Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Appeal No. 454/2023

Zakir Ullah

Versus

The State, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.03.2025	Mr. Muhammad Saeed and Rao Muhammad Sarfraz, Advocates for the appellant. Mr. Muhammad Adnan, SPP, ANF. Mr. Amer Hayat, S.I/I.O, P.S. Golra Sharif, Islamabad.

MUHAMMAD ASIF, J. Appellant (Zakir Ullah) has been tried by the trial Court in case FIR No. 1217 dated 16.09.2022 offence under section 9 (1) 3 (C) CNSA, 1997 (Amendment) Act, 2022, police Station Golra, Islamabad and was convicted and sentenced vide Judgment dated 28.10.2023 as under:-

> **9 (1)3(C) of CNSA 1997 (Amended) Act, 2022**
> Sentence to 09-years R.I. along with fine of Rs. 80,000/- and in default of payment of fine, further undergo 05-Months S.I with benefit of Section 382-B Cr.P.C.

2. Briefly, as per complaint (Ex. P.E.) on 16.09.2022 at about 08:50 pm the police party were on routine patrolling within the area of Police station Golra, meanwhile the accused/appellant came there and apprehended by the police on the basis of suspicion, on his personal search a blue-coloured shopper weighing 1320 grams charas was recovered from his possession.

3. On receipt of report under Section 173 Cr.P.C, copies as required under Section 265-C of Cr.P.C were delivered to the

appellant and charge was framed against him on 15.04.2023, to which he pleaded not guilty and claimed trial.

4. The prosecution in support of the charge, produced as many as five Prosecution Witnesses (PWs) and the learned prosecutor closed the evidence after tendering report of NFSA Ex. P.F.

5. The Statement under section 342 Cr.P.C. was recorded wherein the appellant professed his innocence. He neither opted to appear as his own witness under Section 340 (2) Cr.P.C. nor produced any defence evidence.

6. The learned counsels for the appellant argued that the prosecution has badly failed to prove the charge against the appellant as the evidence is replete with material contradictions and discrepancies; that alleged recovery is planted one as nothing was recovered from the appellant and he was falsely entangled in the case with malafide intention. Finally prayed for acceptance of instant appeal and setting aside of conviction and sentences.

7. On the other hand, learned Special Public Prosecutor, ANF vehemently opposed the arguments of learned counsel for the appellant while contending that prosecution evidence is in line with respect to time, date and place of occurrence as well as with quantity of recovered contraband and that despite lengthy cross-examination, the defence counsel could not create any material dent in the prosecution story. Finally prayed for maintaining the impugned conviction and sentence and dismissal of instant appeal.

8. We have heard the learned counsel for the parties and gone through the record with their able assistance.

9. The discrepancies pointed out by the learned counsel for the appellant in the statements of the PWs are not ignorable rather shatter their credibility.

10. Furthermore, it has been the consistent stance of prosecution that alleged contraband was recovered from blue coloured shopping bag which was hidden by the appellate in his *Daab.* In this regard, Kafayat Ullah, Head Constable/PW-01 while appearing before the trial Court stated that on 16.09.2022 at about 08:50 pm, he along with Noor Elahi, S.I, Amir Zaman and Jaffar Constables were present near Masjid Elahi for Patrolling, on suspicion, the appellant was apprehended and alleged contraband was recovered, however, he does not know the color of alleged narcotics recovered from the appellant. It is a matter of record that although said shopper/shopping bag was taken into possession by the complainant but has not been tendered in evidence with exhibit number. It is also ambiguous as to whether the alleged contraband was weighed with or without said shopping bag/shopper. These important lacunas further create doubt in the prosecution story which is otherwise neither plausible nor believable.

11. These glaring contradictions in the evidence of prosecution witnesses prove that the evidence brought on record by the prosecution against the appellant is not trustworthy and inspires confidence, and it cannot be relied upon and cannot be made the basis for awarding a sentence. Not only this, but it also proves that the entire case is cooked up at the police station and proves the case of prosecution as doubtful. Perusal of the above-referenced evidence shows that the witnesses are not on the same or on one line with each other on material points, which creates doubt regarding the authenticity of the prosecution evidence.

12. In the case of Qaiser and others v. The State (2022 SCMR 1641), the Supreme Court of Pakistan, in paragraph No. 4

of the judgment, has observed that in the absence of establishing secure custody and transmission, the possibility of tampering cannot be discounted. The chain of custody for sample parcels commences from the seizure of narcotics by the police, including the separation of representative samples, their dispatch to the Malkhana, and subsequent transmission to the testing laboratory. This chain of custody and transmission is crucial as it forms the foundation of the Act of 1997 and the Control of Narcotic Substances (Government Analysts) Rules 2001 (Rules 2001). It is incumbent upon the prosecution to ensure the safe and secure handling of this chain of custody, given the critical importance of the chemical examiner's report under the Act of 1997. Any breach in this chain, whether in the safe custody or transmission of representative samples, renders the chemical examiner's report unreliable and unsuitable for substantiating the conviction of the accused. Such a lapse by the prosecution introduces doubt and undermines the conclusiveness and trustworthiness of the chemical examiner's report. The relevant paragraph of the judgment is reproduced as under:-

> *"In absence of establishing the safe custody and safe transmission, the element of tempering cannot be excluded in this case. The chain of custody of sample parcels begins from the recovery of the narcotics by the police including the separation of representative samples of the recovered narcotics, their dispatch to the Malkhana and further dispatch to the testing laboratory. The said chain of custody and transmission was pivotal as the entire construct of the Act 1997 and the Control of Narcotic Substances (Government Analysts) Rules 2001 (Rules 20011), rests upon the report of the analyst. It is prosecutions bounded duty that such chain of custody must be safe and secure because the report of chemical examiner enjoined critical importance under the Act 1997, and the chain of custody ensure the reaching of correct representative samples to the office of chemical examiner. Any break in the chain of custody i.e. the safe custody or safe transmission of the*

> *representative samples, makes the report of chemical examiner worthless and un-reliable for justifying conviction of the accused. Such lapse on the part of the prosecution would cast doubt and would vitiate the conclusiveness and reliability of the report of chemical examiner."*

13. Another important aspect of this case is that PW-3 namely *Muhammad Refan*, in cross-examination has admitted that he has not brought the entry made in Register 19 to deposit the contraband material in the *Mall Khana*. Furthermore, the entry made in the Register 19 has also not been produced before the trial court, as such, the prosecution has failed to establish on record safe transmission and safe custody of the contraband material, which makes the prosecution story further doubtful.

14. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as **Tajamal Hussain v. the State** (2022 SCMR 1567), **Sajjad Hussain v. the State** (2022 SCMR 1540), **Abdul Ghafoor v. the State** (2022 SCMR 1527 SC), **Kashif Ali v. the State** (2022 SCMR 1515), **Muhammad Ashraf v. the State** (2022 SCMR 1328), **Khalid Mehmood v. the State** (2022 SCMR 1148), **Muhammad Sami Ullah v. the State** (2022 SCMR 998), **Bashir Muhammad Khan v. the State** (2022 SCMR 986), **The State v. Ahmed Omer Sheikh** (2021 SCMR 873), **Najaf Ali Shah v. the State** (2021 SCMR 736), **Muhammad Imran v. the State** (2020 SCMR 857), **Abdul Jabbar v. the State** (2019 SCMR 129), **Mst. Asia Bibi v. the State** (2019 PLD 64 SC), **Hashim Qasim v. the State** (2017 SCMR 986), **Muhammad**

Mansha v. the State (2018 SCMR 772), **Muhammad Zaman v. the State** (2014 SCMR 749 SC), **Khalid Mehmood v. the State** (2011 SCMR 664), **Muhammad Akram v. the State** (2009 SCMR 230), **Faheem Ahmed Farooqui v. the State** (2008 SCMR 1572), **Ghulam Qadir v. the State** (2008 SCMR 1221) and **Tariq Pervaiz v. the State** (1995 SCMR 1345).

15. For what has been discussed above, we are of the view that the prosecution evidence is highly deficient and the conviction recorded by the learned trial court, in the circumstances, is not sustainable. We, thus, while allowing the instant criminal appeal, set-aside the impugned judgment dated 28.10.2023 and acquit Zakir Ullah (appellant) of the charge. He is directed to be released forthwith if not required in any other case.

(ACTING CHIEF JUSTICE) **(MUHAMMAD ASIF) JUDGE**

//*Kamran*//