

ISLAMABAD HIGH COURT, ISLAMABAD

NO.    IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. G.I.A. 374 200 8.

Titled Gadher alias Tareen Vs the State.

(a) Judgment approved for reporting

☒ Yes / ~~No~~

(b) Judgment any comment upon the Conduct of the  
Judicial Officer for Quality of the impugned  
judgment is Desired to be made.

~~Yes / No~~

(In case the answer is the affirmative Separate  
confidential note may be Sent to the Registrar  
drawing his Attention to the particular aspect).

Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Crl. Appeal No. 374 of 2008.**

Qadeer alias Teeran

Versus

The State:

**DATE OF HEARING:**

**19<sup>th</sup> June, 2012:**

**APPELLANT BY:**

M. Imran Fazal Siddiqui, Advocate.

**STATE BY:**

Mr. Rehan-ud-Din Khan Golra learned Standing Counsel:

**JUDGMENT**

**MUHAMMAD ANWAR KHAN KASI, J:**

Qadeer alias Tareen, convict in case FIR No. 168, dated 16.08.2007, under section 9-C CNS Act, 1997, PS Tarnol, by way of this appeal assails his conviction inflicted upon him vide Judgment dated 22.05.2008 by the learned ASJ/Judge Special Court CNS Act, 1997, Islamabad. He was sentenced to undergo Life Imprisonment together with fine of Rs.10,000/- & in-default to pay the amount of fine, to further suffer SI for Six-Months. He was, however, extended benefit of Section 382-B Cr. PC.

2- The appellant also preferred an appeal through Jail bearing No. 373-J-2008. Both are being decided together.

3- Learned counsel for the appellant straightaway drawn our attention towards the statements of recovery witnesses including the Investigating Officer. It was his stance that both these statements are absolutely silent on the point as to who weighed the total quantity of narcotics and took out sample from the bulk, therefore, prosecution story as narrated in complaint Ex. PA is doubtful, the benefit of which must go to the appellant. It has also been contended that as per

prosecution version, 15-KGs of "crushed poppy heads" were recovered from the sack(Gatto) but only 10-grams were taken for chemical analysis, therefore, it cannot be said with certainty that the entire fifteen kilograms was narcotics, which can be used for causing intoxication.

4- Learned Standing Counsel, on the other hand, repelled the arguments by maintaining that the appellant was caught red handed with contraband, the prosecution witnesses, being natural & independent, had no reason to falsely implicate and plant huge quantity against him, both the witnesses successfully stood the test of cross-examination and the learned Trial Court after properly evaluating the evidence on record, rightly convicted & sentenced the appellant, which does not call for any interference in this appeal.

5- After hearing arguments, we advert to the evidence on record.

6- As per complaint. Ex. PA, on 16<sup>th</sup> of August, 2007, at about 04:30 pm, Muhammad Nawaz SI of PS Tarnol alongwith other police officials including PW-3 Arshad Ali Constable intercepted the appellant at Jhangi Syedan Bus Stop Motorway when the latter was having a sack (Gatto) on his shoulder. On its checking, fifteen kilogram of "crushed poppy heads" were recovered, out of which ten-grams was separated & sealed into a parcel for chemical analysis. Remaining quantity was also sealed into separate parcel and SI/IO/PW-4 took both the parcels in possession through recovery memo Ex. PB.

7- As per statement of PW-3 Arshad Ali constable at about 04:30 PM a person carrying colourful "Gatto" de-boarded the bus, who on seeing police party tried to escape. On suspicion, he was apprehended by the SI. The accused

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disclosed his name as Qadeer alias Teeran son of Mubarak Ali now present in the Court. On checking the said Gatto it was found crushed poppy. On weighing, it was found 15-KG. Out of which 10-grams poppy was separated for chemical analysis and prepared two sealed parcels. One containing sample and remaining is Ex. PD. Both sealed parcels were taken into possession, which were attested by me and Baseer Ullah SI.

8- PW-4 Nawaz SI/IO in examination in chief has given the following account:-

“At about 4.30 pm the accused/Qadeer present in the court carrying colourful “Gatto” de-boarded the bus. On suspicion he was apprehended by us, on weighing it was found 15-KG. Out of which 10-grams poppy was separated for chemical analysis and prepared two sealed parcels. One containing sample and remaining is Ex. P1. Both sealed parcels were taken into possession, which were attested by Arshad Ali HC and Baseer Ullah SI.

9- It is manifestly clear from the above statements of recovery witnesses including the IO that prosecution evidence is discrepant due to having material flaw as not only PW-3, the recovery witness but the IO himself in his statement failed to give the complete details of the prosecution version contained in Ex. PA. It is nowhere mentioned in their statements that who conducted the entire proceedings i.e. search of Gatto, recovery of crushed poppy heads, its weighing, separation of ten grams for chemical analysis, preparing sample & another parcel. The IO only stated that on suspicion they apprehended the appellant, on weighing it was found 15-KG. The IO never stated in his statement that he himself conducted the entire proceedings & that 15-KG crushed poppy heads were recovered from the possession of the appellant.



10- Moreover, in presence of above glaring discrepancy, it can also not be believed that sample of 10-grams was in fact taken out of 15-KGs of narcotics, allegedly recovered from the possession of appellant. Even otherwise, sample of only ten grams from huge quantity of 15-KGs of crushed poppy heads cannot be termed as “representative sample”. The Hon’ble Supreme Court in case of “**Ameer Zeb Vs. The State (PLD 2012 SC 380)** held that accused person is at receiving end of long and stringent punishments and thus safeguards from his point of view should not be allowed to be sacrificed at the altar of mere comfort or convenience of the prosecution.

11- It has also been held by the Hon’ble Apex Court in case “**Muhammad Imran Versus The State (2011 SCMR 1954)** that stringent sentences have been provided under Control of Narcotic Substances Act, 1997 if offence charged against the accused is proved within any component of S. 9 of Control of Narcotic Substances Act, 1997. For such reason, CNSA 1997 has to be construed strictly and relevant provision of law dealing with the procedure as well as furnishing proof like report of expert etc. are to be followed strictly in the interest of justice, otherwise it becomes impossible to hold that total commodity recovered from the possession of the accused was narcotics.

12- The rationale behind the dictums is that while dealing with such like cases special attention should be paid at the time of apprehension of the accused, his search, recovery proceedings and each & every detail should be brought on record so that it could be ascertained that entire proceedings conducted by the investigating agency are transparent and smacks truth. It is against the spirit of natural justice and in fact

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in contravention of the dictums (supra) that an accused is awarded Life Imprisonment on the basis of evidence having discrepancies, mentioned above.

13- It is also evident from the record that the appellant is first offender having no past criminal history.

14- In view of above discussion, the appellant deserves remission in sentence, therefore, while maintaining conviction, his sentence is reduced to one already undergone by him. Amount of fine & sentence in lieu thereof together benefit of Sec-382 B Cr. PC shall remain intact.

15- Appeals Dismissed. Sentence reduced.

(MUHAMMAD ANWAR KHAN KASI)  
JUDGE

(SHAIKAT AZIZ SIDDIQUI)  
JUDGE

M. Suhail  
19<sup>th</sup> June, 2012:

APPROVED FOR REPORTING