JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CRIMINAL APPEAL NO. 260 OF 2023

AND

JAIL APPEAL NO. 277 OF 2023

MUHAMMAD IQBAL ALIAS SYED ALI

Vs

THE STATE.

Appellant by	**:**	**Raja Haseeb Sultan and Ms. Farzana Mumtaz, Advocates.**
Respondents by	**:**	**Rana Zulfiqar Ali, SPP, ANF.**
Date of hearing	**:**	**20.02.2025**

MUHAMMAD AZAM KHAN, J.

1. By this common judgment, we intend to dispose of Criminal Appeal No. 260/2023 and Jail Appeal No.277/2023 both arising out of the Judgment dated 20.06.2023 **("Impugned Judgment")** passed by the learned Judge, Special Court (CNS), Islamabad **("Trial Court")** in case FIR No.46/2020 dated 07.05.2020, registered under Sections 6, 9(C) and 15 of the Control of Narcotic Substances Act, 1997 **("CNSA")** registered with Police Station ANF RD North, Rawalpindi.

2. Both the titled Appeals have been filed by the Appellant/Convict [Muhammad Iqbal alias Syed Ali] against the Impugned Judgment passed by the learned Trial Court whereby the Appellant has been convicted under Section 9(c) CNSA and sentenced to undergo ten (10) years rigorous imprisonment with fine of Rs.100,000/- (one lac) and in default whereof to further undergo five (05) months simple imprisonment. The benefit of Section 382(B), Code of Criminal Procedure, 1898 **("Cr.P.C.")** has also been extended to the Appellant.

3. The brief facts of the case in hand as per contents of the FIR are that on 07.05.2020, at about 14:00 hours, Sub-Inspector Mamoon ur Rasheed was present on duty in PS ANF RD North Rawalpindi, meantime, spy informer came to Police Station and informed that notorious inter provincial drug peddlers namely Muhammad Iqbal alias Syed Ali resident of Mansehra and Gul

Muhammad Afghani will smuggle huge quantity of narcotics for supplying from Peshawar to interior Punjab through white colored vehicle bearing Registration No. LEI-1917 which will pass through Islamabad Interchange near Old Toll Plaza, Motorway, Islamabad at about 16:15 hours. On receipt of this information, after permission of high ups, Mamoon ur Rasheed, Sub-Inspector along with Muhammad Fayyaz, Subedar and Muhammad Imran, Waqas Khan and Imtiaz Aslam, Constables spy informer left the Police Station in official vehicle bearing Registration No. RIG-1177 driven by Masood Alam, Constable and arrived at the specified location at approximately 16:00 hours and set up a checkpoint (Naaka). They started surveillance of Mehran car coming from Peshawar side. At about 16:30 hours, the vehicle Mehran bearing Registration No.LEI-1917 was seen coming from Peshawar side wherein two persons were boarded. The vehicle was stopped by Mamoon ur Rasheed, Sub-Inspector with the help of accompanying officials and official vehicle as per pointation and indication of spy informer while adopting effective strategy. Both individuals were apprehended and removed from the vehicle. On asking names and addresses by Mamoon ur Rasheed, Sub-Inspector in presence of accompanying officials, the driver of the vehicle disclosed his name as Muhammad Iqbal alias Syed Ali son of Naseeb Ullah resident of Mansehra (present Appellant), whereas, the person de-boarded from front seat of the vehicle, disclosed his name as Gull Muhammad S/O Muhammad Raheem, Afghani by caste, permanent resident of District Sarobi, Province Kabul, Afghanistan, presently residing at Mohallah Qaziabad, Ganj Peshawar. On asking different questions regarding information about narcotics, they after some hesitation separately one after the other, disclosed regarding presence of narcotics in the right and left dub of Gul Muhammad's *shalwar*, as well as in the compartment for the spare wheel in the trunk of the vehicle in their possession. As per their disclosure and pointation, two packets wrapped in Khaki insulation tape were recovered from right and left dub of Gull Muhammad's *shalwar*, whereas, as per disclosure and pointation of Muhammad Iqbal and Gul Muhammad, six packets wrapped in Khaki insulation tape were recovered from a nylon sack, which was lying in the spare tire compartment of the trunk beneath the CNG cylinder. All eight packets were opened, and upon inspection, brown-colored Heroin was found inside each packet. When weighed at the scene, each packet was found to contain 1 kilogram of Heroin, bringing the total weight of the recovered Heroin to 8 kilograms, along with the packing material. A 10-gram sample of Heroin was taken from each packet, and 8 sample

parcels were prepared for chemical analysis. The remaining Heroin, along with the packing material, was repacked into a parcel as part of the case property. All the parcels were sealed with the seal "MR/ANF". A total of nine parcels, including the sample parcels and the parcel containing the remaining case property and vehicle bearing No.LEI-1917 along with key were taken into possession by Mamoon ur Rasheed, Sub-Inspector through seizure memo. Personal search of both the accused was also conducted by Mamoon ur Rasheed, Sub-Inspector and recovered articles were taken into possession through separate seizure memos. Hence, subject FIR was registered.

4. After the registration of FIR, Challan under Section 173, Cr.P.C was submitted before the learned Trial Court. On 23.10.2020, photocopies under Section 265-C, Cr.P.C were supplied to the accused, and on 11.11.2020, charge was framed against the accused to which they pleaded not guilty and claimed trial. Thereafter, in support of their version, the prosecution produced four witnesses namely Azhar ur Rehman, Head Constable as PW-1; Murtaza Khan, Head Constable as PW-2; Mamoon ur Rasheed, Sub-Inspector as PW-3, and Waqas Khan, Ex-Constable as PW-4. On 12.06.2023, learned SPP after giving up PW Masood Alam, Constable being unnecessary and closed the prosecution evidence. Statements of the accused under Section 342, Cr.P.C were recorded wherein they opted not to produce defense evidence or to appear under Section 340(2), Cr.P.C to record their statements under oath. After hearing arguments of both the sides, the learned Trial Court vide the Impugned Judgment acquitted the accused Gull Muhammad of the charges, while present Appellant Muhammad Iqbal alias Syed Ali was convicted under Section 9(c), CNSA and sentenced to undergo rigorous imprisonment for ten years with fine of Rs.100,000/- (rupees one hundred thousand only) and in default of payment of fine to further undergo five (05) months simple imprisonment. The benefit of Section 382-B Cr.P.C was also extended to the Appellant/Convict. Being aggrieved of the Impugned Judgment, the Appellant/Convict has filed the instant appeals.

5. The learned counsel for the Appellant/Convict argued that the Impugned Judgment is totally against the law and facts of the case, without lawful justification and cogent reason, therefore, liable to be set-aside being not maintainable in the eyes of law. The learned counsel for the Appellant submitted that the learned Trial Court completely failed to consider the facts (i) that the Investigating Officer **("I.O")** was dismissed from service for possessing forged

documents as a result whereof all the investigations he initiated or conducted are illegal, unauthorized, and without justification; that due to the said reason, the investigation is highly questionable and without proper authority and consequently, the sentence imposed on the Appellant/Convict is not supported by sound legal reasoning, as it is based on an unauthorized and illegal investigation; (ii) that PW-3 as well as other witnesses, admitted that no public witness was associated/involved in the recovery proceedings by the I.O., which raises serious doubts about the I.O.'s acts and in fact, the I.O. deliberately chose not to involve any private individual from the public in the recovery proceedings, likely to cover up his illegal actions and unauthorized investigation; (iii) that the provisions of Section 103, Cr.P.C. are mandatory in nature and the legislature introduced these provisions to protect the public from potential injustices at the hands of local police, as such, the very registration of the alleged case is baseless, without lawful authority or justification, and goes against the norms of justice; (iv) that the prosecution has failed to present any criminal history of the Appellant/Convict, showing prior involvement in similar cases while during the evidence, it was established that the Appellant/Convict had never been involved in such cases nor had he been previously convicted by any court of law resultantly the entire proceedings initiated by the I.O are unfounded and merely a display of Police *Karguzari/*efficiency), intended to support their illegal actions and agenda. The learned counsel further argued that the Impugned Judgment and conviction of the Appellant/Convict is harsh and is in violation of Sections 367 and 544-A, Cr.P.C as well as Prohibition Law, therefore, the same is liable to be set-aside. Lastly, the learned counsel requested that instant Appeal may kindly be accepted, Impugned Judgment may be set-aside and the Appellant/Convict be acquitted of the charge.

6. On the other hand, the learned Special Public Prosecutor **("SPP")**, ANF argued that the prosecution has successfully proved its case against the Appellant/Convict beyond any shadow of doubt; that the prosecution witnesses remained consistent on material aspects of the case; that there is sufficient evidence available on record which connects the Appellant/Convict with the commission of the offence; that narcotics smugglers are ruining the society; that the Impugned Judgment is well reasoned and has been passed after proper appreciation of the evidence available on the record which as such does not

suffer from any illegality or irregularity; and that the instant Appeal may kindly be dismissed.

7. We have heard the learned counsel for the Appellant/Convict as well as the learned SPP, ANF and have also perused the record with their able assistance.

8. Azhar ur Rehman, Head Constable (**PW-1)** was posted as Moharrar Malkhana in the P.S ANF RD North, Rawalpindi, who stated that on 07.05.2020, Mamoon ur Rasheed, Sub-Inspector handed over to him eight sealed sample parcels said to contain 10/10grams Heroin sealed with the seal "MR/ANF" and one sealed parcel of remaining Heroin weighing 920 grams having seal "MR/ANF", articles of personal search of the accused, a motorcar bearing Registration No.LEI-1917 along with key. He entered all these items in register No.19. On 08.05.2020, he handed over eight sealed sample parcels containing 10/10 grams of Heroin to Waqas Khan, Constable along with Road Certificate for onward transmission to NIH, Islamabad, who on return after depositing the sealed sample parcels, handed over back the Road Certificate to him.

9. Murtaza Khan, HC (**PW-2)** stated that on 07.05.2020, he chalked the FIR in the instant case, after receiving complaint/*Istighasa* (Ex.PA) which was sent by Mamoon ur Rasheed, Sub-Inspector through Muhammad Imran, Constable. After registration of FIR, he made report on the original complaint and handed over one carbon copy of FIR along with the original reported complaint back to Muhammad Imran, Constable for sending it to Mamoon ur Rasheed, Sub-Inspector.

10. Mamoon ur Rasheed, Sub-Inspector (**PW-3)** who is the Investigating Officer in the instant case, stated that on 07.05.2020 at about 14:00 hours, he was present on duty in P.S ANF RD North, Rawalpindi, when informer came to Police Station and furnished information that a notorious interprovincial drug peddlers namely Muhammad Iqbal alias Said Ali resident of Mansehra and Gull Muhammad Afghani will smuggle huge quantity of narcotics for supplying to interior Punjab through vehicle bearing registration No.LEI-1917 from Peshawar. Upon this information, he along with other ANF officials boarded on official vehicle, reached at the motorway old Toll Plaza, Islamabad Interchange at about 16:00 hours and established a nakabandi. At about 16:30 hours, vehicle Mehran car bearing Registration No.LEI-1917 was seen coming from the Peshawar side which was signaled to stop, in which two persons were boarded. Both the persons

were deboarded, on search of Gull Muhammad (since acquitted), recovery of two packets wrapped in khaki insulation tape was effected from the right and left dub of his *shalwar*. When the vehicle was searched, from the compartment where spare wheel was lying in the trunk of the vehicle, six packets wrapped in khaki insultation tape were recovered from nylon sack, which was lying in the spare tire compartment of the trunk beneath the CNG cylinder. All the eight packets were opened and on checking, Heroin brown color was found. Samples from each packet of 10/10 grams were obtained and eight sample parcels were prepared for the purpose of chemical analysis, while the remaining Heroin was packed along with packing material in parcel of remaining case property. All the parcels were sealed with the seal "MRANF". Recovery memo was prepared witnessed by Masood Alam and Waqas Khan. Personal search of the accused was also made and separate recovery memo was prepared witnessed by Masood Alam and Waqas Khan, Constables. He then drafted the complaint (Ex.PA) and sent the same through Muhammad Imran, Constable to the Police Station for the registration of FIR. Muhammad Imran, Constable brought the original reported complaint along with carbon copy of FIR. After completing the investigation on the spot, he came back to the Police Station and handed over the case property to Moharrar Malkhana. On 08.05.2020, sample parcels were sent to NIH through Waqas Khan, Constable who delivered it on the same day and handed over the receiving on the Road Certificate to Moharrar Malkhana.

11. Waqas Khan, ex-Constable **(PW-4)** stated that on 07.05.2020, he along with the other ANF officials recovered eight packets of Heroin from the accused. He is witness to the recovery memos and he also deposited the sample parcels in the NIH, Islamabad.

12. The learned Trial Court while deciding the instant case, vide Impugned Judgment, acquitted co-accused namely Gul Muhammad, on the ground that "*Record reveals that according to the complaint Ex.PA, 01 kilogram of heroin was recovered from each dub of worn shalwar of accused Gul Muhammad however, in sharp contrast to the stated version, according to the recovery memo Ex.PC, the entire 08 kilograms of heroin was recovered from the trunk of the vehicle seized in the present case. Learned counsel for the accused, while referring to the stated contradiction in the two documents of the prosecution, contended that the same has nullified the nature of the recovery in the present case and thus, pleaded that the accused facing trial should be acquitted on the*

basis of such contradiction. No doubt, the stated contradiction has occurred in the case of the prosecution but the same cannot be considered to have nullified the recovery itself rather, it has created doubt regarding the recovery of 02 kilograms of heroin only. While accepting the stated contradiction in the case of the prosecution, the same would only create doubt regarding recovery of any contraband from accused Gul Muhammad and recovery of 08 kilograms of heroin from the trunk of the vehicle seized in the present case and thus, benefit of doubt can only be extended to such an extent in the present case. So, the stated contradiction would make the liability of accused Gul Muhammad doubtful resulting in his acquittal and would create doubt to the extent of recovery of 02 kilograms of heroin from the trunk of the seized vehicle but such contradiction would not affect the recovery of 06 kilograms of heroin from the seized vehicle to the extent of which, the liability has been fully proved on the record".

13. Perusal of Ex.PC, a recovery memo of the present case, shows that it is clearly stated therein that during search of the car driven by the current Appellant/Convict, a white nylon sack was found beneath the CNG cylinder in the trunk of the vehicle, at the location of the spare wheel. Upon opening the sack, eight packets wrapped in khaki-colored tape were discovered, and after opening all the packets, brown-colored Heroin was found inside. In this recovery memo, there is no mention of recovery of two packets of Heroin from the dub of the acquitted accused namely Gul Muhammad's *shalwar*, rather all the eight packets were recovered from the trunk of the said car in a white sack beneath the CNG Cylinder. Contrary to this, the story of the *Murasla* and the F.I.R is totally different and as per the version there, two packets were recovered from the personal possession of acquitted accused Gul Muhammad, while six packets were recovered from the trunk of the said car beneath the CNG Cylinder. On this ground, one accused namely Gul Muhammad has already been acquitted, meaning thereby that there is a serious doubt regarding the recovery of the alleged eight kilograms Heroin in the prosecution story. Reliance is placed on PLJ 2019 Supreme Court (CR.C) 265 Original Jurisdiction, in which it is held that "*Falsus in uno, Falsus in omni bus*" Latin phrase (false in one thing is false in everything). The said proposition was regarding a portion of a false statement given by a witness, hence, the whole statement of that witness cannot be believed. In the present case, there is huge contradiction between the recovery memo Ex.PC and Complaint Ex.PA and F.I.R Ex.PB. In a criminal case, the

benefit of the doubt always favors the accused, and the aforementioned doubt significantly undermines the prosecution's case. This raises the possibility that either the recovery memo Ex.PC or the Complaint Ex.PA was not prepared by the witnesses and appears to not have been created at the scene. Waqas Khan, Ex-Constable PW-4, during his cross-examination, admitted that according to the recovery memo Ex.PC, no contraband was recovered from the personal possession of the acquitted accused, Gul Muhammad. This clearly indicates that no recovery was made from Gul Muhammad. However, according to the complaint and the F.I.R., two packets were allegedly recovered from the dub of the Gul Muhammad's *shalwar*. This suggests that there was no clerical error in preparing the recovery memo Ex.PC; instead, it confirms that the initial investigation was not conducted at the scene. In the esteemed judgment of the august Supreme Court of Pakistan titled *Muhammad Riaz and others Versus The State and others"* 2024 SCMR 1839, it was held that *"From the above-stated facts and circumstances, it is abundantly clear that in this particular case, the prosecution version is burdened/loaded with major discrepancies, which create serious doubts about its authenticity. The prosecution version with regard to the manner of killing, the medical evidence and the recoveries, contradict each other on material points creating serious cracks in the prosecution version. The prosecution has failed to bring on record any convincing material to establish that it was the appellants who had committed the occurrence. It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to procure conviction then the Court can come forward for the rescue of the accused persons as held by this Court in Daniel Boyd (Muslim Name Saifullah) and another V. The State (1992 SCMR 196); Gul Dast Khan V. The State (2009 SCMR 431); Muhammad Ashraf alias Acchu V. The State (2019 SCMR 652); Abdul Jabbar and another V. The State (2019 SCMR 129); Mst. Asia Bibi V. The State and others (PLD 2019 SC 64) and Muhammad Imran V. The State (2020 SCMR 857). As the prosecution has failed to prove its case, we find there is no need to ponder the plea of alibi raised by the appellants in the defence".* Reliance in this regard is also placed on case titled *Subha Sadiq Versus The State"* 2025 SCMR 50.

14. The reasoning given by the learned Trial Court that the said contradiction cannot be considered to have nullified the recovery itself rather, it has created doubt regarding the only recovery of two kilograms of Heroin is not rational, as the significant discrepancy between the mode of recovery and the location from where the alleged Heroin was recovered casts serious doubt on the entire case. Such inconsistencies raise serious concerns about the credibility of both the recovery memo and the complaint, which are claimed to have been prepared on the spot and also create doubts about which facts are true and whether any of them can be trusted to support the conviction of the Appellant. Reliance is placed upon the rulings of Supreme Court of Pakistan cited in *Muhammad Samiullah versus The State,* 2022 SCMR 998 and *Khial Muhammad versus The State,* 2024 SCMR 1490. Relevant portions from the aforementioned case law are reproduced hereunder:-

> ***2022 SCMR 998 titled "Muhammad Sami ULLAH Vs. State":***
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> *---Reasonable doubt, benefit of ---Scope---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right---Conviction must be based on unimpeachable, trustworthy and reliable evidence---Any doubt arising in prosecution's case is to be resolved in favour of the accused.*
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> ***2024 SCMR 1490 titled "Khial Muhammad Vs. The State":***
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> *---Benefit of doubt---Principle---For the accused to be afforded the right of benefit of doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused---Any doubt arising in prosecution case is to be resolved in favour of the accused.*
>
> *---Single loophole in the prosecution case---Benefit of doubt---Principle---Once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused.*

15. In light of these observations, we are of the opinion that either the recovery memo was not prepared on the spot, or the complaint was not drafted on the spot, which is a requirement under Section 157(1) of the Cr.P.C.

16. For what has been discussed above, the titled Appeals are **allowed.** Resultantly, the Appellant namely Muhammad Iqbal alias Syed Ali son of Naseeb Ullah who is behind the bars since the registration of instant F.I.R dated 07.05.2020 and whose age is about 62/63 years is **acquitted** from the charge under Section 9(c), CNSA. He be released from the jail forthwith if not required

to be detained in any other case. Personal belongings (if any) be returned to the acquitted accused forthwith. The case property shall remain intact until the expiration of the period for appeal or revision.

17. Before parting with the judgment we would like to observe that the vehicle, Mehran bearing Registration No. LEI-1917, which was seized in the present case by the ANF, was confiscated by the learned Trial Court vide the Impugned Judgment. The Impugned Judgment states that no one has claimed ownership of the vehicle either before the Investigation Agency or before the Trial Court, therefore, it is to be disposed of in accordance with the law once a claimant comes forward. The learned Trial Court has failed to adhere to Section 32 of the CNSA which mandates that before the forfeiture of a vehicle, a notice under Section 32 must be served to the vehicle's owner. It appears that the vehicle is registered under the number plate LEI-1917, but the I.O. also failed to determine the vehicle's ownership during the investigation, as there was no confirmation of whether the vehicle is registered in someone's name or if the registration number is fake or fictitious.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in open court on _____.

JUDGE **JUDGE**

//Sajid//*

Approved for Reporting
Blue Slip added.