

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Athar Minallah  
Mr. Justice Irfan Saadat Khan  
Mr. Justice Malik Shahzad Ahmad Khan

**Criminal Petition No.972-L/2017**

Against the judgment dated 17.05.2017 of  
the Lahore High Court, Lahore passed in  
Crl.A. 140/2015

Abdul Samad

...Petitioner(s)

**VERSUS**

The State, etc.

...Respondent(s)

For the Petitioner(s): Mr. Arif Mehmood Rana, ASC

For the State: Mr. Sajjad Hussain, DPG

Date of Hearing: 24.01.2025

**ORDER**

**Irfan Saadat Khan, J.-** This Criminal Petition is directed against the judgment of the Lahore High Court in Cr. Appeal No. 140/2015, dated 17.05.2017, whereby the petitioner's appeal against the conviction and sentence awarded to him by the Anti-Terrorism Court *vide* its order dated 08.01.2015 in Case No. 1884-A/2014, was dismissed by the High Court.

2. Briefly stating the facts of the case before us, as narrated in F.I.R. No. 276/2014, registered at Police Station Kundian, District Mianwali on the complaint of Muhammad Ashraf Khan S.I. on 02.09.2014, are that earlier on the same day a police party headed by Muhammad Ashraf Khan S.I. ("**Complainant**"), was performing its duty of checking vehicles coming from the KPK side of the barrage at the said check post when, at 08:10 P.M., the police officials stopped a bus coming from D.I. Khan and caused its passengers to disembark for checking. During the search process, one of the passengers tried to slip away and was apprehended on suspicion whereupon he disclosed his name as Abdul-Samad ("**Accused/Petitioner**") and that he was resident of District Sheikhpura. Upon searching, 17 detonators along with a 6 ½ foot



long wire as well as 2 mobile phones and 3 sims were recovered from him. The accused/petitioner could not produce any license or permission for possession of the explosive substances. The F.I.R also mentions that when asked about the explosive substances, the petitioner disclosed that he was headed to *Imam-Bargah*, Lahore for terrorist activities and that he would obtain the rest of the material required to carry out activities after reaching Lahore. The offences highlighted in the FIR were sections 4/5 of the Explosive Substances Act, 1908 and section 7 of the Anti-Terrorism Act, 1997.

3. After registration of the case, the investigation commenced and, upon its completion, a report under section 173 of the Code of Criminal Procedure (the "**Cr.P.C.**") was submitted before the Trial Court. The Trial Court, after observing the legal formalities, framed charge on 03.12.2014 against the accused/petitioner under sections mentioned in the FIR to which the accused/petitioner pleaded not guilty, and the matter proceeded to trial.

4. Thereafter, the Trial Court announced its verdict on 08.01.2015, sentencing the accused/petitioner on the following grounds:

*"1. Under section 5 of the Explosive Substances Act, 1908, for having in possession the explosive material i.e. 17 detonators and a wire viz. Fuse No. 11 to undergo fourteen years R.I. and his whole property shall be forfeited under section 5-A to the government.*

*2. Under section 7 (ff) of the Anti-Terrorism Act, 1997 for having in possession of explosive material without any lawful justification to undergo fourteen years R.I. with forfeiture of his property.*

*11. The offence under section 4 of the Explosive Substances Act, 1908 could not be proved against the accused as the prosecution failed to bring on record any evidence in respect of intent of the accused that the said explosive substance was to be used for endangering life of any person, therefore, he stands acquitted from the charge under section 4 ibid*

*12. The sentence of imprisonment awarded to the for both the offences shall run concurrently and he shall also be entitled to the benefit under section 382-B Cr.P.C."*



5. The accused/petitioner then filed Cr. Appeal No. 140/2015 against his conviction and sentence. The High Court, after considering his case, upheld the petitioner's conviction and dismissed his appeal, *vide* judgment dated 17.05.2017, with the following observations:

*"All these witnesses [Prosecution Witnesses] have absolutely no grudge or ill-will against Abdul Samad [accused/petitioner] to falsely implicate him in the present case. They were cross-examined at length but their evidence could not be shaken during the process of cross-examination. They corroborated one another on all material aspects of the case. Their evidence is straightforward, trustworthy and confidence inspiring.*

13. Adverting to the defence plea of Abul Samad [accused/petitioner], he stated in reply to the question "Why this case [is] against you and why the PWs [have] deposed against you?" as under:-

*'I am innocent. Infact, I was arrested by the police on 20.07.2014 as a suspect from Kundian Moar, located at M-Road and kept in illegal custody till 02.09.2014 when this fake case was registered against me by foisting aforesaid incriminating articles which was procured by the police from Afghan Camp Kot Chandana, Mianwali.'*

Abdul Samad [accused/petitioner] did not opt to appear under section 340(2) Cr.P.C. as a witness. However, Mark-A/1-3 and Mark-B/1-4 were produced by the [accused/petitioner] in documentary defence evidence. No oral evidence has been produced by the [accused/petitioner]. Considering above, it is concluded that Abdul Samad has failed to prove his defence plea and learned trial court has rightly discarded his defence plea with sufficient reasons.

14. In view of the above discussion, we are of the view that the prosecution has proved its case beyond shadow of doubt against Abdul Samad [accused/petitioner] through evidence discussed earlier. Learned trial court has rightly convicted the [accused/petitioner], hence, his convictions and sentences awarded by the learned trial Court through the impugned judgment are maintained. Criminal Appeal No. 140 of 2015 has no merits and is dismissed."

**[emphasis added]**



6. Mr. Arif Mehmood Rana, ASC, has appeared on behalf of Abdul Samad, the accused/petitioner. The learned counsel argued that the High Court did not consider that the accused/petitioner remained illegally detained by the police for two months and it was only later, during this illegal detention, that the police falsely implicated the accused/petitioner in the instant case to show their efficiency and on account of *mala fide* intentions. In this regard, he stated that no independent witnesses supported the prosecution's case as only official witnesses appeared. He further highlighted that the High Court has completely ignored the statement of the accused/petitioner under section 342 Cr.P.C. wherein he categorically maintained that he was arrested two months prior to the incident narrated in the F.I.R., and that it was after these two months of illegal detention, that the police planted the incriminating articles on him and foisted a totally uncalled for case against him. The learned counsel thus prayed that the judgments of the Trial Court and High Court may be set aside and that the accused/petitioner, Abdul Samad, may be acquitted.

7. Mr. Sajjad Hussain, DPG, has appeared on behalf of the State and supported the judgments of the Trial Court and High Court, stating that the prosecution has proven its case beyond reasonable doubt, and that both the Trial Court and High Court have correctly decided that the accused/petitioner was guilty of the charges levelled against him.

8. We have heard the learned counsel for the accused/petitioner as well as the DPG representing the State and have perused the record with their assistance, as well as the applicable law.

9. Before proceeding with the contents of the F.I.R. and prosecution's claim, it is necessary to scrutinize the accused/petitioner's statement as, according to him, he had been arrested two months prior to the incident narrated in the F.I.R. Although the accused/petitioner did not opt to appear under section 340(2) Cr.P.C. as his own witness, the Trial Court examined him under section 342 of the Cr.P.C. When asked by the Trial Court "*Why this case is against you and why the witnesses have deposed against you?*", the accused/petitioner stated as follows:



*"I am innocent. Infact, I was arrested by the police on 20.07.2014 as a suspect from Kundian Moar, located at MM-Road and kept in illegal custody till 02.09.2014 when this fake case was registered against me by foisting aforesaid incriminating articles which was procured by the police from Afghan Camp Kot Chandana, Mianwali."*

When asked if he would produce evidence in his defence, the accused/petitioner replied:

*"Yes, I produce newspaper "Daily Express" of 21.07.2014 Mark-B/1-4 and close my defence."*

10. The accused/petitioner thus alleged that he was arrested as a suspect on 20.07.2014 and was kept under illegal detention continuously for two months and that later, on 02.09.2014, the police attempted to implicate him in the instant case by falsely passing off the incriminating material as having been recovered from him when it had actually been recovered from Afghan Camp Kot Chandana, Mianwali. In support of his contention he placed on record a newspaper by the name of "Daily Express" dated 21.07.2014, and according to him, it was published a day after his actual arrest on 20.07.2014. The newspaper (Mark-B/1-4) dated 21.07.2014 details the arrest of one Abdul Samad, resident of Sheikhupura, who was arrested in the same manner from the same location on the same suspicion. It is immediately apparent that the newspaper is referring to the accused/petitioner. Importantly, the newspaper story substantiates the accused/petitioner's claim that he was, in fact, arrested on 20.07.2014 and not on 02.09.2014. Although the prosecution has entirely denied the accused/petitioner's claim, they have not otherwise proven the charge.

During cross-examination, the complainant, Muhammad Ashraf Khan S.I. (PW-2) deposed:

*"I cannot tell the registration number of the vehicle from which the accused had alighted. I did not cite driver, conductor or any other passenger of that vehicle as a witness in these proceedings."*

Furthermore, the investigating officer of the case, Zia Ullah Khan, Inspector, deposed during cross-examination:



*“On the side of the Check Post at southern side of Chashma Barrage, CCTV Cameras were installed. The search proceedings were not covered by the said Cameras.”*

11. The most important aspect, which has perhaps has not been taken into consideration by the Trial Court as well as the High Court, is that the items allegedly recovered from the accused on 02.09.2014 happens to be of the same description as those mentioned in the newspaper dated 21.07.2014. It is quite strange that the prosecution has failed to mention the registration number of the vehicle from which the accused/petitioner was arrested. Moreover, they did not associate the driver, conductor, or any one of the passengers of the said bus – nor did they even mention their names in the FIR. Even the detonators were sent for analysis after two days of their alleged recovery at the time of arrest as per the FIR, casting doubt on the prosecution’s case.

12. It is settled law that where there is even a single circumstance which would create a reasonable doubt in a prudent mind about the accused’s guilt, then the benefit of that doubt that would firstly accrue, as of right, in the accused’s favour; and secondly, such single factor could be conclusive and form the basis of acquittal. The following paragraph from this Court’s judgment in *Tariq Parvez’s*<sup>1</sup> case is relevant:

*“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 doubts. 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.”*

*Muhammad Akram’s*<sup>2</sup> case further reiterates the principle of *Tariq Parvez* (*supra*) in the following terms:

*“It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace.”*

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<sup>1</sup> *Tariq Parvez v The State* (1995 SCMR 1345)

<sup>2</sup> *Muhammad Akram v The State* (2009 SCMR 230)



13. In our view, the accused/petitioner has produced compelling evidence which, at the very least, raises serious questions about the mode and manner in which the police alleged to have arrested and investigated him. Even besides the reasonable doubts that arise in the prudent mind due to the accused/petitioner's evidence, the prosecution's own account of events is fraught with doubtful circumstances as explained above. Importantly, *Muhammad Imran's*<sup>3</sup> case has held:

*"It is by now well settled that benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservation; the case is fraught with many."*

14. The prosecution's case is filled with circumstances that create doubt, which would automatically favour the accused/petitioner without reservation. Therefore, we do not agree with the learned DPG that the accused/petitioner's guilt has been proven beyond reasonable doubt. Rather, in our view, the existence of such doubts decisively favours the accused/petitioner, and this aspect has not been considered by the learned Trial Court as well as the High Court.

15. In view of the above, we cannot agree with the judgments of the Trial Court as well as the High Court; they are hereby set aside. This petition is therefore converted into an appeal and the same is hereby allowed. In case the petitioner/appellant, Abdul Samad, is not required to be incarcerated in any other case, then he shall be released forthwith.

16. These are the reasons of our short order dated 24.01.2025.

ISLAMABAD  
24.01.2025  
Naseer/ Mustafa Kundi L.C.

*"Approved for Reporting"*

<sup>3</sup> *Muhammad Imran v The State* (2020 SCMR 857). Reliance may also be placed upon: *Mst . Asia Bibi v The State* (PLD 2019 Supreme Court 64); *Ayub Masih v The State* (PLD 2002 Supreme Court 1048); *Abdul Jabbar v The State* (2019 SCMR 129); *Maqsood Alam v The State* (2024 SCMR 156).