JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No. 137 of 2022

Sarwar Khan

Versus

The State.

Date of Hearing	:	03.11.2022.
Appellant by	:	Ch. Muhammad Ayyaz, Advocate
Respondents by	:	Makhdoom Syed Fakhar Imam Shah, State Counsel. Talat Mehmood, S.I.

ARBAB MUHAMMAD TAHIR, J: Through the instant criminal appeal under section 48 of the Control of Narcotics Substances Act, 1997 **("Act of 1997"),** appellant (*Sarwar Khan*) impugns judgment dated 28.02.2022, passed by the learned Additional Sessions Judge/Judge Special Court, (CNS), Islamabad (West), whereby he was convicted under Section 9(C) of the Act of 1997, and sentenced to undergo 09 years and 06 months R.I. with fine of Rs. 45,000/-, in default whereof, to further undergo 07 months S.I. with benefit of section 382-B Cr.P.C in case F.I.R No. 388, dated 26.06.2020, under Section 9-C of the Act of 1997, registered at Police Station Tarnol, Islamabad.

2- According to allegations set-forth in complaint Ex. PA, on 26.06.2020, at about 04:20 pm, Tallat Mehmood SI (PW-4) along with other officials namely Arshad Mehmood, Sajjad and Sher Zaman Constables was present near Chungi No. 26, Sector G-15, Islamabad, in connection with routine patrolling when he received a spy information regarding arrival of drug peddler namely Sarwar Khan (appellant) with a huge quantity of narcotics from Peshawar on public transport; that pursuant to said information, they intercepted the appellant having a black colour bag on his right shoulder after alighting him from the public transport; that on checking the bag, 04

brown/chocolate colour packets of charas whereas 02 white colour packets of heroin were recovered; that on weighing the 04 packets of charas garda, the weight of one packet came out to be 1030 grams, the second 1005 grams, the third 970 grams and the fourth 952 grams. The total weight of recovered charas was 3957 grams; that on weighing the 02 packets of white colour polythene bag containing heroin, the weight of both packets came out to be 1175 grams each and total weight of heroin came out to be 2350 grams; that Tallat Mehmood SI/PW-4 separated 10/10 grams charas for sample from each of four packets of charas whereas separated 1/1 gram heroin for sample from each packet of heroin; that SI/PW-4 prepared the separate parcels of recovered charas and heroin (P-1 & P-2), also prepared six sample parcels of charas and heroin with seal "MN"; that SI/PW-4 took into possession all the recovered narcotics charas and heroin through memo Ex-PB, attested by Arshad Mehmood (PW-2) and Sher Zaman constables; that SI/PW-4 drafted complaint Ex-PA, sent it to the police station for the registration of FIR through Sajjad Ahmed (PW-3); that SI/PW-4 inspected the place of occurrence and prepared site plan Ex-PD, interrogated the appellant and formally arrested him; that SI/PW-4 conducted personal search of the appellant as a result of which cash Rs.250/- and a brown color purse were recovered which were separately taken into possession through memo Ex-PC attested by Arshad Mehmood (PW-2) and Sher Zaman Constable; that in the meanwhile, Sajjad Constable (PW-3) brought copy of FIR and original complaint at the place of occurrence whereupon SI/PW-4 completed the documents/recovery memos; that SI/PW-4 took the appellant along with case property to the police station, locked the appellant in lock and handed over the case property to Mubarik Ali Moharrar Maalkhana (PW-5); that SI/PW-4 sent the appellant to judicial lock up on 27.06.2020; that on 29.06.2020, SI/PW-4 sent the sample parcels to NIH Islamabad through Arshad Mehmood Constable (PW-2) after issuance of docket and after completion of investigation, handed over the police file to the SHO for submission of report under section 173 Cr.P.C.

3- At the trial, prosecution produced five witnesses in all i.e. PW-1 Muhammad Ishaq ASI, PW-2 Arshad Mehmood Constable, PW-3 Sajjad Ahmed constable, PW4 Tallat Mehmood SI and PW-5 Mubarik Ali HC. The learned ADDP tendered in evidence the reports of Chemical Examiner Ex. PE to Ex. PJ.

PW-01: Muhammad Ishaq ASI on 26.06.2020, drafted formal FIR Ex. PA/1 on the basis of complainat Ex. PA bought by Sajjad Ahmed constable.

PW-02: Arshad Mehmood Constable had been the member of the raiding party and deposed to prove the apprehension of the appellant, recovery of **3957-grams** charas and **2350-grams heroin** besides his personal belongings which were taken inot possession by the SI/IO through recovery memo Ex. PB and Ex. PC.

PW-03: Sajjad Ahmed Constable on 26.06.2020 took the complaint Ex. PA to the police station for the registration of FIR and handed it over to Muhammad Ishaq ASI/PW-1 who drafted the FIR Ex-PA/1 and thereafter handed it over to PW-3 FIR along with original complaint for its delivery to SI/PW-4 at the place of occurrence.

PW-04: Tallat Mehmood SI/PW-4 is the complainant as well as the investigation officer of the case, who deposed to prove the details of the proceedings conducted at the spot and that of the investigation as well.

PW-05: Mubarik Ali Constable on 26.06.2020 kept the case property in safe custody in Malkhana received from SI/PW-4 and on 29.06.2020 handed over six sample parcels, four said to contain charas and two said to contain heroin to Arshad Mehmood (PW-2) for onward transmission to the NIH.

4- After the recording of above prosecution evidence, the appellant was examined under Section 342 Cr.P.C wherein he denied the prosecution evidence and has taken the plea that " *My father namely Nosherwan Khan was murdered on 12.01.2019 in a fake police encounter which took place at my home within jurisdiction of PS Golra, Islamabad. The Complainant*

Tallat Mehmood PW-4 along with 05 other police officials were involved in the said incident. I moved applications against him before the concerned authorities but unfortunately no case was registered against him. I moved several applications before the police high ups for redressal of my grievance but results remained unsuccessful. Due to this grudge, complainant Tallat Mehmood/PW-4, he got me involved in this false case and arrested me from my home. He also took possession of copies of all the applications which I moved against him with reference to my father's murder case and burnt them. " However, the appellant opted not to make statement on oath under section 340(2) Cr. PC or to produce any defence evidence. The learned Trial Court, after hearing the counsel for the appellant and learned ADDP, convicted and sentenced the appellant vide judgment dated 28.02.2022 in terms noted in para-1 above, being assailed through the instant criminal appeal.

5- Learned counsel for the appellant argued that there are material contradictions in the statements of the prosecution witnesses with regard to the proceedings conducted at the spot; that the appellant was falsely implicated by the SI/IO who was earlier involved in the murder case of his father; that the appellant was not apprehended from the place of the alleged recovery, therefore, impugned conviction and sentence are liable to be set aside.

6- On the other hand, learned State Counsel repelled the above submissions by contending that the prosecution evidence is firm to establish unbroken chain of events that is corroborated by the reports of N.I.H. Further argued that the prosecution evidence being of unimpeachable character establishes charge against the appellant who despite lengthy cross-examination failed to bring on record any material discrepancy, therefore, the impugned judgment does not call for any interference.

7- We have heard the learned counsel for the appellant, learned State Counsel and have gone through the record with their able assistance.

8- To substantiate the proceedings conducted at the spot, prosecution examined PW-2 Arshad Mehmood Constable and PW-4 Tallat Mehmood S.I. /I.O. Both the witnesses in their respective statements had given the details on the material aspects of the prosecution case i.e. apprehension of the appellant, the date and time of apprehension of the appellant as 26.06.2020 at about 04:20 p.m, search of the bag, recovery of four packets of charas and two packets of heroin its weighing and weight as 3957 grams charas and 2350 grams heroin, preparation of separate pracles of samples and the remaining charas amd heroin, taking in possession all the parcels by the SI/PW-4 through recover memo Ex. PB and personal belongings Ex. PC. It is noticed that both the witnesses had given all the material and relevant details in their respective statements and on perusal of their cross examination, nothing untoward is noticed which can be made basis to discard their statements.

09- The safe custody and transmission of the sample sealed parcels to the office of N.I.H Islamabad is established through the statements of PW-2 Arshad Mehmood Constable, PW-4 Tallat Mehmood SI/IO and PW-5 Mubarik Ali Mohrir, HC. From their statements, it is apparent that the contraband was recovered from the possession of the appellant on 26.6.2020, it was made in eight sealed parcels by I.O./PW-4 who on return to the P.S. handed it over to PW-5 Moharrir who kept the same in Malkhana and on 29.06.2020 handed it over to PW-2 Arshad Mehmood Constable for onward transmission to the NIH Islamabad who testified to have deposited the same intact on the same date i.e. 29.06.2020. The reports of NIH Ex.PE to Ex.PJ confirm the receipt of sample parcels through PW-2 Arshad Mehmood Constable on 29.06.2020. Thus right from the recovery till deposit in the NIH, the chain of safe transmission and custody is established without any iota of doubt. The contraband was recovered on 26.06.2020 and within three days deposited in the NIH on 29.06.2020 and during intervening period, it remained in safe custody in Malkhana.

10- The Hon'ble apex Court in the recent pronouncement in ***"Muhammad Rasool v. the State" 2022 SCMR 1145***, graciously refused leave against the sentence of imprisonment to life in case registered under Section 9(c) of the Act, 1997. It has graciously been held that:-

> "Fair trial is not a one-way affair; it also requires an accused and his agents, pleading innocence, to conduct themselves in a manner above board, in accordance with law; their pursuit is only justified insofar as it is in accord with the means sanctioned by law."

11- The Hon'ble apex court in ***"Faisal Shahzad v. The State (2022 SCMR 905),*** has graciously observed that:-

> "This Court has time and again held that the menace of drugs is increasing day by day due to various reasons. It is very disheartening to observe that every day there are many reports of drug peddlers 0being caught with drugs. This menace is a great threat to a peaceful society and is affecting many lives especially the youngsters, therefore, immediate steps are required to be taken to curb these nefarious activities. The proceeds of narcotics are largely utilized in anti-state/terrorist activities, which this country is facing since decades. When the prosecution is able to prove its case on its salient features then un-necessary technicalities should not be allowed to hamper the very purpose of the law on the subject. The close analysis of the whole prosecution evidence i.e. the recovery of huge quantity of narcotics, the happening of the occurrence in broad daylight, separating the samples from each packet in a prescribed manner and sending them to the Chemical Examiner, report of the Chemical Examiner and the statements of the prosecution witnesses when evaluated conjointly leaves no room to come to a different conclusion than what has been arrived at by the learned courts below."

12- In view of above, the prosecution has successfully proved its case beyond any shadow of doubt i.e. the recovery of huge quantity of narcotics, the happening of the occurrence, separating the samples from each packets in prescribed manner and sending the same to the NIH without any break in chain and the reports of the NIH confirming the nature of the contraband as

charas and heroin, on cumulative evaluation, leaves no room to come to a different conclusion than what has been arrived at by the learned Trial Court. The learned trial Court has already taken a lenient view while determining the quantum of sentence on account of having no previous history of conviction thus, under the circumstances the sentenced awarded to the appellant is just and appropriate. Consequently instant appeal fails and is accordingly **dismissed.**

(MOHSIN AKHTAR KAYANI)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____12.2022

JUDGE **JUDGE**

//*Kamran*//