section 9(c) of Control of Narcotic Substances Act, 1997 and sentenced to suffer imprisonment for life with fine of Rs.35,000/- and in default whereof, to suffer Simple Imprisonment for six months with the benefit of Section 382-B Cr.P.C. Through the same judgment, the learned trial Court acquitted the co-accused of the appellant Zeeshan Sami son of Zameer Muhammad from all the charges.

2. The case of the prosecution, in brief, is that on 12.04.2019, complainant/Inspector Raja Shoaib Ahmad (PW.4), on duty at Police Station ANF-RD Rawalpindi received spy information that one Jahangir Khan (appellant) allegedly a worker of drug peddlers, carried huge quantity of narcotics/contraband in the secret cavity of his Honda motorcar bearing Registration No.AY-700 Islamabad having Silver colour and the same vehicle will pass through Motorway Toll

Plaza M-1 at about 20:30 hours. Upon which the complainant and PWs reached at the pointed place and at about 20:30 hours apprehended the appellant being driver of the said Car. On search of secret cavity of car, total 15-packets of contraband, detailed as, 11 packets of Opium, each packet of opium came out to be 1200 grams, i.e. total 13 kilograms and 200 grams of Opium and 04 packets of charas, each packet of charas came out to be 1200 grams i.e. total 04-kilograms and 800 grams of *charas*, were recovered and the same were entirely sealed. After completing all legal formalities, the accused along with recovered contraband and vehicle were taken to police station, where the instant case was registered against the appellant and his co-accused.

3. On completion of usual investigation, Investigating Officer submitted report under section 173 Cr.P.C before the competent Court of law and charge against appellant was framed on 28.08.2019 to which he pleaded not guilty and claimed trial. The prosecution then directed to adduce evidence.

4. To prove the charge against the appellant, the prosecution examined as many as five witnesses. One Murtaza Khan-HC was given up being unnecessary by the prosecution. The prosecution tendered evidence as Exh.PJ to Exh.PL as well as from Exh.P3 to Exh.P.17 and closed the same. Appellant in his statement recorded in terms of Section 342 Cr.P.C denied the allegations levelled against him and pleaded his innocence. He, however, neither examined on oath in disproof of the charge nor led any evidence in his defence.

5. The learned trial Court after an evaluation of the evidence/material and hearing the counsels for the parties convicted and sentenced the present appellant vide judgment dated 09.11.2021 which he has assailed before this Court.

6. Per learned counsel, the appellant being innocent has been falsely arraigned in this case; that the alleged contraband (Opium and Charas) has been foisted upon appellant on his failure to grease the

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palm of police; that the Chemical Examination reports (Exh.PJ to Exh.PL) are not with protocol of the test, hence the same have lost sanctity in the eye of law; that there are material contradictions in the evidence of the prosecution witnesses; that safe custody/transmission of contraband from the place of recovery to the Chemical Examiner has also not been established; that the complainant and his witnesses are police officials and no independent person has been cited as witness of the recovery proceedings, which was in clear disregard of mandatory provision of Section 103, Cr.P.C. He, lastly, contended that the prosecution has miserably failed to prove its case against the appellant and thus he is entitled to acquittal.

7. In rebuttal to the above, learned Special Prosecutor for ANF while supporting the impugned judgment has contended that the prosecution has successfully proved its case against the appellant who was found transporting huge quantity of Opium and Charas in a motorcar; that the police officials had no animosity to foist such a huge quantity of narcotics substance upon him, as such, he prayed for dismissal of the instant jail appeal.

8. Heard learned counsel for the parties and perused the entire material made available on record.

9. The careful assessment of the material brought on record reflects that on 12.04.2019, complainant/(PW.04) apprehended the appellant and recovered total 15 packets of contrabands detailed above from secret cavity of car. The prosecution in order to prove the safe transmission of recovered contraband to the office of the Chemical Examiner produced Abdul Razzaq (PW.2) and Mazhar Ali (PW.3). According to the deposition of (PW.2), on 13.04.2019 Investigating Officer (PW.4) handed over 11 sealed sample parcels of Opium and 04 sealed sample parcels of Charas alongwith 02 sealed parcels of remaining case property of Opium and Charas sealed with S.A and he (PW.02) on 15.04.2019 handed over the said sealed sample parcels of

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recovered contraband to Mazhar Ali Constable (PW.3) for onward transmission to the Office of NIH Islamabad. Besides, on 13.04.2019, (PW-02) kept all sealed sample parcels of case property as well as articles of personal search in Malkhana in safe custody. He also made entry in Register No.19 regarding the recovered said parcels on 13.04.2019. Statement of PW.2 was duly recorded under Section 161 Cr.P.C on the same date, i.e. 13.04.2019. The evidence of Mazhar Ali Constable (PW.03) is also very relevant in all aspects of the case who deposed that on 15.04.2019, Moharrar Maalkhana Abdul Razzaq (PW.2) handed him over recovered contrabands, i.e. 04 sealed sample parcels of charas weighing 10/10 grams each with sealed stamp of (SA) and 11 sealed sample parcels of Opium weighing 10/10 grams of Opium each with sealed stamp (SA) alongwith road certificate whereby (PW.03) deposited/transmitted the same in the office of NIH Islamabad. The arguments of the learned counsel for the appellant regarding non-establishing of safe transmission of recovered contraband to the office of Chemical Examiner, is naïve, since, the evidence of PW-2 and PW-3, is prima facie, truthful, perfect and does not give any way or gap which led to break the chain of safe custody. Both PWs (PW.2) and (PW.3) furnished the details about the date and time of receiving the case property at the police Station, the number and nature of parcels, its safe custody at Police Station, the date and time of its transmission to NIH Islamabad in safe custody of PW.3 and return of PW.3 to the Police Station alongwith necessary receipts. It has rightly been observed by the learned trial Court that no discrepancy could be brought on record in the statement of PWs (PW.2 & PW.3) and their evidence remained consistent and unshaken. Besides, (PW.03) through whom the case property was sent to the office of the Chemical Examiner and the Examiner confirmed that the property was received in sealed condition. Reports i.e. Exh.PJ to Exh.PL have been examined thoroughly and it specifically noted that requisite protocols have been followed and the same are in line with the guidelines of United Nations Office on Drugs and Crime. To meet

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up the same proposition, we relied upon the case titled as "Faisal Shahzad v. The State" **(2022 SCMR 905),** and case titled "Ajab Khan v. The State" **(2022 SCMR 317),** in which question of safe transmission of contraband decided in details.

10. Prosecution examined I.O of the case, (PW.4) who supported the prosecution version, recorded the statements of PWs under section 161 Cr.P.C. produced evidence from Exh.P1 to Exh.PH and from Exh.P3 to Exh.P17. Evidence of Sparish Khan (PW.5)/recovery witness also gains importance to the prosecution version who while appearing as (PW.5) deposed all the material facts from getting the information until return to Police Station and handing over the case property to the Moharrar Maalkhana (PW.2).

11. After assessing all the evidence and the available record, we are of the considered view that, the prosecution witnesses remained fully consistent regarding time, place, and mode & manners of recovery. Besides, the PWs remained consistent on all the material facts relating to description of vehicle from which recovery was effected, manner of recovery of contraband, weight of contraband recovered, description of contraband recovered, taking the samples from contrabands recovered, preparation of recovery memos, drafting of Murasla/complaint, preparation of site plan, recording of statement of prosecution witnesses at spot of recovery, return to the police station and time of handing over of case property to Moharrar Maalkhana, etc. They were subjected to lengthy cross-examination but they remained consistent and could not be shattered on any material fact.

12. The requirement of Rule 4 of Control of Narcotic Substances (Government Analysts) Rules, 2001 is that the reasonable quantity of samples from the entire narcotic drug, psychotropic substance or the controlled substances seized, shall be drawn on the spot of recovery and dispatched to the office in-charge of nearest Narcotic Testing Laboratory for the test either by insured post or through a special messenger. There is nothing available on record which could negate

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reports Exh.PJ to Exh.PL and learned defence has miserably failed to rebut the prosecution case in this regard. Similarly, Rule 5 of Control of Narcotic Substances (Government Analysts) Rules, 2001 provides a condition that it should be received in the sealed condition in the Laboratory. The incharge officer shall observe full protocol by carefully opening and giving a distinct laboratory number. For that, a separate register shall be maintained. All samples shall be passed to the analyst on the same day and kept in safe custody and examine and record, weight in the test memorandum. He will compare the markings on the test Memorandums with the markings on the packages envelopes and will ensure that he tests the relevant sample. Rule 6 of the C.N.S (Government Analysts) Rules, 2001 further provides that on analysis, the result thereof together with full protocols the test applied, shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-11. We have perused the Chemical Examiner's report available as Exh.PJ to Exh.PL and in our humble view these reports are according to its Rule and the full protocol was observed by the office of Chemical Examiner.

13. Turning to the arguments of learned counsel for the appellant concerning violation of Section 103, Cr.PC, it would be appropriate to refer to Section 25 of the Control of Narcotics Substances Act, 1997, which reads as under;-.

> "25. Mode of making searches and arrest.--- The provisions of the Code of Criminal Procedure, 1898, except those of section 103, Cr.P.C shall mutatis mutandis, apply to all searches and arrests in so far as they are not inconsistent with the provisions of sections 20, 21, 22 and 23 to all warrants issued and arrest searches made under these sections.

14. It means that the applicability of Section 103, Cr.P.C in the narcotics cases has been excluded and the non-inclusion of any private witness is not a serious defect to vitiate the conviction. Normally people are avoiding to give evidence against drug peddlers due to fear of their lives. So-far the evidence of the police officials is concerned, they are competent as like other witnesses and their evidence cannot be brushed aside merely on the pretext that they are police officials.

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They have furnished straightforward and confidence-inspiring evidence and nothing has come on record to show that they have deposed against the appellant maliciously or out of any animus and it cannot be believed that the police officials would plant or foist such a huge contraband against present appellant at their own resources. It is a well-settled principle of law that the statement of official witness cannot be discarded merely for the reason that they are police officials. The reference in this context is made to the case of "Zaffar v. The State" **(2008 SCMR-1254)**, the Hon'ble Supreme Court of Pakistan has held that,-

> *"Police employees are the competent witnesses like any other witnesses and their testimonies cannot be discarded merely on the ground that they are police officials"*

15. Moreover, a procedural formality cannot be insisted at the cost of completion of an offence and if an accused is otherwise found connected then mere procedural omission and even allegation of improper conduct of investigation would not help the accused. The reference in this context is made to the case of the "State/ANF v. Muhammad Arshad" **(2017 SCMR-283)**, wherein the Hon'ble Supreme Court of Pakistan has held that;-

> *"We may mention here that even where no proper investigation is conducted, but where the material that comes before the Court is sufficient to connect the accused with the commission of crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case".*

16. The reliance is this regard is also placed on the case titled as Salah-ud-Din v. The State, reported in **(2010 SCMR-1962)**, wherein the Hon'ble Supreme Court of Pakistan has held that;-

> *"....No enmity whatsoever has been alleged against the prosecution witnesses and there is hardly any possibility for false implication without having any ulterior motives which was never alleged. In view of overwhelming prosecution evidence the defense version has rightly been discarded which otherwise is denial simpliciter and does not appeal to logic and reasons..."*

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17. It is a trite proposition of law that items recovered from the vehicle in possession of the driver are presumed to be assenting to be in his control and in his knowledge. If the drugs are secured from the possession of an accused then it is normally believed that they have a direct relationship with the drugs and the burden of proof that they did not know the same lies heavily on them. We in this regard would like to refer to a judgment given by the Hon'ble Supreme Court in the case of Muhammad Noor v. The State reported in **(2010 SCMR 927)**, wherein the Hon'ble Court observed as under:

> 8. As regards Driver of the vehicle, it is important to note that when he is driving the vehicle, he is Incharge of the same, therefore, it would be under his control and possession. Hence, whatever articles lying in it would be under his control and possession. The liability of the driver, in view of provisions of section 27 of P.P.C., has been considered by this Court in the case of Sherzada v. State 1993 SCMR 149, wherein it was observed as under:--
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> > *The next point raised by the learned Counsel was that it is provided in section 27, P.P.C. that when property is in the possession of wife, clerk or servant on account of that person, it is in that person's possession within the meaning of this Code. The learned Counsel argued that the appellant was a driver, hence an employee of the owner of the car and even if he is admitted to be in possession of the contraband article on behalf of the owner, he cannot be said to be liable for that possession. But this argument of the learned Counsel is without force on the fact of it because section 27, P.P.C. is confined to the Pakistan Penal Code only, as the words "within the mean of this Code" appearing in that section clearly indicate. This section has not been made applicable to the Prohibition (Enforcement of Hadd) Order, 1979 as is evident from Article 26 of that Order where certain other provisions of the P.P.C. have been made applicable.*
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> This Court in the case of Adil Ahmed v. Deputy Collector, C and CE 1991 SCMR 1951 has observed that in view of provisions of Customs Act, the drivers and owners were both responsible.
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> In the case of Rab Nawaz v. The State PLD 1984 SC 858, the liability of drivers was again considered and lenient view was taken, as they expressed their ignorance about the contents and claimed to be simple carriers. In the present case the appellant did not claim to be carrier.
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> This Court in the case of Nadir Khan v. State 1988 SCMR 1899 has observed that knowledge and

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> awareness would be attributed to the Incharge of the Vehicle. The relevant portion reads as under:--
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> "We have gone through the evidence on record and find that the petitioners had the charge of vehicle for a long journey starting from Peshawar and terminating at Karachi. They had the driving license also. As being person Incharge of the vehicle for such a long journey, they must be saddled with the necessary knowledge with regard to the vehicle and its contents".

18. In the above prevailing circumstances, the prosecution has successfully discharged its duty thereby shifting the burden upon the appellant within the meaning of Section 29 of the Act. Such burden would require the accused to firstly cause a dent in the prosecution case and secondly to establish at least justify the possibility of false implication or foistation of such huge quantity of narcotics but the defense has failed to do so. There is no denial to the fact that the appellant was carrying huge quantity of Opium and Charas. No convincing material has been produced by him denying the fact that how it is possible that he was not having any knowledge about the contraband available in the secret cavity of car carried by him. No illegality or irregularity and mis-appreciation of evidence were found, so-far as his case is concerned. The case of the prosecution is based upon the proper appraisal of the evidence, supported with reasons placed on record. No incriminating evidence was produced to show misreading and omission from consideration of the evidence. It is seen that appellant was carrying contraband containing opium and Charas and only the justification behind the same was to transport/supply it to someone else. Income of narcotics is largely utilized in anti-state/terrorist activities which this country is facing for decades and such menace of narcotics obviously has affected the society at large. When the prosecution can prove its case on its salient features then unnecessary technicalities should not be allowed to hamper the very purpose of the law on the subject. Reliance is placed in the case of "Faisal Shahzad v. The State **(2022 SCMR 905)**.

19. In view of facts and the reasons discussed above and while relying upon the case laws of the Hon'ble Apex Court, we are of the

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considered view that the prosecution has successfully established the guilt against the appellant beyond the shadow of any reasonable doubt. Consequently, the instant Jail Appeal being devoid of merits is dismissed accordingly and the impugned judgment passed by learned trial Court is hereby maintained.

(Muhammad Asif) ***(Acting Chief Justice)***
Judge

Approved For Reporting.

(Muhammad Asif) ***(Acting Chief Justice)***
Judge

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P.W.1, Azhar-ur-Rehman, he recorded the FIR Exh.PB without any addition or omission, PW.2, Abdul Razzaq, he has been handed over 11 sealed sample parcels containing Opium, 04 sealed sample parcels containing charas and 02 sealed parcels of remaining case property of opium and charas sealed with seal S.A. Articles of personal search of accused were also handed over to him. He (PW.2), kept all the sealed sample parcels and parcels of case property as well as articles of personal search in Maalkhana in safe custody. A motorcar Honda bearing registration No.AY-700 alongwith remote key, registration paper has also been handed over to him and he marked the same in the courtyard of Police Station. PW.2 made entry in Register No.19 regarding said articles and parcels. On 15.04.2019 PW.2 handed over the above said sealed sample parcels i.e. 11 sealed sample parcels of Opium and 4 sealed sample parcels of charas to PW3/Mazhar Ali Constable intact for the onward transmission to the office of NIH Islamabad. I.O./PW.4 Inspector Raja Shoaib recorded the statement of PW.2 under Section 161 Cr.P.C. Mazhar Ali was examined as PW.03 who has been handed over docket Urdu, English and Sample Seal SA and directed him to collect sealed sample parcels of this case from PW.2.Moharrar Abdul Razzaq for onward transmission to the Office of NIH Islamabad. He met with PW.2/Moharrar Abdul Razzaq and PW.2 handed over to PW.3/Mazhar Ali 04 sealed parcels of Charas, weighing 10/10 grams each with sealed stamp of (SA), 11 sealed sample parcels of Opium weighing 10/10 grams with the sealed stamp of (SA) and road certificate which PW.3 deposed in the Office of NIH, Islamabad intact. Inspector Raja Shoaib Ahmad was examined as PW.4 and Saparish Khan as PW.5.

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