

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

Crl. Appeal No.141/2017  
Sajid Zaman  
**Versus**  
The State

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<b>31.01.2019</b>	<b>Raja Arshad Hayat, Advocate for the appellant Mr. Awais Malik, learned State Counsel.</b>

Through the instant criminal appeal, the appellant, Sajid Zaman, impugns the judgment dated 15.09.2017, passed by the learned Judge Special Court C.N.S.A. Islamabad (East), whereby he was convicted in case F.I.R. No.384/2014, dated 01.12.2014, registered under Section 9-C of the Control of Narcotic Substances Act, 1997 ("C.N.S.A.") at Police Station Koral, Islamabad and sentenced him to rigorous imprisonment for a term of one year and nine months with a fine of Rs.13,000/-. In case of default in payment of fine, the appellant would further undergo four months and fifteen days simple imprisonment. The appellant was given the benefit of section 382-B Cr.P.C.

2. Learned counsel for the appellant submitted that the impugned judgment dated 15.09.2017 is against the law and facts of the case; that the conviction and sentence awarded to the petitioner is not sustainable in law; that the prosecution was not able to prove its case beyond reasonable doubt; that the narcotic substance was alleged to have been recovered from the appellant on 01.12.2014, whereas the same was alleged to have given in the *malkhana* on 08.12.2014; that the narcotic substance allegedly recovered from the appellant was sent on 17.12.2014 for chemical

examination to the Forensic Science Laboratory; that it has nowhere been explained as to where the narcotic substance remained between 01.12.2014 to 08.12.2014; that the appellant has already spent one year and four months behind bars; and that the appellant does not have any criminal record. Learned counsel for the appellant prayed for the appeal to be allowed and for the impugned judgment to be set-aside. In making his submissions, learned counsel for the appellant placed reliance on the judgment reported as 2017 PCr.LJ 501.

3. On the other hand, learned State Counsel submitted that the impugned judgment does not suffer from any legal infirmity; that the appellant had specifically been nominated in the FIR; that five witnesses had given testimony against the appellant; that there is no inconsistency in the testimony of the prosecution's witnesses as all of them were policemen; and that a large quantity of 1020 grams of *charas* had been recovered from the appellant. Learned State Counsel prayed for the appeal to be dismissed.

4. I have heard the contentions of the learned counsel for the appellant as well as the learned State Counsel and have perused the record with their able assistance.

5. As per the contents of the FIR, on 01.12.2014, 1020 grams of *charas* were recovered from the appellant. The said recovery was said to have been made after spy information was received by the Police while on patrol. The appellant was arrested on the same very day when recovery was effected from him. On 14.01.2015, the *challan* was submitted, whereas on 31.03.2015, a formal charge was framed under Section 9-C of

the C.N.S.A. Five witnesses gave testimony against the appellant. Samples of the narcotic substance alleged to have been recovered from the appellant were sent to the Forensic Science Laboratory at Lahore on 17.12.2014. This has been confirmed by the prosecution witness (PW-4, Akhtar Abbas, Constable) in his testimony. The delay in sending the sample of the recovered narcotic substance was stated to be due to the non-submission of the required fee in the bank caused by the non-operation of the online system in the bank. The said PW-4 also deposed that on 08.12.2014, when he was posted at Police Station Koral, Islamabad, he was handed over the samples of the recovered narcotic substance by Shan Muhammad, S.I./Moharrar Malkhana.

6. Now the evidence of the prosecution witnesses have made it clear that the narcotic substance recovered from the appellant on 01.12.2014 was sent to the Forensic Science Laboratory on 17.12.2014. Furthermore, the evidence of the prosecution witnesses also shows that the said narcotic substance was handed over to PW-4, Akhtar Abbas on 08.12.2014 for the issuance of a docket from the E.T.O. Office.

7. Rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001, reads as follows:-

*“(2) Samples may be dispatched for analysis under the cover of a Test Memorandum specified in Form-I at the earliest, but not later than seventy-two hours of the seizure. The envelope should be sealed and marked "Secret Drug Sample/Test Memorandum".”*

8. As mentioned above, it is an admitted position that the samples of the contraband substance recovered from the appellant were sent for chemical analysis with a considerable delay.

The learned State Counsel has not come up with a single precedent/authority, wherein delay beyond the period stipulated in Rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001, had existed and accused had not been given the benefit of doubt. The admitted lapse on the part of the police/prosecution to have sent the recovered contraband substance for chemical analysis within the period stipulated under the law makes the case against the appellant into a doubtful one. The observance with the requirements of the Control of Narcotic Substances (Government Analysts) Rules, 2001, has also been emphasized recently by the Hon'ble Supreme Court in the case of The State Vs. Imam Bakhsh (2018 SCMR 2039).

9. Initially, the charge against the appellant was framed under section 9-C of the C.N.S.A. however, the learned Trial Court, vide the judgment impugned, modified the charge from section 9-C to 9-B of the C.N.S.A. as the prosecution had failed to prove the exact weight of the narcotics excluding the wrappers etc. Resultantly, the learned Trial Court had given the benefit of doubt to the appellant in a way that the weight of narcotics was either 1000 grams or less. The appellant was sentenced for a term of one year and nine months under section 9-B of the C.N.S.A. He has remained behind bars for one year and four months.

10. The delay in sending the recovered narcotic substance for chemical examination is of more than two weeks in the instant case. This substantial delay has not been adequately explained in the prosecution evidence.

11. In view of the above, the instant appeal is allowed; the impugned judgment dated 15.09.2017

is set-aside; and the appellant is acquitted of the charge framed against him.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)  
JUDGE

Qamar Khan

Blue chip added.

Approved for refashioning.

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