JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CRIMINAL APPEAL NO. 298 OF 2023

AND

JAIL APPEAL NO. 331 OF 2023

KHURRAM MASIH

Vs

THE STATE.

Appellant by : Mr. Muhammad Ilyas Khan Advocate.

Respondents by : Rana Hassan Abbas, ADPP.
Mr. Zafar Iqbal, S.I, P.S Tarnol, Islamabad.

Date of hearing : 04.03.2025

MUHAMMAD AZAM KHAN, J.

1. By this common judgment, we intend to dispose of Criminal Appeal No. 298/2023 and Jail Appeal No.331/2023 which stem from the Judgment dated 21.07.2023 **("Impugned Judgment")** passed by the learned Additional Sessions Judge/Judge Special Court (CNS), Islamabad-West **("Trial Court")** in case FIR No. 754/2020 dated 07.12.2020 under Section 9(c), Control of Narcotic Substance Act, 1997 **("CNSA")** registered with Police Station Tarnol, Islamabad. Vide Impugned Judgment whereby the Appellant/Convict has been convicted under Section 9(c) CNSA, 1997 and sentenced to undergo life imprisonment with fine of Rs.100,000/- (one lac) and in default whereof to further undergo one (01) year of simple imprisonment. The benefit of Section 382(B), Code of Criminal Procedure, 1898 **("Cr.P.C.")** has also been extended to the Appellant/Convict.

2. The brief facts of the case as per the contents of FIR are that on 07.12.2020, on the directions of high ups, officials of CIA Staff comprising Zafar Iqbal, S.I/Complainant/Investigating Officer, Sudheer Abbas, ASI, Imran Shafique, 7455/C, Amir Zaman, 7229/C and Shahid Hayat, 7092/C were present in the area of Police Station Tarnol, Islamabad in connection with patrolling. Spy met Zafar Iqbal, S.I/Complainant/Investigating Officer and informed him that a vehicle bearing Registration No. AAC-164/Punjab is coming from Peshawar Motorway

side with huge quantity of narcotics and the persons boarded in the vehicle use to sell narcotics in Islamabad Rawalpindi. Considering the information reliable, CIA officials reached at the Motorway Old Toll Plaza near Sector G-16/1, established checkpoint and started checking the vehicles coming from Peshawar motorway side. At approximately 04:20 pm, a vehicle with Registration No. AAC-164/Punjab arrived at the location. Upon noticing the police party, the driver attempted to flee, but the vehicle was successfully intercepted and stopped. The person sitting on the driving seat disclosed his name as Khurram Masih son of Nazeer Masih (present Petitioner). During the search of the vehicle, a white colored plastic bag with red and blue English writing was found on the front seat, beneath the dashboard on the Foot Mat. On search of the plastic bag, 20 packets wrapped in yellow coloured solution tape containing Charas Garda in the shape of *littar* were recovered. The recovered packets of Charas were weighed through electrical scale which came out to be 21025 grams. From each packet of recovered Charas, 10/10 grams were separated for chemical analysis. The samples were taken into possession through 20 separate parcels whereas the remaining packets of Charas were taken into possession through a single parcel. Hence, Subject FIR was registered against the Appellant/Convict.

3. After necessary investigation, the Appellant/Convict was sent up to the Trial Court to face deeds of his culpability, where on commencement of the trial, the Appellant/Convict entered the plea of denial, thus, the prosecution in order to bring home the charge, produced as many as six witnesses, and after close of the prosecution side, the Appellant refuted the allegations so brought and confronted with the allegations as envisaged under section 342 of Cr.P.C., whereafter, the Appellant/Convict neither stepped into the witness box to depose on oath nor produced any evidence in his defense, hence on conclusion of the trial, the Appellant/Convict was convicted and sentenced in the terms mentioned in the paragraph supra. Being aggrieved of the Impugned Judgment, the Appellant/Convict has filed the instant Appeal.

4. The learned counsel for the Appellant/Convict *inter alia* contended that the most important point which is not appreciated by the learned Trial Court while deciding the case is that in this case, all the witnesses were from CIA staff; that neither any Officer from the concerned police station was associated nor any

permission from the concerned police station was taken while conducting the investigation of the instant case; that the CIA staff conducted the investigation of the case without the permission from the high ups; that the superior court expressed a similar view in cases reported as *The State versus Bashir,* **PLD 1997 SC 408**; *Muhammad Afzal versus The State,* **PLD 2000 SC 816;** *Muhammad Idrees versus The State,* **PLD 2006 Lahore 780**, and *DODO versus The State,* **2009 YLR 2049 Karachi**; that the prosecution has failed to prove the safe custody in *Maalkhana*; that firstly the case property was kept in the *Malkhana* of CIA which is not a police station; secondly when the case property was produced before the Court, was broken and the same was not visible which creates doubt in the prosecution case; that considering the above-mentioned fact, it has not been proven in the present case that the samples of the alleged drug were kept in safe custody and securely transmitted from the recovery site to the Narcotics Testing Laboratory, which is a mandatory requirement in narcotics cases, reliance was placed on *The State versus Imam Bukhsh,* **2018 SCMR 2039**; that Adnan Ali, 2009/C (PW-2) stated that he had deposited the sample parcels in the laboratory on the instruction of Zafar Iqbal, S.I/Complainant/Investigating Officer and not on the instruction of In-charge/SHO Police Station Tarnol while Ex.PH, Ex.PJ, Ex.PK & EX.PL are contradictory to the statement of above stated witness; that Zafar Iqbal, S.I/Complainant/Investigating Officer (PW-5) in his statement recorded before the Court stated that he sent the sample parcels along with Road Certificate to the NIH laboratory through Adnan Ali, 2009/C but astonishingly, Ex.PJ, Ex. PK & Ex.PL (Laboratory Reports) bears the name of the police official Imran Ahmad, Constable but neither he was in the list of the witnesses nor he was produced before the Court by the prosecution as a witness; that record of the present case shows that safe custody of recovered substance, as well as safe transmission of sample of recovered substance to the office of the Chemical Examiner, has not been established by the prosecution, reliance was placed upon *Abdul Ghani versus The State,* **2019 SCMR 608**, *Qaisar Khan versus The State,* **2021 SCMR 363**, *Mst. Sakina Ramzan versus The State,* **2021 SCMR 451**, *Shah Zameen versus The State,* **2022 SCMR 2149**, *Lal Jan versus The State,* **2023 SCMR 1009**, *Muhammad Hazir versus The State,* **2023 SCMR 986** and *Asif Ullah versus The State*, **2023 YLR 966**; that another important point which is not appreciated by the learned Trial Court while deciding the case is that Zafar Iqbal,

S.I/Complainant/Investigating Officer had himself investigated the case; that it is clear that the person who is Complainant of the case in order to keep all fairness of things cannot investigate the same case which must be investigated by an independent Officer but not by the Complainant himself; that the superior Courts took similar view in cases reported as *The State versus Bashir,* **PLD 1997 SC 408**, *Agha Qais versus The State,* **2009 PCr.LJ 1334** and *Ashiq alias Kaloo versus the State,* **1989 PCr.LJ 601**; that the prosecution has failed to prove its case against the Appellant/Convict and the learned Trial Court instead of giving the benefit of the doubt to the Appellant/Convict, has wrongly favoured the prosecution; that there are material contradictions in the statements of PWs and the whole case of prosecution is full of doubts but learned Trial Court while convicting the Appellant/Convict has committed patent illegalities which caused grave miscarriage of justice; that the prosecution has miserably failed to bring home guilt of the Appellant/Convict and as such the Impugned Judgment has been passed without application of judicial mind and without taking into consideration the relevant provisions of law, hence, the Impugned Judgment has been passed in utter disregard of the material on record and relevant provisions of law which is against the administration of criminal justice. Lastly, the learned counsel requested that instant Appeal may kindly be accepted, Impugned Judgment may be set-aside and the Appellant/Convict be acquitted from the instant case.

5. Conversely, the learned Assistant District Public Prosecutor **("ADPP")** vigorously resisted the arguments advanced by the counsel for the Appellant/Convict and submitted that the prosecution has proved the case against the Appellant/Convict beyond any shadow of doubt; that the safe custody and transmission has also been proved beyond any shadow of doubt, which does not in any manner vitiate the trial; 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 while keeping in view the evidence available on record; that there is no illegality or irregularity in the Impugned Judgment; and that the instant appeal may kindly be dismissed.

6. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

7. The prosecution produced Naeem ul Hassnain, ASI as (**PW-1)** who was Moharrar, on 07.12.2020, and stated that Zafar Iqbal, S.I / Complainant / Investigating Officer handed over to him, 20 sealed sample parcels and 01 sealed parcel of remaining case property for safe custody at *Maalkhana* which he kept there. Zafar Iqbal, S.I/Complainant/Investigating Officer handed over to him one vehicle Honda City bearing Registration No. AAC-164 Punjab which he also parked at CIA Center. On 09.12.2020, on the direction of Zafar Iqbal, S.I/Complainant/Investigating Officer, he handed over 20 sample parcels to Adnan Khan for onward transmission to NIH, Islamabad. Adnan Khan, after depositing the sealed sample parcels in NIH, Islamabad handed over to him Road Certificate acknowledging receipt.

8. Adnan Ali, 2009/C **(PW-2)** took the 20 sealed sample parcels from the Moharrar *Maalkhana* on 09.12.2020 for onward transmission to NIH and deposited there on the same day and on return handed over Road Certificate acknowledging receipt to Moharrar.

9. Sudheer Abbasi, ASI **(PW-3)** came up with a similar story as mentioned in paragraph No. 3 of this judgment regarding the recovery of aforesaid narcotics from the possession of the Appellant/Convict, which was taken into possession through recovery memo (Ex.PA). He produced memo of Articles of Personal Search as Ex.PB. He also produced recovery memo of the vehicle of the Appellant/Convict taken into possession by Zafar Iqbal, S.I/Complainant/Investigating Officer as Ex.PC.

10. Azmat Hayat Bhatti, S.I **(PW-4)**, chalked F.I.R in the instant case, upon receiving the complaint sent by Zafar Iqbal, S.I/ CIA Staff, through Amir Zaman, 7229. The F.I.R bears his signatures. He returned the original complaint and a copy of the F.I.R. to Amir Zaman, Constable, for delivery to the place of occurrence.

11. Zafar Iqbal, S.I **(PW-5)** who is the Complainant and Investigating Officer, reiterated what he had reported in complaint (Ex.PE). According to him, on 07.12.2020, he was on patrolling along with Sudheer Abbasi, ASI, Imran Shafique, Constable, Shahid Hayat, 7092/C and Amir Zaman, 7229/C when spy informed

him that a vehicle Honda City bearing Registration No. AAC-164 is coming from Peshawar Motorway side with huge quantity of narcotics. Considering the information reliable, they reached at the Motorway Old Toll Plaza near Sector G-16/1, established police checkpost and started checking the vehicles coming from Peshawar motorway side. At about 04:20 pm, a vehicle bearing Registration No.AAC-164/Punjab reached there and the driver, upon noticing the police party, attempted to flee, but the vehicle was successfully intercepted and stopped. The person sitting on the driving seat disclosed his name as Khurram Masih son of Nazeer Masih (present Petitioner). During the search of the vehicle, a white colored plastic bag with red and blue English writing was found on the front seat, beneath the dashboard on the Foot Mat. On search of the plastic bag, 20 packets wrapped in yellow colour solution tape containing Charas Garda in the shape of *littar* were recovered. He weighed the recovered packets of Charas through electrical scale which came out to be 21,025 grams. He separated 10/10 grams Charas from each packet of recovered Charas for chemical analysis. He prepared 21 parcels (20 sample parcels and 01 parcel of remaining case property) sealed with the seal "ZA" and took the same into possession through recovery memo Ex.PA. He conducted personal search of the Appellant/Convict as a result of which cash amount Rs.2,360/-, original CNIC of the Appellant/Convict, receipt of vehicle and 01 Nokia Mobile Phone were recovered which he took into possession through recovery memo Ex.PB. He also took into possession the vehicle of the Appellant/Convict through recovery memo Ex.PC. He drafted complaint Ex.PE and sent the same to the Police Station for registration of F.I.R through Amir Zaman, Constable. Amir Zaman, Constable came back to the spot from the Police Station along with copy of F.I.R and original complaint at the place of occurrence. He prepared unscaled site plan Ex.PF. He interrogated the Appellant/Convict, formally arrested him and recorded the statements of witnesses under Section 161 Cr.P.C. He then left the spot and went to the CIA Staff, where he handed over the case property including the vehicle and personal search articles to Moharrar CIA namely Naeem Hassnain (PW-1). On 08.12.2020, he sent the application Ex.PG for obtaining permission to investigate the case. On 09.12.2020, after taking sample parcels from the Moharrar *Maalkhana*, he sent the sample parcels along with Road Certificate to the NIH Laboratory, through Adnan Ali 2009/C who after depositing the same in NIH, handed over the receiving on back of the Road

Certificate to him. He recorded statements of Moharrar *Maalkhana* Naeem ul Hassnain and Adnan Ali, 2009/C under Sections 161 Cr.P.C. On 14.12.2020, he handed over case file to the S.H.O for preparation of Challan.

12. Amir Zaman, 7229/C **(PW-6)** has narrated the arrest of the Appellant/Convict and recovery of 20 packets of Charas from his possession. He brought the complaint from Zafar Iqbal, S.I/Complainant/Investigating Officer from the spot to the Police Station and handed over it to Azmat Hayat, S.I, who chalked out the F.I.R No.754/2020. Thereafter, Amir Zaman, 7229/C went to the place of occurrence and handed over the copy of F.I.R and the original complaint to Zafar Iqbal, S.I/Complainant/Investigating Officer who recorded his statement under Section 161 Cr.P.C.

13. The main contention of the learned Defense Counsel is that the CIA police has not obtained the necessary permission from his high-ups for conducting the investigation in a narcotic case and the permission to investigate this case was granted on 21.12.2020 i.e. after completion of the investigation. In this regard, the prosecution has exhibited an Application dated 08.12.2020 i.e. on the next date of registration of the F.I.R of this case, for obtaining necessary permission for investigation which is Ex.PG. Even at the bottom of the Complaint/Ex.PE, it is mentioned by Zafar Iqbal, S.I/Complainant/Investigating Officer that permission to investigate the case was being requested from the high-ups, of course verbally. Similarly, at the bottom of the F.I.R, it is mentioned by Duty Officer Azmat Hayat Bhatti (PW-4) that the matter was being brought to the notice of S.H.O P.S Tarnol who was out of the police station at that time. Hence, this objection holds no ground.

14. The second contention raised by the learned Defense Counsel is that the seal on the remaining case property is broken. Sudheer Abbasi, ASI (PW-3) who is a witness to the Recovery Memo (Ex.PA) stated in his cross-examination that seal "ZA" is not visible on Ex.P1, self-stated, it was sealed but is not readable due to the passing of so much time. His statement was recorded on 19.10.2022 while the case was registered on 07.12.2020, i.e. almost one year and 10 months and it is natural that due to passage of such a long time the seal "ZA" has become unreadable, therefore, this is also not a material infirmity which could damage the prosecution case.

15. The third contention raised by the learned Defense Counsel is that the sample parcels were deposited by Adnan Ali, Head Constable while the Laboratory Reports Ex.PH, Ex.PJ, Ex.PK & EX.PL show that sample parcels were deposited by Constable Imran Ahmed. Whereas, except Laboratory Report which is Ex.PJ, all the other Laboratory Reports show that Constable Imran Ahmed deposited the sample parcels for chemical analysis while Ex.PJ shows that Head Constable Adnan Ali deposited the sample parcels.

16. The fourth contention raised by the learned Defense Counsel is that there are contradictions among the statements of the prosecution witnesses. The F.I.R. was registered on 07.12.2020, and the prosecution witnesses were examined approximately one and a half years later. It is quite natural for minor contradictions to arise when a witness attempts to reconcile the events that occurred before him, especially when his statement is recorded after such a long delay. Hence, minor contradictions carry no weight to shatter the strong case of the prosecution in which a huge quantity of narcotics is recovered from the accused facing trial.

17. The fifth objection raised by the learned Defense Counsel is that the vehicle bearing Registration No.AAC-165, from which the narcotics substance was recovered has not been exhibited during trial. In this regard, the learned Trial Court has given plausible reason that the said vehicle was given to one Naveed Ahmed son of Abdul Hameed on *superdari* vide Order dated 24.06.2021 by the Court. Numerous notices were issued to the *superdar* and his surety to present the vehicle before the Court for exhibition during the evidence stage, however, neither they themselves appeared before the Court nor the vehicle was brought before the Court for this purpose**.** Subsequently, the *superdari* Order dated 24.06.2021 was recalled and after adopting due process for compelling the *superdar* and surety of the *superdar*, to appear before the Court and produce the vehicle F.I.R No. 308/23 dated 22.05.2023 under Section 201/420/468/471, PPC was registered in the Police Station Margalla against the *superdar* and surety of the *superdar* who had submitted fake revenue record for becoming surety. In this scenario, prosecution cannot be blamed for not exhibiting the vehicle during the trial and the benefit of the same cannot be given to the Appellant/Convict. Even otherwise, the narcotics substance was not recovered from the secret cavities of the said vehicle, rather the

same were recovered from a bag lying on the floor of the vehicle beneath the dashboard.

18. In narcotics cases, it is essential to prove the charge of possession of narcotics recovered from the accused while strictly adhering to the requirement that the contraband is searched and seized by an officer of at least the rank of Sub-Inspector. Additionally, samples from each packet must be collected and sent for chemical analysis, and these samples should be forwarded to the Forensic Science Laboratory within 72 hours of the seizure. Moreover, ensuring the proper handling and safe transmission of the samples to the Forensic Science Laboratory is also critical. In the present case, all of these legal requirements have been properly adhered to. Under Section 29, CNSA, a presumption is attached in trials regarding the possession of illicit articles of which he fails to account satisfactorily, unless and until the contrary is proved by the appellant. This burden was also not contradicted or disproven by the Appellant/Convict, who failed to explain his possession of such a large quantity of narcotics or his presence at the scene.

19. On perusal of the NIH reports Ex.PH, Ex.PJ, Ex.PK & Ex.PL it reveals that, the report Ex.PJ mentions the name of Head Constable Adnan Ali as the person who deposited the sample and according to the prosecution story and the evidence produced Adnan Ali, 2009/C (PW-2) took all the 20 sealed sample parcels to the NIH, but the NIH reports Ex.PH, Ex.PK & Ex.PL mentioned the name of Constable Imran Ahmed as the depositor, which discrepancy will definitely benefit the Appellant/Convict as it could not be termed as a clerical mistake for the reason that on all three reports, the name of Constable Imran Ahmed is mentioned and not Head Constable Adnan Ali. In this scenario, the prosecution has proved only five sample parcels which were sent by Head Constable Adnan Ali to the NIH (Ex PJ) and the reports confirm that they tested positive for Charas Garda. According to CNSA before the amendment, the punishment for having in possession of Charas exceeding 4 kilograms and upto 5 kilograms was rigorous imprisonment for 7 years and 6 months with fine of Rs. 35,000 or in default simple imprisonment for 6 months and 15 days. Therefore, the prosecution has successfully established its case regarding 5 kilograms of Charas by presenting compelling and reliable evidence through six prosecution witnesses, leaving no room for doubt.

20. For what has been discussed above, the titled Appeals are **partially allowed** and the Impugned Judgment is modified to the extent that the Appellant/Convict namely Khurram Masih is convicted and sentenced for rigorous imprisonment for 7 years and 6 months with fine of Rs. 35,000/- and in default of payment thereof he shall further undergo 06 months simple imprisonment. The benefit of Section 382-B, Cr.P.C. is also extended to the Appellant/Convict.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in open court on: 14.4.2025.

JUDGE **JUDGE**

Approved for Reporting
Blue Slip added.
Sajid/--