JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Jail Appeal No.216 of 2024

Tanveer Ahmed
Vs.
The State

Appellant by:	M/s Bilal Arshad and Muhammad Usman, Advocates.
Respondent/State by:	Ch. Muhammad Zaheer Akhtar and Rana Zulfiqar Ali Tahir, SPPs, ANF.
Date of Hearing:	**11.03.2025.**

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INAAM AMEEN MINHAS, J.- Through the instant jail appeal, the appellant has assailed the judgment dated 07.05.2024 **("Impugned Judgment")**, passed by the learned Judge, Special Court, CNS, Islamabad **("Trial Court")**, whereby the appellant was convicted u/s 9(c), CNSA, 1997 in case FIR No.17, dated 01.02.2022, registered u/s 9 (c) & 15 of CNSA, 1997, at Police Station ANF, Islamabad and sentenced to Rigorous Imprisonment for life with fine of Rs.100,000/-, in case of default in payment of fine, the appellant shall further undergo 06 months Simple Imprisonment. Benefit of section 382-B, Cr.P.C was also extended to the appellant.

2. Brief facts of the case are that on 01.02.2022, at 10:00 PM, Complainant Inspector Nazim Shahzad Virk, along with ANF officials, was conducting a routine narcotics check near New Abul-Qasim Tableeghi Markaz, Islamabad. The informant alerted the team that

Tanveer Ahmad (present appellant) and Tanveer Akhtar were transporting a large quantity of narcotics in a white Toyota Corolla (Reg. No. LEB-9479) from Peshawar to Islamabad. At 10:30 p.m, the vehicle was intercepted. Upon inquiry, the appellant disclosed the presence of narcotics in the trunk/Digi of the vehicle. A search led to the recovery of 48 kg of Opium (40 packets, each weighing 1200 grams) and 16.8 kg of Charas (14 packets, each weighing 1200 grams), which were seized and properly sealed. Sample parcels were prepared for chemical analysis. The vehicle and narcotics were taken into custody through a recovery memo. After registration of the FIR, the police completed the investigation and submitted the challan before the learned Trial Court, where the charge was framed, evidence was recorded and after hearing the arguments, the appellant was convicted and sentenced through the Impugned Judgment, hence this appeal.

3. Since this was a jail appeal, therefore, vide order dated 23.05.2024 Mr. Bilal Arshad Sheikh Advocate was appointed as counsel to represent the appellant.

4. The learned counsel for the appellant contended that the appellant was involved in a false and fabricated case by the ANF officials; that the appellant was neither arrested as per the manner, date, time and place mentioned in the FIR nor he was present at the relevant time in the seized vehicle; that no video was recorded on the spot; that there are numerous contradictions in the statements of P.Ws, which makes the prosecution case doubtful and benefit of the doubt must be extended to the appellant; that the learned Trial Court has not

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appreciated the evidence in its true perspective. Lastly, the learned counsel contended that the appellant is an old person having no history of criminal record and prayed for acquittal.

5. On the other side the learned Special Prosecutor, ANF contended that a huge quantity of narcotics was recovered from the possession of the appellant, which directly collaborated with FSL report and there is no mala-fide or ill will on the part of the prosecution; that the prosecution has proved its case beyond any shadow of doubt, therefore, the learned Trial Court has rightly convicted and sentenced the appellant.

6. We have heard the learned counsel for the appellant as well as the learned Prosecutor, ANF and gone through the record.

7. The prosecution in order to prove its case produced the following witnesses:-

PW1: Amjad Hussain, HC stated that on 02.02.2022 as Moharrar Malkhana at P.S ANF Islamabad, he received following items from Inspector Nazim Shahzad Virk:

- 40 sealed sample parcels of Opium (10 g each), numbered 01-40
- 4 sealed parcels of remaining Opium (11.900 kg each), numbered 41-44
- 14 sealed sample parcels of Charas (10g each), numbered 45-58
- 2 sealed parcels of remaining Charas (8.330 kg each), numbered 59-60
- Toyota Corolla (LEB-9479) & key, as per recovery memo

He further stated that all these items were sealed with seal “NV” and recorded in Register No. 19. The vehicle was parked in MT and the case property was stored in Malkhana.

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PW2: Asif Iqbal, Constable stated that on 03.02.2022, Nazim Shahzad Virk, Inspector handed over to him an Urdu application, English docket, sample seal and directed him to collect sealed sample parcels from Moharrar Malkhana for NIH, Islamabad. He received:-

- 40 sealed Opium samples & 14 sealed Charas samples with the seal "NV"
- Road certificate for NIH Islamabad

He further stated that the parcels remained intact till their deposit at NIH and after his return Nazim Shahzad Virk, Inspector recorded his statement under section 161 Cr.P.C.

PW3: Qamar Zaman, HC stated that on 02.02.2022, he was posted in PS ANF, Islamabad as a duty officer when he received a written complaint Exh.PA sent by Nazim Shahzad Virk, Inspector through Constable Muhammad Touseef for the registration of FIR. Based on this, he chalked out FIR No.17/2022 Exh.PB, without addition or omission. He handed over the original reported complaint along with a copy of the FIR to Constable Muhammad Touseef for taking the same to Inspector Nazim Shahzad Virk at the spot of occurrence.

PW4: Muhammad Touseef, Constable stated that on 02.02.2022, he was posted at police station ANF, Islamabad. Inspector Nazim Shahzad Virk, along with other officials of ANF were present near Abul Qasim Tableeghi Markaz, Srinagar Highway, Link Road Motorway, Islamabad. On 02.02.2022, at about 02:00 a.m, Nazim Shahzad Virk, Inspector handed over to him a written complaint to take the same to the police station for registration of FIR. He took the complaint to the police station on 02.02.2022, at about 03:00 a.m and handed over the same to duty officer Qamar Zaman, HC. At about 03:45 a.m, the duty officer handed over to him the original reported complaint and a carbon copy of the FIR, which he handed over to Inspector Nazim Shahzad Virk on his arrival back from the police station to the spot.

PW5: Nazim Shahzad Virk, Inspector testified that on 01.02.2022 at 10:00 p.m, he along with ANF officials was conducting routine

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narcotics checks near New Abul-Qasim Tableeghi Markaz, Sri-Nagar Highway Link Road, Motorway, Islamabad. A spy informer informed him that Tanveer Ahmad and Tanveer Akhtar were smuggling narcotics in a white Toyota Corolla (LEB-9479) from Peshawar to Islamabad via the Motorway. Surveillance was initiated and at 10:30 p.m, the vehicle was intercepted. Upon questioning, Tanveer Ahmad voluntarily disclosed narcotics in the trunk/Digi, handing over four white and two yellow sacks, On search 40 packets of Opium, each weighing 1200 grams (total 48 kg) were recovered, out of which 10 grams was separated from each packet and sealed it into parcels as 1-44. Similarly, 14 packets of Charas, each weighing 1200 grams (total 16.8 kg) were recovered, out of which 10 grams was separated from each packet and sealed it into parcels as parcels 45-60. All parcels were sealed with seal "NV" and the recovered narcotics along with the vehicle and key were taken into custody vide recovery memo Exh.PC attested by him and Amir Nawaz, Constable.

PW6: Ufqad Khalid HC, stated that On 01.02.2022, at about 10:00 p.m, he along with Nazim Shahzad Virk Inspector, Amir Nawaz Constable, Shagufta Tabassum Lady constable, Arslan Akbar Constable, Muhammad Touseef Constable, Hassan Abbas constable and Driver Farhat Zulfiqar boarded in official vehicle bearing registration No.RIG-1114 were present opposite of New Abul-Qasim Tableegi Markaz, Sri-Nagar Highway Link Road, Motorway, Islamabad for routine checking of narcotics. In the meanwhile, spy informer provided information to Nazim Shahzad Virk Inspector that Tanveer Ahmad with his lady companion namely Tanveer Akhtar will try to smuggle huge quantity of narcotics concealed in his vehicle, Toyota Corolla bearing registration No. LEB-9479, white in colour via Motorway Islamabad and will arrive from Peshawar to Islamabad. In case of prompt action, arrest and recovery of narcotics is eminent. Upon this information, strict surveillance commenced. At about 10:30 p.m, the informed vehicle Toyota Corolla bearing registration No.LEB-9479 white in colour was spotted coming from Peshawar side wherein, one male and a female

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were found boarded. The said vehicle was signaled to stop and intercepted by Nazim Shahzad Virk Inspector upon the pointation of accompanied spy informer and with the help of ANF officials and official vehicle at the spot. The driver of the said vehicle was overpowered by Nazim Shahzad Virk Inspector and lady accused was overpowered by lady constable Shagufta Tabassum. Upon asking of their names in his presence, Amir Nawaz constable and Shagufta Tabassum lady constable, the appellant disclosed his name Tanveer Ahmad son of Sabir Hussain, resident of District Jhelum, while the lady accused disclosed her name as Tanveer Akhtar wife of Muhammad Hussain, resident of Gujranwala. During cursory query, after some hesitation, the appellant Tanveer Ahmad made disclosure about presence of narcotics in trunk/Digi of the Toyota Corolla bearing registration No.LEB-9479. After disclosure, the appellant Tanveer Ahmad himself opened the trunk/Digi of the Toyota Corolla bearing registration No.LEB-9479 and himself brought out and handed over to Nazim Shahzad Virk Inspector, 04 sacks/torras of white colour and 02 sacks/torras of yellow colour. During search of the said four sacks/torras of white in colour, 10/10 packets each, total 40 packets wrapped in yellow plastic insulation tape were recovered. On further checking of the packets, Opium wrapped in polythene was found present. The recovered 40 packets of Opium were weighed by Nazim Shahzad Virk Inspector at the spot in the presence of him and Amir Nawaz Constable, which came out to be 1200/1200 grams each, total weight of recovered Opium came out to be 48 kilograms along with packing material. 10/10 grams of Opium was separated from each packet of Opium for the purpose of chemical analysis by Nazim Shahzad Virk Inspector and sealed into sample parcels having serial No.01 to 40, whereas remaining case property of Opium along with packing material was given corresponding serial numbers 01 to 40 and sealed into parcels having serial No.41 to 44 (by keeping them in the same sacks/torras). While during search of the said two yellow sacks/torras, 07/07 packets each, total 14 packets wrapped in yellow plastic insulation tape were recovered. On further checking of the

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packets, Charas wrapped in polythene was found present. The recovered 14 packets of Charas were weighed by Nazim Shahzad Virk Inspector at the spot in his presence and Amir Nawaz constable, which came out to be 1200/1200 grams each, total weight of recovered Charas came out to be 16.800 kilograms along with packing material. 10/10 grams of Charas was separated from each packet of Charas for the purpose of chemical analysis by Nazim Shahzad Virk Inspector and sealed into sample parcels having serial No.45 to 58, whereas remaining case property of Charas along with packing material was given corresponding serial numbers 45 to 58 and sealed into parcels having serial No.59 and 60 (by keeping them in the same sacks/torras). On further search of the vehicle in question, nothing incriminating was recovered. Total 60 parcels (54 sample parcels and 06 parcels of remaining Opium and Charas) were duly sealed by Nazim Shahzad Virk Inspector with the stamp abbreviation of "NV". The vehicle bearing registration No.LEB-9479 along with key and recovered narcotics was taken into possession by Nazim Shahzad Virk Inspector through recovery memo already exhibited as Exh.PC attested by him and Amir Nawaz Constable. He identified his signatures over recovery memo of narcotics and vehicle as Exh.PC/2. He identified the four white sacks/torras containing remaining forty packets of Opium already exhibited as Article P-1 to P-4 (10 packets per sack/torra). He identified the two yellow sacks/torras containing remaining fourteen packets of Charas already exhibited as Article P-5 to P-6 (07 packets per sack/torra). He identified the vehicle bearing registration No.LEB-9479 already exhibited as Article P-7 and its key already exhibited as Article P-8 as the same. The personal search of the appellant Tanveer Ahmad was conducted by Nazim Shahzad Virk Inspector. During personal search of the appellant Tanveer Ahmad, his original CNIC already exhibited as Article P-9, driving license already exhibited as Article P-10, registration certificate of vehicle Toyota Corolla bearing registration No.LEB-9479 already exhibited as Article P-11, Pakistani Currency Rs.2400/- already exhibited as Article P-12, two cell phones I-tel along with sim already exhibited as Article P-13 and Nokia along

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with sim already exhibited as Article P-14 were recovered and taken into possession by Nazim Shahzad Virk Inspector through personal search memo already exhibited as Exh.PD attested by him and Amir Nawaz constable. He identified his signatures over personal search memo of appellant Tanveer Ahmad Ex.PD/2 produced before the Court as the same. I.O recorded his statement under section 161 Cr.P.C.

PW7: Farhat Zulfiqar, Constable corroborated the incident, stating that the recovery proceedings were recorded through a video by Arslan Akbar, Constable. On 08.02.2022, the video was transferred/converted to a CD and taken into possession vide recovery memo Exh.PG signed by him and Arslan Akbar, Constable.

PW8: Shagufta Tabassum, Lady Constable affirmed that she assisted in intercepting the vehicle and her remaining evidence is with regard to lady accused.

8. The prosecution has successfully discharged its burden of proof by establishing the recovery of the contraband narcotics through the testimonies of the Investigating Officer, PW5 and Ufqad Khalid, HC, PW6 and the recovery memo Exh.PC. Moreover, recovered Opium was exhibited as Article P-1 to P-4 (10 packets per sack / Torra and 14 packets of Charas were exhibited as Article P-5 and P-6 (7 packets per sack / Torra, the subject vehicle bearing registration No.LEB-9479 was exhibited as Article P-7 along with its key exhibited as Article P-8). Their depositions are corroborated by material evidence, which affirmatively establish the seizure of the narcotics on the pointation of appellant from the vehicle trunk/Digi. The entire recovery process was conducted in accordance with law by following legal requirements, thereby lending credibility to the prosecution’s case.

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9. The Investigating Officer, PW5 in strict adherence to the prescribed legal procedures, meticulously separated 10/10 grams from each packet of Opium and prepared 40 sample parcels for chemical analysis bearing serial No.1 to 40 and the remaining Opium was sealed into parcels bearing serial No.41 to 44. Similarly, he separated 10/10 grams from each packet of Charas and prepared 14 samples parcels for chemical analysis bearing serial No.45 to 48 and the remaining Charas was sealed into parcels bearing serial No.59 & 60. (Total parcels 60, out of which 54 sample parcels and 6 parcels of the remaining Opium and Charas). The principle of representative sampling enunciated in ***Ameer Zaib vs. State***, **(PLD 2012 SC 380)** was duly observed, thereby ensuring the reliability and admissibility of the chemical analysis conducted on the seized recovered substance. This procedural compliance eliminates any apprehension regarding possible contamination or misidentification of the recovered narcotics.

10. The prosecution has satisfactorily demonstrated the secure safe transmission of the recovered narcotics from the place of occurrence to the Police Station's Malkhana (official storage facility). The chain of custody of the narcotics is an essential requirement in narcotics-related cases, which has been proved in the instant case through the evidence of Investigating Office, PW5 and Amjad Hussain, Moharrar Malkhana, PW1 and during cross examination nothing was brought on record to disprove the safe transmission of the recovered narcotics.

11. The prosecution further proved the chain of custody and safe transmission of narcotics by proving the onward secure transmission of

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the recovered narcotics from the Police Malkhana to the forensic laboratory. The relevant witness Asif Iqbal, Constable deposed that the narcotics was delivered to the forensic laboratory in a sealed condition, leaving no room for doubts regarding tampering, substitution, or mishandling of evidence. The absence of any break in the chain of custody of narcotics is a crucial factor in maintaining the evidentiary value of the forensic report.

12. The prosecution has also established the safe custody of the narcotics in the Police Malkhana through the testimony of Amjad Hussain, Muharrar Malkhana, PW1, who unequivocally affirmed that the contraband remained in secure custody without any unauthorized access, thereby eliminating any possibility of substitution, manipulation, or fabrication of evidence.

13. The Chemical Examiner's report Exh.PH contains details of the protocol as held in ***State vs. Imran Bakhsh***, **(2018 SCMR 2039)**, which conclusively determines that the recovered substance falls within the definition of a narcotic drug, as per the relevant provisions of the Control of Narcotic Substances Act, 1997. Moreover, the expert opinion serves as conclusive proof of the nature of the substance and corroborates the prosecution's stance regarding the recovery of narcotics substance.

14. The appellant was driving the vehicle at the relevant time and was exclusively in control of the vehicle Exh.P-7 and on the pointation of the appellant, the recovery of the contraband was effected from the trunk/Digi of the vehicle, thereby making him liable under the settled

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principles of possession and knowledge. The doctrine of "conscious possession" has been reinforced by judicial precedents, including ***Ismail vs. State***, **(2010 SCMR 27)**, which establishes that a person in control of a vehicle or premises is presumed to have knowledge of the illicit substances found therein unless proven otherwise. The appellant failed to discharge this burden, thereby further strengthening the prosecution's case.

15. The appellant while recording his statement under section 342, Cr.P.C denied the allegations/evidence and did not opt to enter in the witness box himself in terms of section 340(2) Cr.P.C or to produce defense evidence in order to substantiate his claim, therefore, his mere denial cannot displace the otherwise convincing prosecution evidence.

16. The defence has failed to demonstrate any mala fide intent, enmity, or ulterior motive on the part of the prosecution witnesses that could suggest false implication. The prosecution witnesses remained consistent and unwavering during cross-examination, reinforcing their credibility and reliability. The absence of any proven ill will or personal grudge negates the possibility of a false case being engineered against the appellant.

17. In light of the cumulative effect of the prosecution's unimpeachable evidence, including the lawful recovery, the unbroken chain of safe custody of the narcotics, safe transmission, the principle of representative sampling, the chemical examination report, the principle of conscious possession, and the failure of the appellant to produce any exculpatory evidence, the case has been proved beyond

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any shadow of doubt against the appellant. The prosecution has successfully discharged its legal duty and the defence has failed to create any reasonable doubt warranting the benefit of doubt in favor of the appellant. Consequently, the instant appeal is **dismissed** and the conviction and sentence awarded to the appellant through the Impugned Judgment are **upheld**.

(KHADIM HUSSAIN SOOMRO)
JUDGE

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 23.04.2025

JUDGE **JUDGE**

R.Anjam

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