JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

CRIMINAL APPEAL NO. 93 OF 2025

IKHLAS HUSSAIN

VS

THE STATE.

Appellant by	**:**	**Mr. Shan Zeb Khan, Advocate.**
Respondents by	**:**	**Rana Zulfiqar Ali, SPP, ANF.**
Date of hearing	**:**	**06.05.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Criminal Appeal, Ikhlas Hussain **("Appellant/Convict"),** presently confined in Central Jail, Adyala, Rawalpindi, has assailed the Judgment dated 27.02.2025 **("Impugned Judgment")** passed by the learned Judge, Special Court (CNS), Islamabad **("Trial Court")** in case FIR No. 30/2021 dated 22.04.2021 registered under Section 9(c) of the Control of Narcotic Substances Act, 1997 **("CNSA")** with Police Station ANF RD North, Rawalpindi **("Subject FIR")** whereby the Appellant/Convict has been convicted under Section 9(c), CNSA and sentenced to undergo rigorous imprisonment for six years, with fine of Rs.30,000/- (rupees thirty thousand only) and in default of payment thereof to further undergo six months simple imprisonment. Benefit of Section 382-B, Code of Criminal Procedure, 1868 **("Cr.P.C")** has also been extended to the Appellant/Convict.

2. The brief facts of the case as per the contents of the FIR are that on 22.04.2021, Muhammad Munir Abid Inspector was present in P.S ANF RD North, Rawalpindi when spy informer informed him that notorious international drug smuggler namely Ikhlas Hussain, with huge quantity of heroin, will come to Islamabad International Airport, Islamabad at about 02:00 am in his vehicle Toyota Land Cruiser V8 bearing registration No. ACX-444, white color, to proceed abroad. Pursuant to the said information, Muhammad Munir Abid Inspector along with Altaf Hussain HC, Murtaza Khan HC, Muhammad Imran Constable, Ijaz Hussain Constable boarded in official vehicle bearing registration No. RIG-7177, driven by Driver Amir Ibad, reached International Departure Drop Lane Islamabad Airport at about 01:30 am. At about 02:45 am, the abovementioned vehicle arrived and stopped in the drop lane in which three persons were present who were overpowered. The said persons

disclosed their names as Ikhlas Hussain son of Matloob Hussain, Waqas Hussain son of Inayat Khan, and Zhehraz Hussain son of Matloob Hussain. A search of the vehicle was conducted but nothing incriminating was recovered. On a query regarding the narcotics, Driver Waqas Khan and the person sitting in the rear seat showed their ignorance about presence of narcotics in their vehicle while Ikhals (appellant/convict) made the disclosure that a huge quantity of heroin is present in his house situated at Bahria Town Phase-IV, Islamabad. The vehicle in question was taken into custody through a recovery memo and sent to Police station through official driver. ANF officials along with Ikhlas Hussain, Waqas Hussain and Zhehraz Hussain reached at House No.1434, Street No.38, Phase-V, Islamabad. Ikhlas Hussain opened the main entry gate of the said house and the raiding party entered into said house. During search of the house, conducted in the presence of witnesses, from a residential room in the upper story of the house (room of accused Ikhlas Hussain), from an almirah, Ikhlas Hussain himself brought out a packet of brown color heroin wrapped in polythene shopper and handed over to Muhammad Munir Abid Inspector. The weight of packet of heroin came out to be 1301 grams out of which a sample of 10 grams heroin was separated for chemical analysis. The sample and remaining heroin were taken into possession through 02 separate parcels, sealed with the seal “MA”. Hence, Subject FIR was registered against the Appellant/Convict.

3. After necessary investigation, the Appellant was sent up to the Trial Court for determination of his culpability, where on commencement of the trial, the Appellant entered the plea of denial of guilt. Thus, the prosecution, in order to bring home the charge, produced as many as five witnesses. After the closure of prosecution evidence, the Appellant denied the allegations in his statement as envisaged under Section 342 Cr.P.C. Although the Appellant opted not to step into the witness box himself to depose on oath, he opted to produce evidence in his defense. On conclusion of the trial, the Appellant was convicted and sentenced in the terms mentioned in the para supra. Being aggrieved by the Impugned Judgment, the Appellant/Convict filed the instant Appeal.

4. The learned counsel for the Appellant/Convict argued that the Impugned Judgment is against the law and facts borne out from the record; that the same 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 no recovery whatsoever was effected from the possession of the Appellant; that the recovery witnesses are at variance on the place of recovery, but this aspect was also not appreciated by the learned Trial Court to the extent of extending the benefit of doubt to the Appellant; that the judgment of the learned Trial Court is based on conjectures and surmises and nothing cogent and convincing has been brought on record to establish a doubtless case against the Appellant; that the Appellant has been convicted on the basis of partial and dishonest investigation, while highly convincing evidence produced by the defense has not been properly considered and appreciated by the learned Trial Court, therefore, the Impugned Judgment is liable to be set aside as per law; that the prosecution has failed to prove its case beyond any shadow of doubt; that no contraband was effected from the Appellant and the recovery was fake and planted; 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; that the statement of the Appellant was never appreciated in its true perspective and he has been wrongly convicted without any incriminating piece of evidence. Lastly, the learned counsel requested that the instant appeal may kindly be accepted, the Impugned Judgment may be set aside, and the Appellant/Convict be acquitted from the instant case.

5. The learned Special Public Prosecutor argued that the prosecution has proved the case against the Appellant/Convict beyond any shadow of doubt; that the prosecution witnesses remained consistent on the 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.

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

7. The prosecution produced Abdul Razzaq, Head Constable as PW-1, who is the Moharrar Maalkhana, on 22.04.2021. He stated that Muhammad Munir Abid, Inspector handed over to him one sample parcel said to contain 10 grams of heroin sealed with the seal “MA” and one parcel of remaining case property said to contain

1291 grams of heroin, sealed with the same seal. He also received a trolley bag containing wearing apparel, vehicle V8 bearing registration No.ACX-444 (white color) along with key, and articles of personal search of the accused according to recovery memos. He made entry of the case property in Register No.19, got the vehicle parked in the MT of the police station, and kept the case property along with key in Malkhana for safe custody. The I.O. recorded his statement under Section 161 Cr.P.C. On 23.04.2021, he handed over the sealed sample parcel containing heroin 10 grams sealed with the seal "MA" along with Road Certificate to Constable Shahzada Irum for deposit at NIH, Islamabad. Shahzada Irum returned after depositing the sealed sample parcel in the office of NIH, Islamabad and handed over to him receiving on the Road Certificate.

8. Muhammad Shah Fahad Hashmi, ASI (PW-2), chalked FIR (Ex.PB) upon receiving complaint Ex.PA sent by Muhammad Munir Abid, Inspector/Complainant through Muhammad Imran, Constable. After registration of F.I.R, he made a report on the original complaint (Ex.PA/1) and returned it with the original complaint and carbon copy of F.I.R to Muhammad Imran, Constable to take the same to Muhammad Munir Abid, Inspector at the spot.

9. Muhammad Munir Abid, Inspector/Complainant (PW-3) who is the Investigating Officer, has narrated the same facts as mentioned in para No.2 of this judgment regarding recovery of heroin from the appellant, separation of sample from the recovered heroin, preparation of parcels and seizure of recovered heroin by him through recovery memo Ex.PC. He also took into possession the articles of personal search of accused i.e. mobile P-3, along with CNIC, driving license, Visa, passport, Pakistani Currency Rs.13,100/-, two small wallets, shoulder bag, suit case along with used clothes and other things, through recovery memo Ex.PD. He prepared complaint Ex.PA and sent the same to the police station for registration of F.I.R through Imran Constable. He, with the approval of competent authority, released the other two suspected persons being found not involved. He further prepared unscaled site plans Ex.PE and Ex.PF. On arrival of Imran Constable to the place of occurrence, with copy of FIR and original complaint, he completed head notes over the relevant documents, parcels and formally arrested the accused Ikhlas Hussain and issued information slip. He recorded statement u/s 161 Cr.P.C of Imran Constable. He along with other ANF officials, case property and accused Ikhlas Hussain proceeded towards P.S ANF RD North, Rawalpindi where he locked the accused in lock up, and case property and articles of personal search according to memos, were handed over to Moharrar Malkhana Abdul Razzaq HC. He got parked

the vehicle in MT of the police station. On 23.04.2021, sample parcel was sent to NIH Islamabad for chemical analysis through Shahzada Irum Constable. A letter for verification of ownership of vehicle bearing registration No.ACX-444 was sent to ETO concerned. A separate letter for CDR pertaining to cell number of accused Ikhlas Hussain was issued to concerned Cellular company. A letter for verification of ownership of house in question, letter for obtaining CCTV footage to Bahria Town and Airport Authorities were issued. Letter for travel history of accused Ikhlas Hussain was also issued to F.I.A. A letter was also issued to NADRA Authorities for family tree of Ikhlas Hussain. On 11.06.2021, pursuant to receipt of chemical analysis report Ex.PH from NIH, Islamabad and house verification report Ex.PJ (1-4 pages), supplementary report u/s 173 Cr.P.C was submitted before the court.

10. Muhammad Imran, (PW-4) came up with a similar story as mentioned in para No.2 of this judgment regarding recovery of the aforesaid narcotics from the possession of the Appellant, which was taken into possession through recovery memo Ex.PC. He also deposed about recovery of articles of personal search of accused i.e. mobile P-3, along with CNIC, driving license, Visa, passport, Pakistani Currency Rs.13,100/-, two small wallets, shoulder bag, suit case along with used clothes and other things, which I.O took into possession through recovery memo Ex. PD. He also deposed about taking into custody the vehicle by the I.O. through the recovery memo Ex.PG. He also deposed that he brought the complaint from Muhammad Munir Abid, Inspector/Complainant (PW-3) to the Police Station for the registration of F.I.R and handed over it to Duty Officer, Muhammad Shah Fahad Hashmi A.S.I (PW-2). After registration of F.I.R, PW-2 handed over to him copy of F.I.R and the original reported complaint which he brought back to Muhammad Munir Abid, Inspector at the place of occurrence. Inspector Muhammad Munir Abid also recorded his statement u/s 161 Cr. P.C.

11. Shahzada Irum, Constable (PW-5) stated that on 23.04.2021, Inspector Muhammad Munir Abid handed over to him, application in Urdu, English docket, sample seal and directed to collect the sealed sample parcel from Moharrar Maalkhana Abdul Razzaq HC for onward transmission to the office of NIH Islamabad. He met Moharrar Maalkhana who handed over to him one sealed sample parcel said to contain heroin weighing 10 grams sealed with seal stamp of “MA” along with Road Certificate for onward transmission to NIH Islamabad. He deposited the sample parcel in the office of NIH, Islamabad on the same day and on return handed over receiving on the back side of Road Certificate to Moharrar

Maalkhana Abdul Razzaq, HC. The I.O recorded his statement under Section 161 Cr.P.C.

12. The Appellant/Convict produced Waqas Hussain in his defense as DW-1 who deposed that he was called by the father of Ikhlas Hussain and told him to drop Ikhlas Hussain in a vehicle bearing registration No.ACX-444 at the Islamabad International Airport and bring back the vehicle home. On 22.04.2021, in between 01:00 am to 02:00 am, he along with accused Ikhlas Hussain and his brother namely Shibraz Hussain departed from their house to Islamabad International Airport. At about 03:00 am, they reached at the drop lane of the Islamabad International Airport. When he came out from the car to handover luggage of Ikhlas Hussain from the dickey of the car, some uniformed officials took accused Ikhlas Hussain to their official vehicle and they were shifted to police station. Accused Ikhlas Hussain was separately taken to the police station. In the police station, they were separately made to sit. Subsequently, he and Shibraz Hussain were brought to another room where accused Ikhlas Hussain was also sitting with the ANF officials. ANF officials conducted search of the luggage of accused Ikhlas Hussain and then took him and Shibraz Hussain to another room, in which they remained seated till 08:00 p.m. At the same time, he and Shibraz Hussain were released by the ANF officials. The ANF officials have not taken them to Bahria Town. He further deposed that the accused Ikhlas Hussain is innocent and nothing incriminating was recovered from him.

13. The record depicts that the complainant himself investigated the case. This, of course, could be considered to have caused prejudice to the accused because all the witnesses in the case were subordinate to him. The role of the Investigating Officer is that of a neutral authority whose object is to discover the truth. In this regard, reliance is placed on Rule 25.2(3) of Police Rules, 1934 **(Police Rules)**, which reads as under:-

> *"It is duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."*

An officer who is himself the complainant in the case cannot be expected to collect and preserve evidence that goes against his case. He cannot properly perform the duties of an independent and fair Investigating Officer. Therefore, the superior Courts have never approved the practice of complainant police officers acting as Investigating Officers. In the case of *State v. Bashir and others* reported in **PLD 1997 SC 408**, the august Supreme Court held as under:

> *"It could hardly be expected that a police officer, who is heading a raiding party and is a witness, also becomes the complainant and lodges an FIR against the accused, and then becoming an Investigating Officer of the same case, will comply with the aforesaid Police Rule. In the circumstances, the practice of seizing officer or the head of a police party who is also a witness to the crime becoming or being nominated as an Investigating Officer of the same case should be avoided and if any other competent officer is available in the police station, he may be nominated as the Investigating Officer rather than the head of the police party. As observed Investigating Officer is as important witness for the defense also and in case the head of the police party also becomes the Investigating Officer he may not be able to discharge his duties as required of him under the Police Rules."*

14. As per contents of complaint Ex.PA and as per the statement of I.O Muhammad Munir Abid Inspector, spy informer informed that notorious international drug smuggler namely Ikhlas Hussain will come to Islamabad International Airport Islamabad at about 02:00 am in his vehicle Toyota Land Cruiser V8 bearing registration No.ACX-444, white in color to fly abroad with huge quantity of heroin. On receipt of said information, ANF officials reached at the Islamabad International Airport Islamabad, however during search of the vehicle conducted by Muhammad Munir Abid Inspector (PW-3), nothing incriminating was recovered. PW-3 in his cross-examination admitted it correct that air ticket of accused Ikhlas Hussain was neither recovered nor taken into possession.

15. PW-1 Abdul Razzaq Head Constable in his cross-examination stated that the parcels were sealed in white color cloth. He cannot say as in what kind of wrapping material, the contraband was inside the parcels as the parcel were handed over to him in sealed condition. PW-1 was confronted with his statement recorded u/s 161 Cr.P.C wherein it is mentioned that “the contraband was wrapped in polythene bag”, PW-1 stated that such part of statement was not made by him to the I.O rather, the I.O might have written the said part of the statement himself. Whereas I.O Muhammad Munir Abid Inspector (PW-3) in his cross-examination stated that it is incorrect to suggest that the statement of Moharrar Maalkhana Abdul Razzaq HC was recorded by him not in the manner as narrated by PW-1.

16. After the reassessment of material available in the file, we found that in the present case, there are numbers of infirmities/lacunas, which have created serious doubts in the prosecution's case. It is settled principle of law that for extending the benefit of the doubt, it is not necessary that there should be multiple circumstances creating doubt. If there exists a single circumstance, that creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession, but as a matter of right, as has been held in

the case of *Tariq Pervez v. The State* reported as **1995 SCMR 1345**, wherein the apex Court has held as under:-

> *"The concept of benefit of doubt to an accused person is deep-rooted in our country for giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right".*

17. In light of the above discussion, we are of the considered view that the prosecution has failed to prove the charge against the Appellant/Convict beyond reasonable doubt. It is trite law that in criminal cases, the benefit of every doubt must go to the accused, even if it arises from the prosecution's own evidence. The benefit of the doubt is not to be stretched in favour of the prosecution under any circumstances.

18. Accordingly, the instant Criminal Appeal is **allowed** and the Impugned Judgment dated 27.02.2025 passed by the learned Judge, Special Court (CNS) Islamabad is set aside. The Appellant/Convict Ikhlas Hussain is acquitted of the charge. He shall be released from jail forthwith if not required in any other case.

(KHADIM HUSSAIN SOOMRO)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of June 2025.

JUDGE

JUDGE

Sajid/--