JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CRIMINAL APPEAL NO. 49 OF 2024

AND

JAIL APPEAL NO. 170 OF 2024

NAVEED AHMED

Vs

THE STATE.

Appellant by : Mr. Sohaib Ahmed Shafi Advocate.

Respondent by : Rana Hassan Abbas, ADPP.
Mr. Tanvir S.I, P.S Bara Kahu, Islamabad.

Date of hearing : 05.03.2025

MUHAMMAD AZAM KHAN, J.

1. By this common judgment, we intend to dispose of Criminal Appeal No. 49/2024 and Jail Appeal No.170/2024 arising out of the Judgment dated 22.12.2023 **("Impugned Judgment")** passed by the learned Additional Sessions Judge/Judge Special Court (CNS), Islamabad-East **("Trial Court")** in case FIR No.906/2022 dated 02.11.2022 under Section 9(1)(6)(c) Control of Narcotic Substance Act, 1997 **("CNSA")** registered at Police Station Bara Kahu, Islamabad.

2. Both the titled Appeals have been filed by the Appellant/Convict [Naveed Ahmed] against the Impugned Judgment passed by the learned Trial Court whereby the Appellant has been convicted under Section 9(1)(6)(c) CNSA, 1997 and sentenced to undergo ten (10) years rigorous imprisonment with fine of Rupees One hundred and twenty-five thousands (Rs.1,25,000/-) and in default whereof to further undergo one (01) month of simple imprisonment. The benefit of Section 382(B), Code of Criminal Procedure, 1898 **("Cr.P.C.")** was also extended to the Appellant.

3. The brief facts of the case as per the contents of FIR are that on 01.11.2022, on the directions of high ups, police officials comprising of Shahid Munir S.I, Sikandar Ali 6677/HC and Bilal 4442/C, were on patrolling duty at Murree Road when spy met Shahid Munir S.I and informed him that a notorious drug peddler

namely Naveed Tinda is going at Bheera Pull Stop, having huge quantity of narcotics. Considering the information reliable, police party reached Bheera Pull in front of Punjab Cash and Carry where a person on foot was going towards Abadi who on spy pointation, was overpowered. The said person disclosed his name as Naveed Ahmed alias Tinda son of Muhammad Siddique. From the red color shopper held by the said person in his right hand, heroin powder was recovered which on weighing through digital scale came out to be 1455 grams. From the recovered heroin, 01 gram heroin was separated for chemical analysis. Two parcels (one parcel of remaining heroin alongwith red color shopper and one parcel of sample heroin) sealed with the seal "SW", were prepared which were taken into possession by Shahid Munir S.I through recovery memo. Hence, Subject FIR was registered against the Appellant/Convict.

4. After necessary investigation, the Appellant was sent up to the Trial Court to face deeds of his culpability, where on commencement of the trial, the Appellant entered the plea of denial, thus, the prosecution in order to bring home the charge, produced as many as five witnesses, and after close of the prosecution side, the Appellant negated the allegations so brought and confronted with the allegations as envisaged under section 342 of Cr.P.C., whereafter, the Appellant 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 was convicted and sentenced in the terms mentioned in the para supra. Being aggrieved of the Impugned Judgment, the Appellant/Convict has filed the instant Appeal.

5. Learned counsel for the Appellant argued that the alleged incident occurred on 01.11.2022 at 11:30 PM, coinciding with the Appellant's arrest, while PW-01 and PW-02 stated he was arrested on 02.11.2022. PW-05/I.O Shahid Munir SI claimed he weighed 1455 grams of heroin at the scene, separated only 1 gram, and then filed the complaint. The F.I.R.'s version is implausible, as separating just 1 gram sample for chemical analysis is unrealistic, reducing the charge to Section 9(a) CNSA instead of 9(c), making the prosecution's case doubtful and the sentence excessive. No independent witnesses were cited at the time of arrest, warranting the benefit of the doubt for the Appellant. The recovery memo lacked details such as the location, spy information, color of bag, details of the raiding party, and tools used to separate the sample. Contradictions in witnesses statements further support the Appellant's claim that the case was fabricated to show police efficiency. Additionally, the delay in sending the sample for analysis and the failure to produce the case property before the court cast further doubt. The

prosecution failed to prove the Appellant was seen selling or transporting heroin, no independent witness confirmed the transaction, and no cash was recovered. The police's failure to include independent witnesses and contradictions in evidence suggest malafide intent. The trial court has not appreciated evidence, leading to a wrongful conviction. Therefore, the Appellant seeks the appeal's acceptance, the setting aside of the impugned judgment, and his acquittal.

6. Conversely, learned ADPP vigorously resisted the arguments advanced by the counsel for the Appellant and urged that the Trial Court has well appreciated the evidence on record, which does not call for interference; 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 and as such requested for dismissal of the Appeal 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.

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

8. Sikandar Ali 6677/HC **(PW-1)** came up with a similar story as mentioned in para No.3 of this judgment regarding recovery of aforesaid narcotics from the possession of the Appellant, which was taken into possession through recovery memo (Ex.PA). He further stated that on 08.11.2022, on the direction of I.O, Moharrar Maalkhana handed over to him 01 sealed sample parcel along with English docket and Road Certificate No.823/22. He deposited the sample parcel in NFSA and on return, handed over Road Certificate bearing receipt of NFSA to Moharrar Maalkhana.

9. Umar Hayat 292/HC **(PW-2)** deposed that on 02.11.2022, Muhammad Nawaz S.I, handed over to him, 01 sealed sample parcel weighing 01 gram and 01 sealed parcel of remaining case property weighing 1454 grams, said to contain heroin powder, stamped with seal "SW" which he kept in Malkhana for safe custody. On 08.11.2022, on the direction of Muhammad Nawaz S.I, he handed

over 01 sealed sample parcel to Sikandar 6677 along with Road Certificate No.823/22 for onward transmission to NFSA laboratory who after depositing the sealed sample parcel in NFSA on the same day, handed over to him Road Certificate bearing acknowledgment.

10. Muhammad Bilal **(PW-3)** has narrated about the arrest of Appellant/Convict and recovery of heroin weighing 1455 grams from his possession. He brought the complaint from the Complainant, Shahid Munir S.I from the spot to the Police Station for registration of F.I.R. After registration of F.I.R, he along with Nawaz Gondal S.I came to the place of occurrence along with copy of F.I.R and the original complaint. I.O recorded his statement u/s 161 Cr.P.C.

11. Muhammad Nawaz SI **(PW-4)** who is the Investigating Officer, deposed that on 02.11.2022, Muhammad Bilal/C brought the complaint written and sent by Shahid Munir S.I on the basis of which he registered F.I.R Ex.PC and put his endorsement on the complaint. Thereafter, he along with Muhammad Bilal/C went to the place of occurrence at about 12:30 am. Shahid Munir S.I handed over to him the custody of accused, case property and documents. He prepared unscaled site plan Ex.PD, on the pointation of Shahid Munir S.I. He recorded the statements of witnesses, interrogated the Appellant/Convict and formally arrested him. He then left the spot and came back to police station along with Muhammad Bilal/C, where he handed over the case property to Moharrar Maalkhana for placing in safe custody. On 08.11.2022, on his direction, Sikandar Ali/HC collected one sealed sample parcel from Moharrar Maalkhan Umer Hayat along with Road Certificate No.83/22 and English Docket for onward transmission to NFSA, Islamabad. After depositing the sample parcel in NFSA, Sikandar Ali HC came back to the police station and handed over the road certificate bearing receipt of NFSA, to Moharrar Maalkhana who placed the same in the concerned register. He recorded statements u/s 161 Cr.P.C of Moharrar Maalkhana and Sikandar Ali HC. On the same day, he handed over case file to the S.H.O for submission of report u/s 173 Cr.P.C.

12. Shahid Munir S.I **(PW-5)** has narrated the same facts as mentioned in para No.3 of this judgment regarding recovery of heroin from the possession of the appellant, separation of sample from the recovered heroin, preparation of parcels and seizure of recovered heroin by him through recovery memo (Ex.PA). He also prepared complaint Ex.PB and sent the same to the police station for registration of F.I.R through Muhammad Bilal 4442/C. He further stated that after registration of F.I.R, Muhammad Bilal 4442/C and Muhammad Nawaz S.I came to the place of

occurrence with original complaint and copy of F.I.R. He handed over the case property, custody of accused and recovery memo to Muhammad Nawaz S.I who on his pointation, drafted unscaled site plan. I.O recorded his statement u/s 161 Cr.P.C.

13. The learned defense counsel pointed out that the recovery was made on 01.11.2022, while the F.I.R was lodged on 02.11.2022. In reply to this, it is to mention here that the place of occurrence is Jhugi Stop, Murree road, time and date of occurrence was 11:30 pm on 01.11.2022, while the F.I.R was lodged at 00:35 am on 02.11.2022, thus the whole proceedings of investigation including writing of complaint/Istighasa on the spot, sending the complaint to the Police station for registration of F.I.R, takes at least an hour which is quite reasonable and acceptable to a prudent mind.

14. The second contention raised by the learned defense counsel is that only one gram of heroin was separated from the total recovered heroin i.e. 1455 grams, is not sufficient and not required for sample purposes. To this objection, it is to mention here that there is no yardstick of separation of quantity of narcotics for a representative sample which is to be sent for chemical analysis. The Forensic Laboratory has not raised any objection to that effect that the quantity of the sample is so less that it cannot be analyzed for determination as to whether it's a narcotic or not. Hence, one gram of representative sample for sending it for chemical analysis is sufficient to determine the kind of narcotics recovered.

15. The third contention raised by the learned defense counsel is that no private witnesses has been cited by the police during the whole proceedings. In this regard it is to mention that it is held in so many judgment of the superior courts that police officials are as good witnesses as of private witnesses and even otherwise in our society, no one is ready to become witness in such like cases, and this has become judicially recognized fact. Reliance is placed on judgment of the Supreme Court cited in (2023 SCMR 1669) titled *"Zain Ali Vs. The State"*, relevant portion of which is reproduced as under: -

> *"As already stated above, the whole case hinges upon the statement of the official witnesses and no independent witness was associated while conducting the search of the vehicle. However, it is well settled that testimonies of the police personnel are required to be treated in the same manner as the testimony of any other witness and there is no principle of law that without corroborating by the independent witnesses, their testimonies cannot be relied upon. This Court has time and again held that reluctance of general public to become witness in such like cases has become judicially recognized fact and there is no way out to consider*

> *statement of official witnesses, as no legal bar or restriction has been imposed in such regard. The presumption that a person acts honestly applies, as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds."*

16. The fourth contention raised by the learned defense counsel is that sample was sent beyond 72 hours, to the laboratory for its forensic test. In this regard, it is to mention here that though under Rule 4 of Control of Narcotic Substances (Government Analysts) Rules, 2001, requirement for sending the sample for chemical analysis is within 72 hours but in the presence of other cogent, strong, unrebutted and reliable prosecution evidence**,** this anomaly cannot be given any weightage and specially when there is previous conviction of the accused in similar nature of cases. Hence, this contention carries no bearing on the credibility of the prosecution case. Even otherwise, the said Rules are being directory and not mandatory, which could not control the substantive provisions of the Control of Narcotics Substances Act, 1997 and frustrate its purpose. Failure to follow the said rules would not render the search, seizure and arrest under the parent Act, nullity and would not make the entire case doubtful, thus belated dispatch of incriminating article for expert opinion could not be fatal in the absence of any objection regarding the same having been tampered with or manipulated. Reliance is placed on ruling of the Supreme Court cited in **(2011 SCMR 624)** titled *"Gul Alam versus The State"*.

17. 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 reasonable time 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.

18. In view of the discussion made in the preceding paras, we have come to the considerable conclusion that the prosecution has proved through cogent,

credible and reliable evidence that police had recovered 1455 grams of heroin from the Appellant and bring home the charge against Naveed Ahmed (Convict) under Section 9(1)(6)(c) of CNSA, 1997, while the defense has failed to bring any material contradiction after thoroughly cross-examining all the prosecution witnesses.

19. In the light of above discussion, we are of the view that the learned Appellant's counsel has failed to point out any illegality or irregularity in the impugned judgment dated 22.12.2023 which calls for no interference by this court, and keeping in view the previous convictions of the accused in narcotic cases i.e. in F.I.R No. 47/2016, under section 9-b CNSA, P.S Bara Kahu and F.I.R No.254/2015 under section 9-B CNSA, P.S Bara Kahu (as per the police record). The instant Criminal Appeal and Jail Appeal are devoid of any merits, hence **dismissed** and the sentence and conviction awarded by the learned trial court is hereby maintained. The accused is a previous convict but the learned trial court should have framed the charge as provided under the proviso under section 9 CNSA, but the learned trial court failed to do so.

20. It is to be noted here with grave concern that even the prosecution has not submitted the challan before the trial court to the effect that the accused is a previous convict and in this regard, office is directed to send the copy of this judgment to the Prosecutor General Islamabad for instructing the District Prosecutor to be careful in future, in such eventuality when an accused is a previous 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/--