JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CRIMINAL APPEAL NO. 321 OF 2024

MUSTAJAB

Vs.

THE STATE.

Appellant by	**:**	**Mr. Shan Zeb Khan, Advocate.**
Respondent by	**:**	**Raja Anwar ul Hassan, SPP, ANF.**
Date of hearing	**:**	**28.1.2025**

MUHAMMAD AZAM KHAN, J. This Criminal Appeal has been filed by the Appellant against the Judgment dated 12.9.2024 ("**Impugned Judgment**") passed by the learned Judge Special Court, (CNS), Islamabad, whereby the Appellant was convicted under Section 9(2) 3 of the Control of Narcotic Substances Act, 1997 **("CNSA, 1997")** in case FIR No. 201/23 dated 14.11.2023 registered with Police Station ANF-RD, North Rawalpindi and sentenced to undergo three (03) years rigorous imprisonment with fine of Rs. 200,000/- (Two Lacs) and in default whereof to undergo further six (6) months simple imprisonment.

2. Facts of the case, as per the FIR are that on 14.11.2023 during investigation of case FIR No. 200/2023 dated 14.11.2023. registered under Sections 9 (2), (3) and 15 of CNSA, 1997, accused Saad Ramzan and Muhammad Hamza told that Intoxicant "Ecstasy Pills" recovered from them were handed over by Dr. Mustajab **("Accused/Appellant)**, resident of Flat No. 1404, Blue Line Capital Residencia, E-11/4, 1slamabad **("Flat")** for the purpose of sale. Accused Saad Ramzan and Muhammad Hamza further informed that more Intoxicant "Ecstasy Pills" were available with the Accused/Appellant in his Flat. The permission and direction was sought from the high ups for the purpose

of immediate arrest and recovery from the Accused/Appellant. Fawad Ali Khan, S.I./Complainant along with other ANF officials [Muhammad Naveed, Constable, Ghulam Murtaza, Constable, Lady Constable Zahida Gillani], along with sealed property and two accused persons boarded in official Vehicle No. RIG-1177 driven by Sheraz Nazeer, Sepoy and raided at the Flat on the pointation of accused Saad Ramzan around 5:30 hours. Door of the Flat was knocked by Fawad Ali Khan, S.l./Complainant. A person who opened the door spotted the ANF officials and tried to close the door of the Flat but was overpowered by Fawad Ali Khan, S.l./Complainant with the help of accompanied ANF officials. Upon asking his name and address he disclosed his name as Muhammad Mustajab son of Muhammad Jan/Accused/Appellant resident of Peshawar. During cursory investigation, after some hesitation the Accused/Appellant made disclosure about presence of Intoxicant “Ecstasy Pills” below the sofa seat lying in the gallery of the Flat. The Accused/Appellant himself took out a shopping bag from beneath the sofa seat and handed over the same to Fawad Ali Khan, S.I./Complainant. During checking of the said shopping bag Intoxicant “Ecstasy Pills” in different colours and shapes were found lying in 10 polythene bags as such 2600 Intoxicant “Ecstasy Pills” were found present in the said shopping bags. The recovered 2600 Intoxicant “Ecstasy Pills” were gathered and put into white polythene bag, weighed by Fawad Ali Khan, S.l./Complainant at the spot. The recovered 2600, Intoxicant “Ecstasy Pills” along with packing material were put into white cloth sack and parcel was prepared bearing serial No.1 sealed with the stamp with description of “FAK”. The Intoxicated “Ecstasy Pills” were taken into possession through recovery memo (Ex.PC) for the purpose of chemical analysis, duly attested by witnesses Ghulam Murtaza, Constable and Muhammad Naveed, Constable. Fawad Ali Khan, S.I./Complainant identified his signatures upon recovery memo of Intoxicant “Ecstasy Pills” as Ex.PC/1 and produced parcel of remaining case property of Intoxicant "Ecstasy Pills" received in sealed form, after chemical analysis from Punjab Forensic Science Agency (**“PFSA”**), Rawalpindi along with English receipt as Article P-1. During personal search of the Accused/Appellant Pakistani Currency Rs.1,000/- as Article P-2, Mobile Phones

as Article P-3 and Article P-4 (02 phones), CNIC in the name of the Accused/Appellant as Article P-5, Purse black in colour as Article P-6, different visiting cards as Article P-7 and ATM Card as Article P-8 were recovered and taken into possession through personal search memo Ex.PD duly attested by witnesses Ghulam Murtaza, Constable and Muhammad Naveed, Constable. Fawad Ali Khan, S.I./Constable identified his signatures over personal search memo of the Accused/Appellant as Ex.PD/1. On further search of the Flat no other incriminating material was recovered.

3. During investigation, the Accused/Appellant further disclosed that his vehicle is parked in the parking area of Capital Residencia, E-11/4, Islamabad carrying Intoxicant “Ecstasy Pills” in the dashboard of his vehicle [White coloured Corolla Altis bearing Registration No. BKN-366]. Upon the said disclosure, Fawad Ali Khan, S.I./Complainant along with Ghulam Murtaza, Constable, Muhammad Naveed, Constable, Zahida Gillani, Lady Constable, other ANF officials and two other accused persons of FIR No. 200/2023 and sealed case property reached at the parking area of Capital Residencia, where the Accused/Appellant headed towards his vehicle, brought out a white polythene bag from the dashboard of the vehicle and handed over the same to Fawad Ali Khan, S.I./Complainant. Upon opening and checking 500 Intoxicant “Ecstasy Pills" were recovered. The recovered 500 Intoxicant “Ecstasy Pills” were weighed by Fawad Ali Khan S.l/Complainant at the spot which came out to be 240 grams which along with packing material were put into white cloth sack and parcel given serial No.2 sealed with the stamp description of “FAK” was prepared and taken into possession through recovery memo Ex.PE along with said vehicle for the purpose of chemical analysis, duly attested by witnesses Ghulam Murtaza, Constable and Muhammad Naveed, Constable. Fawad Ali Khan, S.I./Complainant identified his signatures over recovery memo of Intoxicant “Ecstasy Pills” as Ex. PE/1. Parcel of remaining case property of Intoxicant “Ecstasy Pills” received in sealed form after chemical analysis from PFSA along with English receipt as Article P-9. The complaint was jotted down and sent to Police Station through Ghulam Murtaza, Constable for registration of

FIR. Fawad Ali Khan S.I./Complainant produced Complaint Ex.PA and identified his signature on the Complaint Ex.PA as Ex.PA/2. Accordingly the FIR was registered on 14.11.2023.

4. The Challan was submitted before the Court on 25.3.2024. The charge was framed on the Accused/Appellant on 22.4.2024. The Accused/Appellant pleaded not guilty while claiming trial. The prosecution produced five witnesses and exhibited certain documents and items before closing their evidence. The statement of the Accused/Appellant was recorded under Section 342, Cr.P.C. in which he denied all the allegations leveled against him and specifically stated that the vehicle which was taken into possession through recovery memo (Ex.PE) was hired by his brother and the same was taken from PIMS Hospital Islamabad by the ANF Authority.

5. Upon conclusion of the trial, the Accused/Appellant was convicted and sentenced, as detailed in para 1 above, which necessitated him to file the instant appeal.

6. The learned counsel for the Accused/Appellant submitted that there are contradictions in the statements of the prosecution witnesses with regard to the date of sample parcels received in PFSA, Rawalpindi, whole quantity of recovered substance was not consumed and even the samples were not collected from each and every tablet. The learned counsel for the appellant further argued that the prosecution produced Chemical Examiner as CW-1 in a bid to fulfil the lacunas mentioned above. The learned counsel further argued that the element of safe transmission of narcotics to PFSA, Rawalpindi, contradiction qua sample parcels, number of sample parcels and certain other infirmities put dent in the prosecution case. In the last he requested for the acquittal of the accused from the charge.

7. The Special Public Prosecutor ANF argued that the charge against the Accused/Appellant is proved beyond any reasonable doubt by producing various categories of evidence which includes ocular evidence, substantial evidence and

recovery evidence coupled with the positive report from PFSA, Rawalpindi. The evidence produced by the prosecution confirmed the presence and recovery of narcotics from the possession of the accused hence the evidence supports the charge under Section 9 (2) (6) of the CNSA, 1997 against the Accused/Appellant Muhammad Mustajab. The learned Special Public Prosecutor, ANF emphasised that the Accused/Appellant is habitual offender involved in the sale of drugs and was found in keeping huge quantity of Intoxicant "Ecstasy pills" for the purpose of sale, In the last he requested that the Accused/Appellant has rightly been convicted by the learned Trial Court and appeal merits dismissal.

8. Arguments heard, record perused.

9. In order to prove the factum of recovery of Intoxicant "Ecstasy" pills from the possession of the Accused/Appellant, the prosecution was under obligation to prove that on 14.11.2023, pursuant to disclosure of accused persons namely Saad Ramzan and Muhammad Hamza arrested in another case FIR No. 200/2023 dated 14.11.2023, that the Accused/Appellant was apprehended around 5:30 hours from his Flat and from his possession total 2100 Intoxicant "Ecstasy pills" were recovered. After disclosure the Anti-Narcotics Force (**"ANF"**) raided the said premises and apprehended the Accused/Appellant and recovered 2600 Intoxicant "Ecstasy pills" of different colours, shape and nature beneath the Sofa seat. Upon further disclosure of Accused/Appellant 500 Intoxicant "Ecstasy pills" were recovered from the dash-board of vehicle which was parked in the parking area of Capital Residencia. The recovery of Intoxicant "Ecstasy pills" i.e. 2600 tablets weighing 1620 grams and 500 Intoxicant "Ecstasy pills" total weighing 240 grams were taken into possession. I.O Fawad Ali Khan S.I/Complainant (PW-4) after weighing the same prepared parcels and recovery memos Exh. PC and PE duly signed by the recovery memo witnesses namely Ghulam Murtaza, Constable (PW-5) and Muhammad Naveed, Constable. He scribed the complaint and sent to police station through Ghulam Murtaza, Constable (PW-5) for registration of FIR. In the meanwhile, Ghulam Murtaza, Constable brought copy of FIR and original complaint to the place of occurrence. The Accused/Appellant was formally arrested. He prepared un-scaled site plan

Ehx. PF. Upon his arrival at the police station, the Accused/Appellant was confined in lock-up, case property and articles of personal search according to recovery memos were handed over to Arshad Mehmood Janjua, ASI, Mohrrar Maalkhana, (PW-2) and Amir Shahzad, ASI, Duty Officer (PW-1). On 15.11.2023 the parcels were sent to PFSA Rawalpindi for chemical analysis through Constable Muhammad Irshad, Constable (PW-2).

10. Amir Shahzad, Duty Officer, (PW-1) after receiving the complaint, reduced it into FIR No. 201/2023 Exh. PB, and handed over carbon copy of FIR and original complaint to Ghulam Murtaza, Constable (PW-5) and took the same to Fawad Ali Khan, S.I./Complainant (PW-4) for investigation. Arshad Mehmood Janjua, ASI, (PW-2) stated that on 14.11.2023 he received one sealed parcel from S.I. Fawad Ali Khan S.I./Complainant to contain 2600 Intoxicant "Ecstasy pills" weighing 1620 grams, another seal parcel said to contain 500 Intoxicant "Ecstasy pills" weighing 240 grams with the seal of "FAK".

11. Similarly, vehicle bearing Registration No. BKN-366 along with key and articles of personal search of the Accused/Appellant according to personal search memos were handed over to him. He made entries in register No. 19. On 15.11.2023 he handed over two sealed parcels said to contain 2600 Intoxicant "Ecstasy pills" weighing 1620 gram, another sealed parcel said to contain 500 Intoxicant "Ecstasy pills" weighing 250 grams, to Muhammad Irshad, Constable (PW-3) along with Road Certificate for onward transmission to the office of PFSA, Rawalpindi, who after depositing the same in PFSA Rawalpindi, handed over back the receiving.

12. Muhammad Irshad, Constable (PW-3) stated that on 15.11.2023 being posted at police station ANF, RD North Rawalpindi, Fawad Ali Khan, S.I/Complainant handed over to him docket in English, sealed sample, copy of FIR and directed him to collect sealed sample parcel of the instant case from Mohrrar Maalkhana for onward transmission to the office of PFSA, Rawalpindi. On the same date i.e. 15.11.2023, Arshad Mehmood Janjua, ASI, Moharrar Maalkhana (PW-2) handed over to him two sealed parcels containing 2600

Intoxicant “Ecstasy pills” and 500 Intoxicant “Ecstasy pills” respectively. He deposited the parcels in the office of PFSA, Rawalpindi and during that period the parcels remained in his custody and remained completely intact. After depositing the same he handed over back the receiving of Road Certificate to Arshad Mehmoood Janjua ASI, Moharrar Maalkhana (PW-2). Ghulam Murtaza, Constable (PW-5) is the marginal witness of recovery memos prepared by the I.O who confirmed that he is the recovery memo witness on the recovery memos, which correctly bears his signatures.

13. Umer Sharif Ali, Forensic Scientist Narcotics, PFSA, Lahore was examined as CW-I, who stated that on 16.11.2023 two parcels were received through Muhammad Irshad Constable (PW-3) by their Rawalpindi Regional Collection Centre. The said two parcels were sent to their Lahore Main PFSA Headquarter on 23.11.2023. On 28.11.2023 chemical examination of said parcels was assigned to him by the concerned Section Supervisor Narcotics. On 25.01.2024 he started chemical examination of the said parcels and ultimately on 22.03.2024 chemical analysis of both the parcels was completed. On 01.04.2024 the chemical report was dispatched to the quarter concerned. He verified his signatures on PFSA reports already produced before the Court as Exh. PG, Exh. PH and Exh. PJ.

14. The prosecution closed his evidence and statement of the Accused/Appellant under section 342, Cr.P.C. was recorded in which he categorically denied the charge against him and stated that he is MBBS doctor by profession and performing his duty in PIMS Hospital, Islamabad. He further stated that the accused Muhammad Hamza and Saad Ramzan were his patients and 2 to 3 days back they came to PIMS Hospital for check-up, during that some harsh words were exchanged between them due to which he has been falsely booked in the instant case.

15. In the instant case complainant and investigating officer is the same i.e. Fawad Ali Khan (PW-4), and when the complainant is also investigation officer, there is a heightened risk of bias. The complainant, being interested in the

outcome of the case, should not be the judge of their own cause. This concern has been highlighted in various judgments, emphasizing that the investigation should ideally be conducted by a different officer to ensure impartiality and fairness. As per the dictum laid down by the Hon'ble Superior Court reported as *Taj Wali and 6 others v. The State* **(PLD 2005 Karachi 128)**

16. Secondly two sealed parcels containing 2600 Intoxicant "Ecstasy pills" and 500 Intoxicant "Ecstasy pills" were sent to PFSA through Muhammad Irshad, Constable (PW-3) on 15.11.2023 while as per the PFSA report and the statement of CW-I the said parcels were received on 16.11.2023 which depicts that the chain of custody is missing between 15.11.2023 and 16.11.2023. In this regard reliance is placed upon the case of *Muhammad Iftikhar and another v. The State and others* **(2022 PCr.LJ 1233)** and *Muhammad Nafees and another v. The State* **(2021 PCr.LJ 63)**

17. Thirdly the Investigating Officer sent the whole recovered Intoxicant "Ecstasy pills" for chemical analysis to PFSA, Rawalpindi and after its analysis which was completed on 22.03.2024 the chemical report was dispatched to the quarter concerned on 01.04.2024 as evident from the statement of the CW-I. From 01.04.2024 till the exhibition of the alleged case property the prosecution has failed to prove the chain of custody. The prosecution witness i.e. Mohrrar Malkhana (PW-2) had failed to utter a single word that he received back the case property from the PFSA, Rawalpindi through a sample bearer. Reliance is placed upon the case of *Abid Ali v. The State* **(2022 PCr.LJ 1088)** and *Arzi Gull and others v. The State and others* **(2020 PCr.LJ 178).**

18. Fourthly the alleged recovery of Intoxicant "Ecstasy pills" is not effected from the personal search of the Accused/Appellant. The prosecution has failed to produce any evidence regarding the lawful possession of that Flat in the shape of any rent agreement or ownership documents.

19. In the last, it is to be mentioned here that the two sealed parcels i.e. one sealed parcel said to contain 2600 Intoxicant "Ecstasy pills", while another sealed parcel said to contain 500 Intoxicant "Ecstasy pills" were sent to PFSA,

Rawalpindi but the forensic report reveals something else. As per PFSA report 2746 pills were present in parcel No. 1 and 468 pills were present in parcel No. 2 which is contradictory to the prosecution case.

20. In summary, it is now an established legal principle that if any limb of evidence is found to be dubious, it can indeed be sufficient for the acquittal of the accused, as the prosecution must prove its case beyond reasonable doubt, and any reasonable doubt must benefit the accused.

21. After considering the above mentioned material contradictions and shortfalls on record, we are of the considered view that the prosecution has failed to prove its case against the Accused/Appellant, beyond any reasonable doubt therefore, the Accused/Appellant namely Muhammad Mustajab is acquitted from the charges levelled against him. Case property be kept intact till the disposal of appeal or any other legal proceedings or otherwise be destroyed in accordance with law. Personal search if any be returned to the acquitted accused. The Vehicle taken into possession has already been returned to one Muhammad Idress Khalil S/o Muhammad Shoaib by the learned Trial Court and the learned trial Court has issued notice under Section 32 of CNSA, 1997 in a separate proceedings, and the same is to be dealt in accordance with law in the light of the decision of this Court.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on _____.

JUDGE **JUDGE**

ISLAMABAD │ 02.2025
APPROVED FOR REPORTING

//*Kamran***//**