JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CRIMINAL APPEAL NO. 409 OF 2024

MUHAMMAD IMRAN KHAN

Vs

THE STATE.

Appellant by	**:**	**Mr. Shan Zeb Khan, Advocate.**
Respondent by	**:**	**Rana Zulfiqar Ali, SPP, ANF.**
Date of hearing	**:**	**16.06.2025**

MUHAMMAD AZAM KHAN, J.

1. By this judgment, we intend to dispose of Criminal Appeal No.409/2024 arising out of the Judgment dated 28.10.2024 (**"Impugned Judgment"**) passed by the learned Judge Special Court CNS, Islamabad (**"Trial Court"**) in case FIR No.127/2023 dated 27.07.2023 registered under Section 9(1)(3)(c) Control of Narcotic Substances Act, 1997 (**"CNSA"**), with Police Station ANF RD North, Rawalpindi, whereby the Appellant has been convicted under Section 9(1)(3)(c) CNSA and sentenced to undergo nine (09) years' rigorous imprisonment with a fine of Rupees eighty thousand (Rs.80,000/-), and in default thereof, to further undergo five (05) months' simple imprisonment. The benefit of Section 382-B, Code of Criminal Procedure, 1898 (**"Cr.P.C."**) has also been extended to the Appellant/Convict.

2. As per the contents of the FIR, the brief facts of the case are that on 27.07.2023, at around 1400 hours, Sub-Inspector Fawad Khan, accompanied by Constables Muhammad Naveed and Waseem Abbas, along with Driver Faqeer Hussain, were on patrolling duty in an official vehicle bearing registration No. RIG-1112, stationed at Ibn-e-Sina Road near PIMS Hospital, Islamabad. In the meanwhile, spy informed Fawad Khan S.I that Imran resident of Buner, involved in smuggling of narcotics, is present in parking area of PIMS Hospital for supply of narcotics to his special customer. Considering the information reliable, ANF

officials along with spy informer, reached at the abovementioned place where a person already sitting there was overpowered by the ANF officials on the pointation of spy. The said person disclosed his name as Muhammad Imran Khan son of Muhammad Sher. After some hesitation, the accused disclosed that narcotics were present in the black-colored shoulder bag he was carrying in his right hand. He then personally retrieved two packets wrapped in khaki solution tape and handed them over to Fawad Ali Khan S.I. The recovered two packets were opened and charas was found present in both packets, which on weighing came out to be 900 grams each (total weighing 1800 grams). From both the recovered packets of charas, 10 grams of charas from each packet was separated for chemical analysis. Three parcels (one parcel of remaining charas and two parcels of sample charas) sealed with the seal "FAK", were prepared, which were taken into possession along with shoulder bag by Fawad Ali Khan, S.I, through a recovery memo. The articles of personal search were also taken into possession by Fawad Ali Khan, S.I., through separate recovery memo. Hence, Subject FIR was registered.

3. After necessary investigation, the Challan under Section 9(1)(3)(c) CNSA was submitted against the Appellant/Convict in the Trial Court to face the deeds of his culpability. Upon commencement of the trial, the Appellant/Convict entered a plea of denial. Thus, the prosecution, in order to bring home the charge, produced as many as five witnesses, and after the close of the prosecution side, the Appellant/Convict negated the allegations and was confronted with the allegations as envisaged under Section 342 of Cr.P.C., whereafter, the Appellant/Convict neither stepped into the witness box to depose on oath nor produced any evidence in his defense. Hence, upon conclusion of the trial, the Appellant was convicted and sentenced in the terms mentioned in the paragraph *supra*. Being aggrieved by the Impugned Judgment, the Appellant/Convict has filed the instant Appeal.

4. The learned counsel for the Appellant/Convict argued that the Impugned Judgment is against the law and facts; that it is based on misreading and non-reading of the evidence on record; that it was passed arbitrarily and hastily without adverting to the material aspects of the case, resulting in a grave miscarriage of

justice; that the settled principles for the appreciation of evidence were not adhered to by the learned Trial Court**,** and the sentence was awarded in vacuum; that the recovery witnesses varied on the place of recovery, yet this fact was not appreciated by the Trial Court to extend the benefit of doubt to the Appellant/Convict; that the Impugned Judgment is based on conjectures and surmises, and nothing cogent and convincing has been brought on record to establish a doubtless case against the Appellant/Convict; that the conviction rests on partial and dishonest investigation, while the highly convincing defense evidence was not properly considered or appreciated by the learned Trial Court**;** therefore, the Impugned Judgment is liable to be set aside; that the prosecution failed to prove its case beyond any shadow of doubt; and that no recovery was effected from the Appellant/Convict and the recovery was fake and planted one. Lastly, the learned counsel prayed that the instant appeal may kindly be allowed, the Impugned Judgment dated 28.10.2024 may kindly be set aside, and the Appellant/Convict may kindly be acquitted.

5. Conversely, the learned Special Public Prosecutor (SPP), ANF vehemently resisted the arguments advanced by the counsel for the Appellant/Convict 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 safe custody and transmission have also been proved beyond doubt, which does not vitiate the trial in any manner; and thus requested dismissal of the Appeal, as the prosecution witnesses remained consistent on material aspects of the case. He further contended that there is sufficient evidence available on record which connects the Appellant/Convict with the commission of the offence. The learned SPP emphasized that the narcotics smugglers are ruining the society and submitted that the Impugned Judgment is well-reasoned and passed keeping in view the evidence available on record; and that there is no illegality or irregularity in the Impugned Judgment. Hence, the appeal may kindly be dismissed.

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

7. Fawad Ali Khan S.I **(PW-4)** is the Complainant and Investigation Officer of this case. He stated that on 27.07.2023, he along with Constable Muhammad Naveed, Sepoy Waseem Abbas boarded in official vehicle bearing registration No.RIG-1112 along with driver Faqeer Hussain were present at Ibn-e-Sina road near PIMS hospital Islamabad for routine checking of narcotics at about 14:00 hours. That informer came and informed him that Imran, resident of Buner involved in smuggling of narcotics is present at parking area of PIMS hospital for delivery of narcotics to his special customer. That pursuant to said information, he along with the above said raiding party and spy informer reached at informed place at about 14:20 hours. That upon the pointation and identification of informer, accused Imran was overpowered by him with the help of ANF officials. That during cursory investigation after some hesitation, accused made disclosure about presence of narcotics in his shoulder bag black in color in his right hand and himself brought out 02 packets wrapped in Khaki insulation tape and handed over to him. He opened both the packets with the help of cutter and charas was found present therein. He weighed both packets of charas at the spot which came out to be 900/900 grams each, total weighing 1800 grams. He separated 10/10 grams of charas from each recovered packet of charas for the purpose of chemical analysis and sealed into sample parcels giving serial No.01 and 02, whereas remaining case property of charas along with packing material were given corresponding serial Nos. 01 and 02, sealed into parcel prepared in white cloth given serial No.3. All the parcels were sealed with stamp “FAK”. He took into possession the sample parcels of charas and parcel of remaining case property along with black color shoulder bag, vide recovery memo Ex.PC. He also conducted personal search of accused and recovered Pakistani Currency Rs.800/- P-5, Student Card P-6, and Mobile Phone P-7 and took the same into possession vide recovery memo Ex.PD. He also drafted a complaint Ex.PA and sent the same to the Police Station for registration of F.I.R through Muhammad Naveed Constable. He conducted cursory investigation at the spot. In the meanwhile, Muhammad Naveed Constable brought copy of FIR and original reported complaint to the place of occurrence. He drafted an unscaled site plan Ex.PE. He completed headnotes over the relevant documents, parcels and formally arrested the accused. He recorded the statements of witnesses, interrogated the Appellant/Convict and formally arrested him. He then came back to police station along with Appellant/Convict and other ANF officials, where he handed over the case property and articles of

personal search to Moharrar Malkhana for placing in safe custody. He locked the accused in lock-up of police station. On 31.07.2023, sample parcels were sent to PFSA Punjab for chemical analysis through Mazhar Ali Constable. A letter for CDR pertaining to cell number of accused was also got issued through Incharge police station.

8. Muhammad Naveed Constable **(PW-5)** is a recovery witnesses who stated that on 27.07.2023, he along with Fawad Ali Khan S.I, Sepoy Waseem Abbas boarded in official vehicle bearing registration No.RIG-1112 along with driver Faqeer Hussain were present at Ibn-e-Sina road near PIMS hospital Islamabad for routine checking of narcotics at about 14:00 hours. That informer came and informed Fawad Ali Khan S.I that Imran, resident of Buner involved in smuggling of narcotics is present at parking area of PIMS hospital for delivery of narcotics to his special customer. That pursuant to said information, he along with the above said raiding party and spy informer reached at informed place at about 14:20 hours. That upon the pointation and identification of informer, accused Imran was overpowered by Fawad Ali Khan S.I with the help of ANF officials. That during cursory investigation after some hesitation, accused made disclosure about presence of narcotics in his shoulder bag black in color in his right hand and himself brought out 02 packets wrapped in Khaki insulation tape and handed over to Fawad Ali Khan S.I. Fawad Ali Khan S.O opened both the packets with the help of cutter and charas was found present therein. In his presence, Fawad Ali Khan Inspector weighed both packets of charas at the spot which came out to be 900/900 grams each, total weighing 1800 grams. Fawad Ali Khan separated 10/10 grams of charas from each recovered packet of charas for the purpose of chemical analysis and sealed into sample parcels giving serial No.01 and 02, whereas remaining case property of charas along with packing material were given corresponding serial Nos. 01 and 02, sealed into parcel prepared in white cloth given serial No.3. All the parcels were sealed with stamp “FAK”. Fawad Ali Khan S.I took into possession the sample parcels of charas and parcel of remaining case property along with black color shoulder bag, vide recovery memo Ex.PC. Fawad Ali Khan S.I also conducted personal search of accused and recovered Pakistani Currency Rs.800/- P-5, Student Card P-6, and Mobile I-Phone P-7 and took the same into possession vide recovery memo Ex.PD. That Fawad Ali Khan S.I handed over to him a written complaint for taking the same to the police station

for registration of F.I.R. He brought the complaint to P.S ANF RD North Rawalpindi and handed over the same to Duty Officer Azhar Rehman HC. After registration of F.IR, he took the original complaint along with carbon copy of FIR at the place of occurrence and handed over to Fawad Ali Khan S.I. I.O recorded his statement u/s 161 Cr.P.C.

9. Azhar Ur Rehman HC **(PW-3)** has stated that on 27.07.2023, Muhammad Naveed Constable brought the complaint sent by Fawad Ali Khan S.I. He registered F.I.R No.127/2023 Ex.PB, without any addition or omission, which is in his handwriting and bears his signatures. After registration of F.I.R, he made report on the original complaint. He handed over the carbon copy of FIR and originally reported complaint to Muhammad Naveed Constable, who took the same to Sub Inspector Fawad Ali Khan for investigation. I.O recorded his statement u/s 161 Cr.P.C.

10. Abdul Razzaq Head Constable **(PW-2)** has stated that on 27.07.2023, Sub Inspector Fawad Ali Khan handed over to him 02 sealed sample parcels said to contain 10/10 grams Charas sealed with the seal “FAK” and 01 sealed parcel of remaining case property of charas weighing 1780 grams sealed with the seal “FAK” and articles of personal search of accused and a shoulder bag black in color were handed over to him. He made entry of sample parcels and parcels of remaining case property in register No.19. He kept all the sealed sample parcels, sealed parcels of case property i.e. charas and articles of personal search in Maalkhana for safe custody. On 31.07.2023, Constable Mazhar Ali came to him along with application in Urdu, English docket, copy of F.I.R, sample seal and asked for sealed sample parcels. He handed over 02 sealed sample parcels said to contain 10/10 grams charas sealed with the seal “FAK” along with road certificate intact for onward transmission to the office of PFSA. After depositing the above said parcels in PFSA on the same day, Mazhar Ali handed over to him receiving on road certificate. I.O recorded his statement u/s 161 Cr.P.C.

11. Mazhar Ali Constable **(PW-1)** has narrated that on 31.07.2023, Sub Inspector Fawad Ali Khan handed over to him, docket English, copy of FIR, sample seal and directed him to collect sealed sample parcel of this case from Moharrar Maalkhana namely Abdul Razzaq HC for onward transmission to the office of PFSA Rawalpindi. That on the same day, he went to Moharrar

Maalkhana who handed over 02 sealed sample parcels said to contain charas weighing 10/10 grams sealed with the stamp “FAK” along with road certificate to him for onward transmission to the office of PFSA, Rawalpindi. He deposited the sample parcels in the office of PFSA, Rawalpindi. On return to police station, he handed over receiving on road certificate to Moharrar Maalkhana. The parcel remained intact in his custody. I.O recorded his statement u/s 161 Cr.P.C.

12. After thoroughly hearing the learned counsel for the parties and carefully examining the record with their assistance, the following findings emerge for adjudication of this appeal. The prosecution case primarily rests on the recovery of 1800 grams of charas from the personal possession of the Appellant/Convict, specifically from a black shoulder bag he was carrying. The Investigating Officer, PW-4 Fawad Ali Khan (Sub-Inspector), provided a detailed and consistent account of the recovery proceedings, corroborated by PW-5 Muhammad Naveed Constable, who was present throughout the recovery and subsequent procedural formalities. Both witnesses testified that the Appellant/Convict voluntarily disclosed and handed over two packets containing the charas to Fawad Ali Khan S.I/I.O.

13. The prosecution also adequately established the safe custody and transmission of the recovered contraband. PW-2 Abdul Razzaq Head Constable deposed about keeping the sealed parcels of recovered charas in the Maalkhana, while PW-1 Mazhar Ali Constable also corroborated the collection and delivery of the sealed sample parcels to PFSA. The PFSA report confirmed the recovered substance to be charas. This scientific verification eliminated any ambiguity concerning the nature of the recovered narcotic, as the report was tendered in evidence and remained unchallenged by the defense, with no objection raised regarding its reliability or the method of analysis.

14. In narcotics cases, it is essential to establish the charge of possession by proving that the contraband was recovered from the accused in strict compliance with legal requirements, namely, that the search and seizure were conducted by an officer not below the rank of Sub-Inspector, that samples were taken from each recovered packet and sent for chemical analysis, and that the samples were forwarded to the Forensic Science Laboratory within a reasonable time, ensuring

proper dispatch and safe transmission. In the present case, all of these legal requirements have been properly adhered to. Under Section 29 of the CNSA, a legal presumption arises in trials concerning the possession of illicit substances, which the accused is required to satisfactorily explain, unless and until the contrary is proven. In the present case, the Appellant/Convict failed to discharge this burden, as he neither offered any plausible explanation for his possession of such a substantial quantity of narcotics nor justified his presence at the place of recovery. Moreover, the Appellant/Convict did not appear as a witness under oath or produce any evidence in his defense. Mere denial or unsubstantiated claims of false implication are insufficient to rebut the statutory presumption of guilt.

15. As regards the dispatch of sample parcels to the laboratory beyond the prescribed period of 72 hours for forensic analysis, it is observed that although Rule 4 of the Control of Narcotic Substances (Government Analysts) Rules, 2001, requires that samples be sent within 72 hours, such delay loses significance in the presence of other cogent, reliable, and unrebutted prosecution evidence. Therefore, the delay in forwarding the samples does not affect the credibility of the prosecution's case. Even otherwise, the said Rules are directory in nature and not mandatory, and they cannot override the substantive provisions of the Control of Narcotic Substances Act, 1997, or defeat its objectives. Non-compliance with the procedural timeline does not render the recovery, seizure, or arrest under the parent statute null and void, nor does it create reasonable doubt about the integrity of the case—especially in the absence of any allegation or proof of tampering or manipulation of the recovered substance. Reliance in this regard is placed on the judgment of the Supreme Court reported as **2011 SCMR 624**, titled *Gul Alam v. The State*.

16. All prosecution witnesses remained consistent on material particulars. Minor discrepancies pointed out by the defense, i.e. regarding the place of recovery, are inconsequential and do not create reasonable doubt. The recovery was made in the presence of multiple officials and no *mala fide* or ill intent was proved against any of them.

17. It is a well-settled legal principle, particularly in narcotics cases, that technical or minor procedural lapses do not outweigh credible and trustworthy

evidence. The august Supreme Court of Pakistan has consistently held that where recovery from the possession of the accused is duly established, and the prosecution successfully proves safe custody and forensic confirmation of the recovered substance, conviction can be sustained in the absence of any serious procedural irregularities or demonstrated mala fide on the part of the prosecution.

18. The sentence of nine years' rigorous imprisonment with a fine of Rs. 80,000/- awarded by the learned Trial Court is within the prescribed limits of Section 9(1)(3)(c) **CNSA**, which provides punishment up to 14 years and not less than nine years. Considering the quantity of narcotics involved, the sentence is not excessive. The benefit of Section 382-B Cr.P.C. was rightly extended, and there is no basis for its reduction or suspension in the absence of mitigating factors.

19. In light of the above discussion, we are of the considered view that the prosecution has successfully proved its case against the Appellant/Convict through confidence-inspiring evidence. No illegality or perversity is found in the Impugned Judgment warranting interference by this Court. Resultantly, the instant Criminal Appeal is **dismissed** and the decision of the learned Trial Court dated 28.10.2024, convicting the Appellant/Convict, is upheld.

(KHADIM HUSSAIN SOOMRO)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in open court on: _____.

JUDGE **JUDGE**

Sajid/--