JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JAIL APPEAL NO. 407 OF 2023

ZAHID

VS

THE STATE.

Appellant by	**:**	**Raja Haseeb Sultan and Ms. Farzana Mumtaz, Advocates.**
Respondents by	**:**	**Rana Zulfiqar Ali and Raja Anwar ul Hassan, SPPs, ANF.**
Date of hearing	**:**	**17.02.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Jail Appeal, Zahid **("Appellant/Convict"),** presently confined in Central Jail, Adyala, Rawalpindi, has assailed the Judgment dated 28.10.2023 **("Impugned Judgment")** passed by the learned Judge, Special Court (CNS), Islamabad **("Trial Court")** in case FIR No. 82/2021 dated 24.01.2021 registered under Section 9(c) of the Control of Narcotic Substances Act, 1997 **("CNSA")** with Police Station ANF RD North, Rawalpindi **("Subject FIR")** whereby the Appellant/Convict has been convicted under Section 9(c), CNSA and sentenced to undergo rigorous imprisonment for Life, with fine of Rs.100,000/- (rupees one hundred thousand only) and in default of payment thereof to further undergo one-year simple imprisonment. Benefit of Section 382-B, Code of Criminal Procedure, 1868 **("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 24.10.2021 at about 01:30 am, the ANF officials comprising of Shehraz Sadiq, Inspector/Complainant, Yasir Naseer, SI, Munir Hussain, Naib Subedar, Shahzada Irum and Mazhar Ali Constables, Driver Waqas Khan, Constable, on official vehicle bearing Registration No. GAB-431 were present at F-11 Markaz, Islamabad in connection with routine patrolling duty. In the meanwhile, Spy informer met Shehraz Sadiq Inspector/Complainant and informed him that inter provincial narcotic smuggler namely Zahid son of Sher Muhammad Khan (present

Appellant) is present in the parking of Souda Sulf Grocery Store opposite to HBL Bank Parking to smuggle huge quantity of narcotics to his customer. On receipt of information, Shehraz Sadiq Inspector/Complainant along with his Staff and spy informer reached the abovementioned place at about 01:40 am where a person holding a plastic *KATTA* of yellow color, was present there. The spy pointed to that person and told that the said person is Zahid who on seeing the ANF officials in uniform tried to escape but he was overpowered with appropriate strategy. The said person on interrogation disclosed his name as Zahid son of Sher Muhammad Khan (present Appellant) and regarding the plastic *KATTA*, he disclosed that the same contains Charas. On opening the said plastic *KATTA*, 14 packets of Charas were recovered. The weight of packets No. 1 to 3 came out to be 1 kilogram each whereas the weight of packets No. 4 to 14 came out to be 1200 grams each. The total weight of packets of Charas came out to be 16200 grams. From each packet of recovered Charas, 10/10 grams were separated for chemical analysis. The samples were taken into possession through 14 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 the registration of FIR, Challan under Section 173, Cr.P.C was submitted before the learned Trial Court. On 07.01.2022, copies of relevant documents under Section 265-C, Cr.P.C were supplied to the Appellant/Convict, and on 28.01.2022, charge was framed against the Appellant/Convict to which he pleaded not guilty and claimed trial. Thereafter, in support of their version, the prosecution produced five witnesses namely Abdul Razzaq, Head Constable as PW-1, Murtaza Khan, Head Constable as PW-2, Shehraz Sadiq Inspector/Complainant as PW-3, Adnan Jahangir, Head Constable as PW-4 and Waqas Khan, Ex-Constable as PW-5. On 30.09.2023, learned Special Public Prosecutor **(SPP)** produced Chemical Analysis Reports Ex.PF, Ex.PG & Ex.PH and closed the prosecution evidence. Statement of the Appellant/Convict under Section 342, Cr.P.C was recorded wherein he opted not to produce defense evidence or to appear under Section 340(2), Cr.P.C to record his statement under oath. After hearing arguments of both the sides, the learned Trial Court vide the Impugned Judgment convicted the Appellant/Convict under Section 9(c), CNSA and sentenced to undergo rigorous imprisonment for Life, with fine of Rs.1,00,000/- (rupees one hundred thousand only) and in case of default of

payment of fine to further undergo one year 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 Appeal.

4. The learned counsel for the Appellant/Convict argued that the Appellant/Convict has been falsely involved in the instant case with *mala fide* intentions and ulterior motives; that no recovery of contraband was effected from the possession of the Appellant/Convict; that allegedly recovered contraband was planted on the Appellant/Convict; that no private witness was included in the recovery proceedings; that the Impugned Judgment is against the law and the facts of the case, therefore, liable to be set-aside; that the conviction of the Appellant/Convict is result of non-reading and misreading of evidence; that the learned Trial Court has failed to appreciate that there are glaring contradictions and inconsistencies in the prosecution evidence; that prosecution has miserably failed to prove charge against the Appellant/Convict through cogent and confidence inspiring evidence; that the reasons for conviction of Appellant/Convict are neither in accordance with law nor based upon the well settled principles of applicable law; and that the learned Trial Court has not applied its judicial mind while passing the Impugned Judgment. In the last, 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. The learned Special Public Prosecutors argued that the prosecution has proved the 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 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 Abdul Razzaq, Head Constable as (**PW-1)** who is Moharrar Maalkhana, on 24.10.2021, and stated that Sheraz Sadiq, Inspector handed over to him, 14 sealed sample parcels and 1 sealed parcel of remaining case property said to contain Charas weighing 16.060 kilograms. On 25.10.2021, he sent those 14 sample parcels through Adnan Jahangir, Constable along with Road Certificate, for onward transmission to the Office of NIH, Islamabad. Adnan Jahangir, Constable returned back to the Police Station ANF, after depositing the sealed sample parcels in the office of NIH, Islamabad and handed over to him receiving on Road Certificate.

8. Murtaza Khan, Head Constable **(PW-2)**, chalked F.I.R in the instant case, upon receiving complaint Ex.PA sent by Shehraz Sadiq, Inspector/Complainant through Waqas Khan, Constable. The F.I.R is in his handwriting and correctly bears his signatures. He handed over back the original complaint and carbon copy of F.I.R to Waqas Khan, Constable to take the same to Shehraz Sadiq, Inspector/Complainant.

9. Shehraz Sadiq, Inspector/Complainant **(PW-3)** who is the Investigating Officer, stated that on 24.10.2021, he along with Yasir Naseer, S.I, Mazhar Ali, Constable, Shahzada Irum, Constable boarded on official vehicle driven by Waqas Khan, Constable/Driver, were on routine checking of narcotics at F-11 Markaz, Islamabad. At 01:30 hours, spy informed him that an inter-provincial smuggler namely Zahid son of Sher Muhammad Khan resident of Bajaur Agency is present in the parking area of Souda Sulf Grocery Store which is opposite to HBL Bank, is present in order to supply narcotics to his customer. Upon this they reached at the place at about 01:40 hours, where a person was seen present while having a yellow color (*zard*) plastic sack (*KATTA*) in his right hand. Upon seeing the ANF officials, the individual attempted to flee the scene however he was apprehended. He disclosed his name as Zahid son of Sher Muhammad Khan resident of Bajaur Agency (Appellant/Convict), who disclosed about presence of narcotics in the yellow plastic sack in his hand. On opening and checking the yellow plastic sack, 14 packets wrapped in khaki insulation tape were recovered. On opening each packet, Charas was found and each packet was weighed. Packets, serial Nos. 1 to 3 came out to be 1/1 kilograms, while packets of serial Nos .4 to 14 came out to be 1200/1200 grams each. Thus total 16.200 kilograms of Charas was recovered from the possession of the Appellant/Convict. Ten/Ten grams of Charas were separated

from each recovered packet of Charas and 14 sample parcels having seal of "SS" were prepared. While the remaining packets of Charas were packed in the yellow plastic sack and a separate parcel of remaining case property of Charas was sealed in a separate parcel having serial No. 15, having seal of "SS". He conducted the personal search of Appellant/Convict and as a result recovered Rs. 2,500/-, two mobile phone sets and original CNIC of the Appellant/Convict. He took into possession 14 sample parcels, one parcel of remaining case property of Charas Ex.P1 having serial No.15, Pakistani currency of Rs.2500/- as Ex.P2, two mobile phone sets as Ex.P3 and Ex.P4 and original CNIC Ex.P5, vide recovery memo which is Ex. PC witnessed by Waqas Khan and Mazhar Ali, Constables. He drafted *marasla* already exhibited as Ex.PA and sent the same to the Police Station for registration of F.I.R through Waqas Khan, Constable. He then started investigation at the spot. On cursory interrogation, the Appellant/Convict disclosed at the spot that he had purchased the recovered Charas from one Sher Khan son of unknown resident of District Khyber for Rs. 22,000/- per kg. In the meanwhile, Waqas Khan, Constable came back to the spot from the Police Station along with copy of F.I.R and original complaint and handed over to him. He prepared rough site plan Ex.PD. He then left the spot and went to the Police Station, where he handed over the case property including the personal search articles to Moharrar Maalkhana Abdul Razzaq, HC (PW-1). On 25.10.2021, he sent the sample parcels to the office of NIH, Islamabad for chemical analysis through Adnan Jahangir, Constable. He also prepared a video recording of the recoveries at the spot through mobile phone which was then retrieved into the computer in the Police Station on 24.10.2021 and he also prepared a copy in a C.D Ex.P6 which was taken into possession through a recovery memo Ex.PE witnessed by Waqas Khan and Mazhar Ali, Constables. He also handed over the said C.D to the Moharrar Maalkhana on the same day. He recorded statement of PWs and after completion of investigation, handed over case file to the Incharge Police Station for submission of Challan under Section 173, Cr.P.C.

10. Adnan Jahangir, Head Constable **(PW-4)** took the 14 sealed sample parcels along with Road Certificate on 25.10.2021 to NIH, Islamabad, on the instructions of Sheraz Sadiq, Inspector/Complainant from the Moharrar Maalkhana and deposited in the office of NIH, Islamabad on the same day and on return handed

over receiving on the Road Certificate to Moharrar Maalkhana Abdul Razzaq, HC (PW-1).

11. Waqas Khan, Ex-Constable **(PW-5)** who brought the complaint from the Investigating Officer, Sheraz Sadiq, Inspector/Complainant (PW-3) from the spot to the Police Station and handed over it to Murtaza Khan, Head Constable (PW-2), who chalked the instant F.I.R and then handed over to him copy of F.I.R and the original complaint which he brought back to the Investigation Officer who was present at the spot. He is also witness to the recovery memos vide which case property i.e. Charas and the personal search articles of the Appellant/Convict were taken in possession by the Investigating Officer on the spot. He is also witness to the recovery memo of video C.D (Ex.PE).

12. In order to prove the factum of recovery of 16.200 Kg of Charas from the possession of the Appellant/Convict, on the ocular side the case of prosecution is supported by the evidence of Shiraz Sadiq, Inspector (PW-3), who was complainant and Investigating Officer of the case and Waqas Khan, ex-Constable (PW-5), who were witnesses of the recovery proceedings. Both the prosecution witnesses, while giving details of occurrence, were found consistent with regard to time of occurrence, place of occurrence, the weight of narcotics, particular place of recovery, particular place of presence of the Appellant/Convict, presence of narcotics in the personal possession of the Appellant/Convict. Furthermore, the purpose and timing of the ANF party's arrival at the recovery spot, time of search of the Appellant/Convict, mode of description of recovery, the manner and place of recovery from personal possession of Appellant/Convict, the manner of recovery of contraband, the weight of contraband recovered, the description of contraband recovered, the taking of the samples from the contraband recovered, preparation of parcels of samples, preparation of the recovery memos, the drafting of *murasala*/complaint, the personal search of the Appellant/Convict, preparation of site plan, recording of statements of the prosecution witnesses at the recovery spot, making of video of the occurrence, return to the Police Station and its timing, the time at which the case property was handed over to the Moharrar Malkhana and its subsequent safe custody in the Malkhana, all were found to be given in a consistent manner.

13. The learned counsel for the Appellant/Convict raised an objection stating that the yellow sack allegedly recovered by the ANF officials containing Charas, was not presented during the trial, instead, a white parcel was exhibited. In response to this objection, the cross-examination of Shehraz Sadiq, Inspector (Investigation Officer)/Complainant (PW-3), is relevant who stated that "*it is correct that case property was produced before the court in a white color hifazati bag, volunteered that yolk plastic bag is present inside the white hifazati bag.*" It is to be noted here that separate parcels are prepared to ensure the safekeeping of the recovered narcotics, which bear the seal of the Investigation Officer. These white bags, available in different sizes, are used by law enforcement agencies for preparing both sample parcels and parcels for the remaining substances. Therefore, this objection is not significant enough to affect the prosecution's case. The second objection raised by the learned Defense Counsel is that only one packet was prepared for the remaining allegedly recovered Charas, whereas it should have been separately sealed in 14 packets. As far as this objection is concerned, it is not significant or detrimental to the prosecution's case, as the Investigating Officer had already prepared separate sample parcels in 14 packets for chemical analysis. The Chemical Analysis Report, which is part of the record, is positive and confirms that the sample parcels contained 'Charas' based on the tests conducted by the Federal Government Analyst. The third objection raised by the learned Defense Counsel is that the arrest of the Appellant/Convict was made within the jurisdiction of Islamabad, whereas the territorial jurisdiction of Police Station ANF RD North, Rawalpindi, is confined to the Rawalpindi District. This objection was not raised by the defense at the trial stage, and it holds no significance at the appellate stage, especially in the presence of strong and convincing evidence against the Appellant/Convict, including the recovery of a large quantity of Charas, i.e., 16,200 grams.

14. In narcotic cases, it is crucial to establish the charge of possession of narcotics recovered from the accused while strictly observing, that the contraband is searched and seized by an officer not below the rank of Sub-Inspector, that samples from each packet must be collected and sent for chemical analysis, that samples should be forwarded to the Forensic Science Laboratory within 72 hours of the seizure, and that ensuring the proper sending and safe transmission of the sample to the Forensic Science Laboratory is also vital. 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 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 during the late hours of the night, i.e., 01:30 am, in the cold winter nights.

15. Based on the discussion in the preceding paragraphs, we have reached with the firm conclusion that the testimony of Shehraz Sadiq, Inspector/Complainant (PW-3), and Waqas Khan, ex-Constable (PW-5), fully corroborated by the un-scaled site plan and the evidence of Murtaza Khan, Head Constable (PW-2), is credible, reliable, and consistent. Therefore, the Prosecution has successfully established, through cogent, credible, and reliable evidence, that the ANF Team recovered 16,200 grams of Charas from the Appellant/Convict, thus proving the charge against the Appellant/Convict under Section 9(c) of the CNSA whereas the defense has failed to highlight any material contradictions, despite thoroughly cross-examining all the prosecution witnesses.

16. For the foregoing reasons, the learned counsel for the Appellant/Convict has failed to point out any illegality or irregularity in the Impugned Judgment so as to warrant interference by this Court. Resultantly the instant Appeal, being devoid of any merits, is hereby **dismissed**.

17. The office is directed to send a copy of this Judgment to the Appellant/Convict through Superintendent Central Jail Adyala, Rawalpindi.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in open court on: _____.

JUDGE

JUDGE

Sajid/--