JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

JAIL APPEAL NO. 436 OF 2024

ZULFIQAR AHMED ALIAS BHUTTO

Vs

THE STATE

Appellant by	**:**	**Ms. Palwasha Banaras, Advocate.**
Respondent by	**:**	**Mr. Nisar Ahmed Shah, State Counsel.** **Mr. Tauseef S.I, P.S Shahzad Town.**
Date of hearing	**:**	**26.06.2025**

MUHAMMAD AZAM KHAN, J.

1. By this judgment, we intend to dispose of Jail Appeal No.436/2024 arising out of the Judgment dated 22.11.2024 ("**Impugned Judgment**") passed by the learned Special Judge CNSA/ASJ, East-Islamabad ("**Trial Court**") in FIR No.237/2024 dated 25.02.2024 under Section 9(1)(3)(c) Control of Narcotic Substances Act, 1997 ("**CNSA**"), registered at Police Station Shahzad Town, Islamabad 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 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.

2. The brief facts of the case as per the contents of the FIR are that on 25.02.2024, Mumtaz Baig S.I. along with Javed A.S.I., Muhammad Mukhtar 7473/HC, and Niaz 2921/C, boarded an official vehicle bearing registration No.GF-741 along with Driver Muhammad Mustafa 2586/C and were present at Taramri Chowk for patrolling duty. Meanwhile, a spy informed Mumtaz Baig S.I. that the notorious drug peddler namely Zulfiqar alias Bhutto, present in the fields at Tarlai Kalan near the Grid Station, having a huge quantity of charas, was selling charas to customers.

Considering the information reliable, the police party reached the abovementioned place at about 06:10 pm, where a person was present who, on seeing the police party, tried to escape; however, he was overpowered. The said person disclosed his name as Zulfiqar Ahmed alias Bhutto son of Allah Deen (Appellant). On conducting a search of the white-color polythene shopper held by the Appellant in his right hand, charas in the form of *littar* wrapped in yellow-color tape was recovered, which on weighing came out to be 1120 grams. From the recovered charas, 10 grams were separated for chemical analysis. Two parcels (one parcel of the remaining charas and one parcel of the sample charas) sealed with the seal "MB" were prepared, which were taken into possession by Mumtaz Baig S.I. through a recovery memo. Hence, the subject FIR was registered.

3. After necessary investigation, the Challan under Section 9(1)3(c) CNSA was submitted against the Appellant in the Trial Court to face deeds of his culpability, whereupon commencement of the trial, the Appellant pleaded not guilty. Thus, the prosecution, in order to bring home the charge, produced as many as four witnesses. After close of the prosecution's case, the Appellant denied the allegations and was examined under Section 342 Cr.P.C. He neither opted to appear as a witness in his own defense nor produced any evidence. Consequently, upon conclusion of the trial, the Appellant was convicted and sentenced in the terms mentioned above. Being aggrieved of 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 a vacuum; that the Impugned Judgment is based on conjectures and surmises and nothing cogent or convincing has been brought on record to establish a doubtless case against the Appellant/Convict; that the prosecution failed to prove its case beyond any shadow of doubt; that no recovery was effected from the Appellant/Convict and the recovery

was fabricated; that no private witness was associated with the alleged recovery proceedings; that there are major contradictions and discrepancies among the prosecution witnesses and their statements cannot be reconciled and the benefit of such contradictions should have been extended to the Appellant/Convict. Lastly, learned counsel prayed that the instant appeal may be allowed, the Impugned Judgment may kindly be set aside, and the Appellant/Convict may be acquitted.

5. Conversely, the learned State Counsel vigorously 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 the safe custody and transmission of the recovered substance were duly established beyond any shadow of doubt, leaving no ground to vitiate the trial; that the prosecution witnesses remained consistent on all material aspects of the case, and sufficient evidence is available on record connecting the Appellant/Convict with the commission of the offence; that narcotics smugglers are ruining society; that the Impugned Judgment is well reasoned and has been passed keeping in view the evidence on record; that there is no illegality or irregularity in the Impugned Judgment; and that the instant 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. Mumtaz Baig S.I **(PW-4)** is the complainant of this case and has narrated that on 25.02.2024, he along with Muhammad Mukhtar 7473/HC, Javed A.S.I, Niaz 2921/C and Muhammad Mustafa 2586/C, was present in official vehicle bearing registration No.GF-741 at Taramri Chowk, for patrolling and search. In the meanwhile, spy informed him that notorious drug peddler namely Zufliqar alias Bhutto, having huge quantity of charas, present at Tarlai Kalan near Grid Station, was selling charas to customers. Considering the information reliable, they reached at the abovementioned place at about 06:10 pm where a person was present in field in front of Grid Station who on seeing the police party tried to escape, however, he was overpowered. The said person disclosed his name as Zulfiqar Ahmed alias

Bhutto son of Allah Deen. He conducted personal search of the accused upon which charas in shape of littar wrapped with yellow color tape lying in white color polythene shopper held by the said person in his right hand, was recovered, which on weighing came out to be 1120 grams. He separated 10 grams of charas for chemical analysis. He prepared two parcels (one parcel of remaining charas and one parcel of sample charas) sealed with the seal "MB", and took the same into possession through a recovery memo Ex.PC. He prepared a complaint Ex.PD and sent the same to the Police Station for registration of F.I.R through Muhammad Mukhtar 7473/HC. He further stated that after registration of F.I.R., Zahid Akhtar S.I., along with Muhammad Mukhtar 7473/HC, came to the place of occurrence with the original complaint and a copy of F.I.R. He handed over the case property, custody of the accused, and the recovery memo to Zahid Akhtar S.I. He further stated that on 28.02.2024, on the instructions of I.O Zahid Akhtar S.I, Moharrar Malkhana Salman Khan 5009/C handed over to him one sealed sample parcel weighing 10 grams of charas to him for onward transmission to PFSA vide road certificate No.182/24. He deposited the above-mentioned parcel in PFSA on the same day and returned the road certificate to Moharrar Maalkhana, who placed the same on record. I.O. recorded his statement u/s 161 Cr.P.C.

8. Muhammad Mukhtar 7473/HC **(PW-3)** is a recovery witness and has narrated that on 25.02.2024, he along with Mumtaz Baig S.I, Javed A.S.I, Niaz 2921/C and Muhammad Mustafa 2586/C, was present in official vehicle bearing registration No.GF-741 at Taramri Chowk, for patrolling and search. In the meanwhile, spy informed Mumtaz Baig S.I that notorious drug peddler namely Zufliqar alias Bhutto, having huge quantity of charas, present at Tarlai Kalan near Grid Station, was selling charas to customers. Considering the information reliable, they reached at the abovementioned place at about 06:10 pm where a person was present in field in front of Grid Station who on seeing the police party tried to escape, however, he was overpowered. The said person disclosed his name as Zulfiqar Ahmed alias Bhutto son of Allah Deen. Mumtaz Baig S.I conducted personal search of the accused upon which charas in shape of littar, wrapped with yellow color tape, lying in white color polythene shopper held by the said person in his right hand, was recovered. Mumtaz

Baig S.I weighed the recovered charas which came out to be 1120 grams. Mumtaz Baig S.I separated 10 grams of charas for chemical analysis and prepared two parcels (one parcel of remaining charas P-1 and one parcel of sample charas) sealed with the seal "MB". Mumtaz Baig S.I took both the parcels into possession through a recovery memo Ex.PC, duly signed by him as Ex.PC/1. Thereafter, Mumtaz Baig S.I prepared a complaint and handed over to him for taking to the Police Station for registration of F.I.R. He handed over the complaint to Zahid Akhtar S.I., who registered the F.I.R. After registration of the F.I.R., he and Zahid Akhtar S.I. came to the place of occurrence along with the original complaint and a copy of the F.I.R. I.O recorded her statement u/s 161 Cr.P.C.

9. Zahid Akhtar S.I **(PW-1),** who is the Investigating Officer, deposed that on 25.02.2024, Muhammad Mukhtar 7473/HC brought the complaint written and sent by Mumtaz Baig S.I on the basis of which he registered Ex.PA and put an endorsement on the complaint. Thereafter, he, along with Muhammad Mukhtar 7473/HC, went to the place of occurrence. Mumtaz Baig S.I. handed over to him the custody of the accused, case property sealed with the stamp "MB" and documents. He prepared an unscaled site plan Ex.PB on the pointation of Mumtaz Baig 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 accused and other officials, where he detained the appellant/convict in lockup, handed over the case property to Moharrar Maalkhana and recorded the statement u/s 161 Cr.P.C. On 28.02.2024, on his direction, Muharrar Maalkhana Salman Khan 5009/C handed over 01 sealed sample parcel, said to contain 10 grams charas to Mumtaz Baig S.I along with road certificate No.182/24 and English docket for onward transmission to PFSA, Islamabad. Mumtaz Baig S.I came back to the police station after depositing the sample parcel in PFSA and handed over road certificate to Muharrar Maalkhana who placed in the concerned register. He recorded statements u/s 161 Cr.P.C of Mumtaz Baig S.I and Moharrar Maalkhana. On the same day, he handed over case file to the S.H.O for submission of report u/s 173 Cr.P.C.

10. Salman Khan 5009/C **(PW-2)** has stated that on 25.02.2024, Zahid Akhtar S.I handed over to him 02 sealed parcels said to contain one sample parcel of charas weighing 10 grams and another of remaining case property weighing 1110 grams, bearing stamp of "MB", which he placed in Maalkhana for safe custody. On 28.02.2024, on the instructions of I.O Zahid Akhtar S.I, he handed over 01 sealed sample parcel weighing 10 grams of charas to Mumtaz Baig S.I for onward transmission to PFSA vide road certificate No.182/24, who deposited the above-mentioned parcel in PFSA on the same day and returned road certificate to him. I.O. recorded his statement u/s 161 Cr.P.C.

11. This Appeal arises out of the conviction of the Appellant/Convict, under Section 9(1)(3)(c) of CNSA, whereby he was sentenced to nine (09) years rigorous imprisonment along with a fine of Rs.80,000/-, and in default, to undergo one (01) month simple imprisonment. The Appellant/Convict seeks reversal of the Impugned Judgment, primarily on the grounds of procedural irregularities, evidentiary contradictions, and alleged fabrication of recovery. It is incumbent upon this Court to reassess the evidentiary value of prosecution witnesses, the integrity of the recovery proceedings, and compliance with the law, particularly the requirements of custody, safe handling, and chain of evidence.

12. Upon detailed examination of the testimonies of PW-3 (Muhammad Mukhtar, HC) and PW-4 (Mumtaz Baig, SI), who were both part of the recovery team, it is evident that their statements are mutually corroborative and consistent on all material aspects. Both witnesses deposed that the Appellant/Convict was intercepted near Tarlai Kalan fields, and upon his search, 1120 grams of charas wrapped in yellow tape was recovered from a white polythene shopper which the Appellant/Convict was holding in his right hand. The charas was weighed on the spot, a 10-gram sample was separated, and two sealed parcels (sample and remaining case property) were prepared using the seal "MB." A recovery memo was prepared on the spot and signed by the recovery team. Witnesses were subjected to detailed cross-examination by learned defense counsel but remained consistent on material aspects of the case. The consistency in narration of the facts lends credence to the authenticity of the recovery and neutralizes the allegation of fabrication.

13. As far as the contention of learned counsel for the Appellant/Convict, that no private witness was associated in the recovery proceedings, is concerned, this by itself does not vitiate the proceedings. The Courts have consistently ruled that non-association of private witnesses does not invalidate recovery if the official witnesses are found credible and their testimony is otherwise unimpeached. In the instant case, the defense did not allege or prove any personal animosity between the Appellant/Convict and the raiding officers, nor was there any suggestion in cross-examination of the witnesses having a motive to falsely implicate the Appellant/Convict. In narcotics cases, where private individuals often refrain from involvement due to fear or inconvenience, reliance on police witnesses is permissible, provided their testimony is cogent and confidence-inspiring, as it is in the present case. Therefore, the official status of the prosecution witnesses does not undermine the credibility of the prosecution's version.

14. The prosecution meticulously established the chain of custody through PW-1 (I.O.), PW-2 (Moharrar), and PW-4 (complainant/officer who submitted the parcel to PFSA). The seal “MB” remained intact from the moment of seizure until delivery to PFSA. PW-2, Salman Khan 5009/C, testified that the parcels were received in a sealed condition and placed in the Maalkhana, and on 28.02.2024, the sample was handed over along with Road Certificate No.182/24 to PW-4 for submission. The PFSA report, which was placed on the record, confirmed that the sample was received in a intact sealed condition and, upon examination, was found to be charas. The integrity of the seal, proper maintenance of the chain of custody, and absence of any tampering fulfill the mandatory requirements for establishing the prosecution’s case.

15. Once the prosecution proves possession and recovery of narcotics, a presumption arises under Section 29 of the CNSA that the accused committed the offence. The Appellant/Convict was found in possession of 1120 grams of charas, an offence falling well within the threshold of Section 9(1)(3)(c) CNSA. The burden shifted to him to explain or rebut the presumption. The Appellant/Convict neither testified under oath nor produced any evidence in his defense. Mere denial in his statement under Section 342 Cr.P.C., unsupported by any corroborative material,

does not suffice to rebut the statutory presumption. Thus, the defense version stands unsupported and implausible.

16. A perusal of the Impugned Judgment reveals that the learned Trial Court has given sound reasoning and applied the legal principles appropriately. There is no misreading or non-reading of evidence. The Impugned Judgment is in line with established jurisprudence and does not suffer from any perversity or arbitrariness.

17. Offences under the CNSA are treated with utmost severity owing to their devastating impact on society, especially the youth. Courts are expected to act firmly and decisively in such matters, provided the accused's legal rights are protected and the prosecution discharges its burden. In the present case, all due process requirements were met, and the Appellant/Convict was given full opportunity to defend himself. Therefore, judicial leniency is neither warranted nor permissible in view of the seriousness of the offence and the quantity of recovered narcotics.

18. In light of the above detailed findings, we are of the considered view that the prosecution has successfully proved the recovery of 1120 grams of charas from the Appellant/Convict. The chain of custody remained intact, leaving no room for doubt regarding the integrity of the evidence. The defense has failed to rebut the presumption under Section 29 of the CNSA. Accordingly, the instant Jail Appeal is hereby **dismissed**, and the conviction and sentence recorded against the Appellant/Convict by the learned Special Judge CNSA, East Islamabad, vide the Impugned Judgment dated 22.11.2024, are **affirmed**.

19. Before parting with this judgement, it is inevitable to discuss that specially in cases under the Control of Narcotic Substances Act, 1997, the entries in the Register No. XIX and the road certificate are relevant facts to prove the safe custody of the case property and safe transmission of representative sample. It is trite that if the safe custody and safe transmission is not proved in an unbroken and unambiguous manner, the benefit shall always be extended to the accused/appellant. It has been observed with grave concern that in most of the narcotics trials being conducted in Islamabad, neither the Register No. XIX nor road certificate is being produced in the court or being exhibited during prosecution evidence. It has been, by far, settled by

the Hon'ble Supreme Court of Pakistan that the production of Register No. XIX for perusal of relevant entries of case property kept in the maalkhana and the road certificate are necessary for establishing the chain of safe custody and transmission. Needless to mention that the trial court as well as the parties are empowered under various provisions like Sections 94, 265-F and 540 of the Code of Criminal Procedure, 1898 to summon the relevant record along with concerned record keeper and exhibit the same for the just adjudication of the case. Similarly, the investigation officer/Officer in charge of Police Station and the prosecution are required to attach the relevant entries of the Register No. XIX and road certificate along with the report under section 173 CrPC to establish the safe custody and transmission. In view of the above discussion, all concerned stakeholders and the trial courts are directed to proceed in accordance with the law as settled by the Hon'ble Supreme Court and this court, to rule out the registration and prosecution of false and frivolous cases.

20. Copy of the judgment be transmitted to the District and Sessions Judges (East and West), Special Courts (ANF), Inspector General of Police Islamabad, Federal Prosecutor General, and Chief Prosecutor ANF Islamabad for circulation and compliance.

(KHADIM HUSSAIN SOOMRO)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in open court on: _____.

JUDGE **JUDGE**

Approved for Reporting
Blue Slip added.

Sajid/--