

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No.01 of 2022

Gul Taj

Versus

The State

=====

Appellant By	:	Mr. Muhammad Ilyas Khan, Advocate
State By	:	Mr. Jamil Fayyaz, State Counsel with Muhammad Nawaz S.I. Police Station Tarnol, Islamabad.
Date of Hearing	:	20.07.2022

ARBAB MUHAMMAD TAHIR, J: Through the instant criminal appeal under section 48 of the Control of Narcotics Substances Act, 1997 (“**Act of 1997**”), appellant (*Gul Taj*) impugns judgment dated 27.12.2021, passed by the learned Additional Sessions Judge/Judge Special Court, (CNS), Islamabad (West), whereby he was convicted under Section 9(C) of the Act of 1997, for trafficking 2500-grams heroin and sentenced to undergo 07 years R.I. with fine of Rs. 50,000/-, in default whereof, to further undergo 07 months S.I. with benefit of section 382-BCr.P.C in case F.I.R No.421, dated 04.07.2020, under Section 9-C of the Act of 1997, registered at Police Station Tarnol, Islamabad.

2- According to allegations set-forth in complaint Ex. PC, on 04.07.2020, Tipu Sultan SI (PW-4) along with other police officials namely Muhammad Aziz HC 4926 (PW-1), Ahmad Ullah constable 2687, Iftikhar Ahmad Constable 3111 PW-5), Ghazanfar Iqbal Constable 3744 (PW-3), was present at “Sara-i-Kharbooza stop” on a private vehicle in connection with surveillance for illicit arms and narcotics, received a spy information regarding arrival of a drug-peddler namely Muhammad Jan along with a companion on a vehicle, Honda, silver colour, bearing registration No.ABW-303, heading towards Rawalpindi for the supply of the drugs; that on the said information, SI/PW-4

along with officials barricaded at Tarnol Railway Crossing, GT road leading towards Rawalpindi; that at about 11:15 p.m., the subject vehicle came from Sangjani side which, on the pointation of the informer was stopped; that the person sitting on the front seat jumped out of the vehicle and started running; that constables Iftikhar Ahmad (PW-5) and Ghazanfar Iqbal (PW-3) had given him the chase, but succeeded to escape by taking benefit of the darkness while the person sitting on the driving seat was overpowered; that said person disclosed his name as Gul Taj son of Israr-ur-Din (appellant); that on search of the vehicle, a white colour shopping bag was recovered from beneath the driver's seat; that on its checking, two packets of heroin, wrapped in yellow colour insulation tape were recovered; that both the parcels were weighed through electronic scale and weight of each packet was found 1250 grams, total 2500 grams; that for the purpose of chemical analysis, one gram each was separated from both the parcels; that thereafter the samples and the remaining heroin were sealed in three separate parcels by affixing seal of "MN"; that SI (PW-4) took the three parcels in possession together with the vehicle through recovery memo; that separate memo of personal belongings of the appellant was also prepared; that nobody from the public was ready to join as a witness, therefore, the officials present there were cited as witnesses; that the appellant disclosed the name of his companion, who succeeded to escape as Muhammad Jan and that the appellant by keeping in his possession "heroin" had committed offence under Section 9(c) of the Act 1997. After due investigation, on being found guilty, report in terms of section 173 Cr.P.C was submitted before the trial Court against the appellant and co-accused Muhammad Jan to face the trial.

3- At the trial, prosecution produced six witnesses in all i.e. PW-1 Abdul Aziz HC 4926, PW-2 Mubarik Ali HC 1184, PW-3 Ghazanafar Iqbal HC, PW-4 Tipu Sultan SI, PW-5 Iftikhar Ahmad Constable 3111, and PW-6 Saqib Mehmood ASI. The learned ADDP tendered in evidence the reports (Test Certificates/Analysis of NIH-Drugs Control and Traditional Medicine Division Islamabad) ("Reports of NIH") as Ex.PF and Ex.PG.

- PW-1: **Abdul Aziz**, Head Constable 4926 had been the member of the police party and deposed to testify the interception of the vehicle apprehension of the appellant, recovery of 2500 of heroin besides his personal belongings. The witness attested the recovery memo Ex.PA and Ex.PB through which SI/PW-4 took into possession heroin P-1 and personal belongings of the appellant.
- PW-02: **Mubarik Ali HC 1184**, on 04.07.2020, kept the case property in safe custody in Malkhana received from S.I./PW-4 and on 06.07.2020, handed it over to Ghazanfar HC (PW-3) for onward transmission to the NIH Laboratory Islamabad.
- PW-03: **Ghazanafar Iqbal HC**, on 06.7.2020 took sample sealed parcels from PW-2 Mubarik Ali Moharrir and deposited the same intact in the NIH Laboratory Islamabad on the same day.
- PW-04: **Tipu Sultan SI**, is the complainant as well as the Investigating Officer of this case, who deposed to prove the details of the proceedings conducted at the spot and that of the investigation as well
- PW-05: **Iftikhar Ahmad Constable 3111**, on 03.07.2020 took the complaint to the P.S. for the registration of FIR and handed it over to Saqib Mehmood ASI who after the registration of FIR, handed over complaint and copy of FIR to PW-5 who then on return to the spot, handed over the FIR and the complaint to the I.O.
- PW-06 **Saqib Mehmmod ASI**, on 03.07.2020 drafted formal FIR Ex.P-E on the basis of complaint, Ex.PC sent by SI/PW-4 through Iftikhar Ahmad PW-5.

4- After the recording of above prosecution evidence, appellant and co-accused Muhammad Jan were examined under Section 342 Cr.P.C wherein they denied the prosecution evidence. The appellant in his statement has taken the plea that *"I was apprehended from Mehran Plaza Tarnol and kept me in illegal confinement along with two others namely Ismail Khan and Fazal Rabi and registered fake case against me. FIR No.422 is Ex.DA, and FIR against Fazal Rabi is Ex.DB. Nothing was recovered from my possession. Fake recovery has been planted by police just to show efficiency before their highups."* However, the appellant opted not to make statement on oath under section 340(2) Cr. PC or to produce any defence evidence. The learned Trial Court, after hearing the counsel for the appellant and learned ADDP, acquitted co-accused Muhammad Jan while convicted and sentenced the appellant vide judgment dated 27.12.2021 in terms noted in para-1 above, being assailed through the instant criminal appeal.

5- Learned counsel for the appellant argued that there are material contradiction in the statements of the prosecution witnesses with regard to the proceedings conducted at the spot and safe transmission of sample in sealed parcels; that under the law, investigation must be conducted by an independent officer, while in the instant case, the complainant himself conducted investigation and that, too, without permission of the high-up's; that the sealing mark "MN" used by the Investigating Officer is neither abbreviation of his name nor of any member of the raiding party and that there is conflict between the statements of Moharrir Malkhana (PW-2) and the official who was deputed for depositing sample in sealed parcels in the office of NIH Islamabad, therefore, impugns conviction and sentence recorded by the learned Trial Court vide impugned judgment are liable to be set aside. Learned counsel relied upon case law 2018 SCMR 2039, 2015 SCMR 291, 2019 SCMR 326, 2021 SCMR 451, 1989 P.Cr.L.J. 601, 2009 P.Cr.L.J 1334, 2021 P.Cr.L.J 1294, 2021 P.Cr.L.J 811, and 2021 YLR 662.

6- On the other hand, learned State Counsel repelled the above submissions by contending that the prosecution evidence is firm to establish unbroken chain of events that is corroborated by the report of N.I.H. Further argued that the prosecution evidence being of unimpeachable character establishes charge against the appellant who despite lengthy cross-examination failed to bring on record any material discrepancy, therefore, the impugned judgment does not call for any interference.

7- We have heard the learned counsel for the appellant, learned State Counsel and have gone through the record with their able assistance.

8- To substantiate the proceedings conducted at the spot, prosecution examined PW-1 Abdul Aziz HC, and PW-4 Tipu Sultan S.I. /I.O. Both the witnesses in their respective statements had given the details on the material aspects of the prosecution case i.e. interception of vehicle (Honda Civic, registration No.ABW-303), apprehension of the appellant who was then sitting on the driving seat of the car, the date and time of interception of the vehicle as 04.07.2022 at about 11:15 p.m., search of the vehicle, recovery of white colour shopper from beneath the driver's seat, recovery of two packets of heroin from the said shopper, its weighing and weight as 1250 grams each, total 2500 grams, separation of one gram each from both the packets, preparation of separate parcels of the two samples and the remaining heroin, taking in possession the three parcels by PW-4/SI through recovery memo Ex.PA and personal belongings Ex.PB.

9- It is noticed that both the witnesses had given all the material and relevant details in their respective statements and on perusal of their cross-examination, nothing untoward is noticed which can be made basis to discard their statements on the ground that one of the witnesses did not name the model and company of the vehicle particularly in presence of specific registration number and the identity of it as being a Honda car. The PW-1 in cross-examination had also given the colour of the heroin as off-white with further clarification that the colour off-white and brown are quite similar. The colour of

heroin, mentioned by PW-1 is corroborated by the NIH reports Ex.PF & Ex.PG, wherein physical examination of the contraband is mentioned as "*brown powder*".

10- On the aspect of affixing monogram on the parcels with different abbreviation i.e. "MN" and not in his own name by the S.I/I.O -PW-4, it is observed that the complaint Ex.PC, FIR Ex.PE and statement of PW-4 S.I/I.O contain the same description of the seal i.e. "MN" which is also mentioned in the reports of NIH of Ex.PF and Ex.PG. In absence of any material contradiction and prejudice on the part of the IO/PW-4, the testimony of the two recovery witnesses cannot be discarded merely on the said ground. It is also noticed that PW-4/I.O. was not cross-examined on material particulars i.e. *the time of the alleged recovery, from where the heroin was recovered, it's weighing, preparation of sample sealed parcels and the parcel of the remaining heroin and taking the same in possession*. Both the recovery witnesses were found consistent on the proceedings conducted at the spot and their statements establish the recovery of contraband i.e. heroin from the possession of the appellant.

11- The safe custody and transmission of the sample in sealed parcels to the office of N.I.H Islamabad is established through the statements of PW-2 Mubarik Ali HC/Moharrir, and PW-3 Ghazanafar Iqbal HC and PW-4 Tipu Sultan S.I/I.O. From their statements, it is apparent that the contraband was recovered from the possession of the accused on 04.7.2020, it was made in three sealed parcels by I.O./PW-4 who on return to the P.S. handed it over to PW-2 Moharrir who kept the same in Malkhana and on 06.07.2020 handed it over to PW-3 for Ghazanfar HC for onward transmission to the NIH Islamabad who testified to have deposit the same intact on the same date i.e. 06.07.2020. The reports of NIH Ex.PF and Ex.PG confirm the receipt of sample parcels through PW-3 Ghazanafar HC on 06.07.2020. Thus right from the recovery till deposit in the NIH, the chain of safe transmission and custody is established without any iota of doubt. The contraband was recovered on 04.07.2020 and

within two days deposited in the NIH on 06.07.2020 and during intervening period, it remained in safe custody in Malkhana.

12- According to the learned counsel, as per the statement of PW-4/I.O. he handed over sample sealed parcels over to PW-3 Ghazanafar HC for onward transmission to NIH while as per statements of Moharrir/PW-2, he handed over sample sealed parcels to PW-3 who also deposed on the same lines. The perusal of statement of PW-4/I.O reveals that while giving the details of the Investigation conducted by him, he narrated the events in sequence in terms that on 04.07.2020, he produced the accused before the Court and sent to judicial lockup; that on 06.07.2020 after preparing application for transmission of sample sealed parcels to NIH got sent the same through PW-3 Ghazanafar Iqbal to NIH for chemical analysis vide Road Certificate No.581 of 2020. It is nowhere in his statement that he handed over the sample in sealed parcels to PW-3 after receiving the same from the Moharrir/PW-2. This aspect is further supported from the fact that PW-4 himself on return to the Police Station handed over sample sealed parcel to PW-2 on 04.07.2020 and PW-2 kept the same intact in Malkhana and on 06.07.2020 transmitted the same to the NIH through PW-3 Ghazanafar HC. The safe custody and transmission of the sample in sealed parcels is established from the evidence on record while the reports of NIH Ex.PF and Ex.PG confirm the identity of the substance as "*heroin*".

13- In support of the submission that for an impartial investigation in a narcotic case, the complainant and the investigating officer should not be one and the same police officer, the learned counsel refers "**State through Advocate General Sindh v. Bashir and others**"(PLD 1997 SC 408). The principle set-in the referred case does not absolutely preclude the complainant to be the investigating officer of the case as well, so long as it does not in any way prejudice the accused person. The Hon'ble Apex Court had graciously observed so in the case of **Zafar v. the State** (2008 SCMR 1254) in following terms:-

*"So far as the objection of the learned counsel for the appellant that the investigating officer is the complainant and the witness of the occurrence and recovery, **the matter has been dealt with by this Court in the case of State through Advocate General Sindh v. Bashir and others PLD 1997 SC 408, wherein it is observed that a Police Officer is not prohibited under the law to be complainant if he is a witness to the commission of an offence and also to be an investigating officer, so long as it does not in any way prejudice the accused person.** Though the investigating officer and other prosecution witnesses are employees of ANF, they had no animosity or rancor against the appellant to plant such a huge quantity of narcotic material upon him. The defence has not produced any such evidence to establish animosity qua the prosecution witnesses. All the prosecution witnesses have deposed in line to support the prosecution case. The witnesses have passed the test of lengthy cross examination but the defence fail to make any dent in the prosecution story or to extract any material contradiction fatal to the prosecution case."*

(Emphasis added)

14- In order to substantiate the alleged biasness of the investigating officer, not a single question has been put to any of the prosecution witnesses that the appellant was apprehended from the place as pleaded or kept in illegal confinement along with two others. Thus, in absence of statement of the appellant in terms of Section 340(2) Cr.P.C and any defence evidence, the plea taken by the appellant is nothing but a bald statement.

15- The Hon'ble apex Court in the recent pronouncement in "**Muhammad Rasool v. the State**" **2022 SCMR 1145**, graciously refused leave against the sentence of imprisonment to life in case registered under Section 9(c) of the Act, 1997. It has graciously been held that:-

"Fair trial is not a one-way affair; it also requires an accused and his agents, pleading innocence, to conduct themselves in a manner above board, in accordance with law; their pursuit is only justified insofar as it is in accord with the means sanctioned by law."

16- The Hon'ble apex court in "**Faisal Shahzad v. The State (2022 SCMR 905)**", has graciously observed that:-

This Court has time and again held that the menace of drugs is increasing day by day due to various reasons. It is very disheartening to observe that every day there are many reports of drug peddlers being caught with drugs. This menace is a great threat to a peaceful society and is affecting many lives especially the youngsters, therefore, immediate steps are required to be taken to curb these nefarious activities. The proceeds of narcotics are largely utilized in anti-state/terrorist activities, which this country is facing since decades. When the prosecution is able to prove its case on its salient features then un-necessary technicalities should not be allowed to hamper the very purpose of the law on the subject. The close analysis of the whole prosecution evidence i.e. the recovery of huge quantity of narcotics, the happening of the occurrence in broad daylight, separating the samples from each packet in a prescribed manner and sending them to the Chemical Examiner, report of the Chemical Examiner and the statements of the prosecution witnesses when evaluated conjointly leaves no room to come to a different conclusion than what has been arrived at by the learned courts below."

17- In view of above, the prosecution has successfully proved its case beyond any shadow of doubt i.e. the recovery of huge quantity of narcotics, the happening of the occurrence, separating the samples from each packets in prescribed manner and sending the same to the NIH without any break in chain and the reports of the NIH confirm the nature of the contraband as heroin, on cumulative evaluation, leaves no room to come to a different conclusion than what has been arrived at by the learned Trial Court. Consequently instant appeal fails and is accordingly **dismissed**.

(MIANGUL HASSAN AURANGZEB) (ARBAB MUHAMMAD TAHIR)
JUDGE JUDGE

Announced in open Court on ____09.2022.

JUDGE

JUDGE