

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT**  
**MINGORA BENCH**  
(Judicial Department)

Cr.A No. 160-M/2022

**JUDGMENT**

Date of hearing: 19.09.2022

Appellant: (Shah Nawaz Khan) by  
Mr. Sabir Shah, ASC.

Respondents: (State & another) by  
Mr. Sohail Sultan, Astt: A.G.

**MUHAMMAD IJAZ KHAN, J.-** Appellant

namely Shah Nawaz Khan has called in question the order/ judgment of his conviction dated 26.05.2022 passed by the learned Additional Sessions Judge/Judge Special Court Malakand at Batkhela, vide which the appellant was convicted and sentenced as follows;

*U/S 11 (b) of KP CNSA 2019 to 10 years rigorous imprisonment along with fine of Rs. 500,000/- (five hundred thousand), or in default of payment of fine he shall further undergo six months simple imprisonment.*

*The appellant was also extended the benefit of section 382-B Cr.P.C.*

2. The appellant faced trial in a criminal registered against him vide case FIR No. 23 dated 25.11.2021 registered under

section 11 (b) of The Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 at Police Station Excise Narcotics Swat on the basis of '*Murasila*' sent to the police station by the complainant namely Taseer Khan, ASHO on 25.11.2021. As per contents of the FIR, the complainant received prior information that a pedestrian would smuggle "ICE". Pursuant to receipt of such information, the complainant and other police party apprehended the appellant namely Shah Nawaz Khan at the spot of occurrence, who was holding a blue colour plastic shopper in his right hand. During search of the bag, the police recovered "ICE" (methamphetamine) weighing 500 grams, out of which one gram "ICE" was separated for the chemical analysis of the Forensic Science Laboratory (hereinafter referred to as "*FSL*") and sealed in parcel No. 1, while rest of the stuff was sealed in parcel No. 2. Accused was arrested on the spot, hence the ibid FIR was registered against him at police station concerned.

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3. The accused was summoned by the learned trial Court and charge was framed against him on 15.04.2022 to which he pleaded not guilty and claimed trial. The prosecution was invited to produce its evidence, who accordingly examined four (04) witnesses in support of their case and thereafter statement of the accused was recorded under section 342 Cr.P.C. On conclusion of proceedings in trial, accused/appellant was convicted and sentenced vide the impugned order/judgment dated 26.05.2022 of the Court of learned Additional Sessions Judge/Judge Special Court Malakand at Batkhela, as stated hereinabove. The appellant has now challenged the aforesaid order/judgment by filing the instant appeal before this Court.

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4. Arguments of learned counsel for the appellant as well as learned Asstt. A.G. appearing on behalf of the State were heard in considerable detail and the record perused with their able assistance.

5. As per the prosecution case the complainant namely Taseer Khan who appeared as PW-2 reported the matter that when he was present on the spot he received spy information that a pedestrian is smuggling "ICE" so he and other police officials rushed to the spot and arrested the appellant who was having a blue colour polythene bag in his hand and on search of the bag it containing "ICE" the same was weighed and it turned out to be 500 grams and thereafter for the purpose of FSL one gram sample was separated and was sealed in parcel No. 1 whereas the remaining "ICE" was sealed in parcel No. 2. The samples along with the remaining stuff, the accused and the '*Murasila*' so drafted on the spot were sent to the police station through constable namely Shabir (PW-1) for the registration of the aforesaid FIR.

6. In this case the prosecution has been able to produce consistent, trustworthy and confidence inspiring evidence as PW-1 namely Shabir who is the marginal witness of

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the recovery memo (Ex.PW-1/1) and PW-2 namely Taseer Khan the seizing officer, have remained consistent on all the material particulars regarding the mode and manner of the recovery effected from the direct possession of the appellant. Both these PWs remained consistent regarding the factum of separation of the samples, preparation of the recovery memo, drafting of 'Murasila' and all other ancillary and axillary proceedings which were conducted on the spot. During the course of cross-examination of these two marginal witnesses the defence has not been able to bring on record any inconsistency what to speak of any material inconsistency. The trend of cross-examination of these two marginal witnesses would also show that with the blessing of defence counsel the case of prosecution has been confirmed and affirmed. In a situation akin to the present one in the case of "Shabbir Hussain v/s The State" reported as 2021 SCMR 198, the Hon'ble Apex Court has held that we have gone

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through the statements of PWs and find them in a comfortable and confident unison on all the salient aspects of the raid as well as details collateral therewith. Learned counsel for the petitioner has not been able to point out any substantial or major variation or contradiction in their statements that may possibly justify to exclude their testimony from consideration. On the contrary, it sounds straightforward and confidence inspiring without a slightest tremor. Absence of a witness from the public, despite possible availability is not a new story; it is reminiscent of a long drawn apathy depicting public reluctance to come forward in assistance of law, exasperating legal procedures and lack of witness protection being the prime reasons. Against the above backdrop, evidence of official witnesses is the only available option to combat the menace of drug trafficking with the assistance of functionaries of the State tasked with the responsibility; their evidence, if found confidence inspiring, may implicitly be relied

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upon without a demur unhesitatingly; without a blemish, they are second to none in status. Similarly, forensic report is sufficiently detailed to conclusively establish narcotic character of the contraband. Similarly, in the case of "Faheem Ullah v/s The State" reported as 2021 SCMR 1795, the Hon'ble Apex Court has held that prosecution case is consistent and straightforward. The petitioner was apprehended during a routine patrol and his arrest along with contraband were incorporated in the daily diary, entry whereof, is placed on record as Exh.3/A; site plan and inspection note also coincide with the details, elaborated in the crime report. These are also consistent with the investigative details. There is nothing on the record that could even obliquely support the plea belatedly taken by the petitioner and, thus, preponderance of prosecution evidence comprising safe custody of contraband, transmission of sample to the office of chemical examiner with a positive report supported by a unison account

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furnished by the official witnesses remained unscathed during an inconsequently cross-examination.

7. In this case the prosecution has also been able to prove the safe transmission and safe custody of the sample and contraband. It is part of the evidence and as stated by PW-2, the seizing officer that when he separated the samples and sealed the same into various parcels, drafted the recovery memo and the '*Murasila*' then thereafter all of them along with the accused were handed over to PW-1 namely Shabir for their transmission to the police station. The said Shabir when appeared as PW-1, who too in an unequivocal terms stated about the factum of taking of parcels, the accused and the '*Murasila*' from the spot to the police station and handing over the same to PW-4 namely Azmat Ali, who is *Muharir* of the police station. Similarly, the PW-4 namely Azmat Ali in his Court has categorically stated that he received the parcels, the case property and the '*Murasila*' at the



hands of PW Shabir. He has further stated that on the next day he also handed over parcel No. 1 along with the receipt *Rahadari* to PW Shabir for taking the same to the FSL. The FSL report (Ex. PW-3/9) shows that the samples were brought by the said PW Shabir. So, in this view of the matter, the prosecution has established the safe transmission and safe custody of the parcels and contraband from the spot to the police station and from the police station to the FSL. In the case of "Faisal Shahzad v/s The State" reported as 2022 SCMR 905, the Hon'ble Apex Court has held that learned High Court after perusal of evidence has rightly found that on the same day when the narcotic was recovered from the petitioner i.e. 27.02.2012, 10 sealed sample parcels of contraband Charas and five sealed sample parcels of opium were received by Falak Sher, HC (PW-1) for safe custody. The said PW handed over the said samples to Mumtaz Hussain (PW-2) on 02.03.2012 along with road certificate for their onward

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transmission to the office of Chemical Examiner Multan. This fact was confirmed and testified by the said Mumtaz Hussain, who took the samples to the office of Chemical Examiner on the same day. The reports of the Chemical Examiner also testify this fact, therefore, it can safely be said that the safe chain of custody of the recovered narcotics was not compromised at all. Similarly, in the case of "Liagat Ali & another v/s The State" reported as 2022 SCMR 1097, the Hon'ble Apex Court has reiterated the same rational by holding that even otherwise, on merits we could not find anything from the record, which could suggest that the safe chain of custody of the narcotic was compromised. 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, report of the Chemical Examiner and the statements of the prosecution witnesses when evaluated conjointly, there is no other option left with

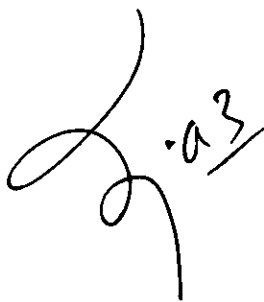
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the Court except to rely on the statements of the prosecution witnesses for the purpose of conviction as recorded by the two courts below.

In view of the above, the prosecution has successfully established the safe transmission and safe custody of the contraband which was recovered from the direct possession of the appellant.

8. The FSL report (Ex. PW-3/9) available on file which has been established through unbroken chain by the prosecution speaks that the contraband recovered from the appellant was found to be methamphetamine ("ICE") and the overleaf of the FSL report also shows that protocol as required was fully applied while analyzing the sample, therefore, no lacuna whatsoever in the FSL report has been brought on record.

9. During the course of arguments and hearing of this appeal the learned counsel for the appellant was confronted that in the cross-examinations of the marginal

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witness PW-1 and PW-2 namely Shabir and Taseer Khan respectively, the charge of recovery of contraband from the appellant has been confirmed and affirmed instead of shattering the same as all the answers to the questions which were put to them are confirming the prosecution story with the blessing of the learned counsel for the defence and as such nothing has been brought from these prosecution witnesses either to challenge their presence on the spot or to shatter their testimony/evidence. Learned counsel for the appellant though stated that in the statement of PW-1 there is reference to the date of occurrence as 26.11.2021 instead of 25.11.2021, however, such an omission is not so significant to destroy the whole case of prosecution in its totality. In the case of "Khadim Hussain v/s The State" reported as PLD 2010 Supreme Court 669, the Hon'ble Apex Court has held that various contradictions in the statements of the prosecution witnesses have not been taken

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into consideration causing serious prejudice against the appellant. It has been held time and again by this Court that minor contradictions do creep in with the passage of time and it can be ignored safely. Similarly, in the case of "Muhammad Ilyas v/s The State" reported as "2011 SCMR 460" the Hon'ble Supreme Court had also held that contradictions which are not grave in nature can be ignored safely as minor contradictions creep in with passage of time. Merely on the basis of contradictions, statement of a prosecution witness cannot be discarded if corroborated by other incriminating material.

10. The record and evidence available on file also shows that the appellant has not controverted during the cross-examinations of prosecution witnesses that either the seizing officer namely Taseer Khan (PW-2) or any other PWs have got any *ill-will* or grudges or motive for the false implication of the appellant and it was not even remotely suggested to the appellant during the course

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of trial, therefore, the consistent, trustworthy and confidence inspiring evidence of these PWs is absolutely free from any kind of manipulation.

11. As a last attempt to create a dent in the prosecution case the plea of learned counsel for the appellant was that no private persons were associated with the recovery proceedings but this plea of the appellant is also misconceive as when the special law by itself specifically excludes the applicability of section 103 Cr.P.C from the recovery proceedings conducted under The Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019, then such objection of the appellant could not be legally appreciated in his favour.

12. In this view of the discussion the prosecution has successfully established the safe custody of contraband as well as safe transmission of the parcels from the spot to the police station and from the police station to the FSL and thus the result so obtained of

the FSL shows that the contraband recovered from the appellant were "ICE" (methamphetamine). Even otherwise, we scanned the record of the case as well as the evidence produced by the prosecution with the able assistance of learned counsel for the appellant as well as the learned Astt: A.G and found that all the PWs are consistent, coherent and in line with the prosecution case and as such their evidence could not be disbelieved on any score whatsoever.

13. In light of what has been discussed above, it is held that the learned trial Court has rightly convicted the appellant after finding him guilty for commission of the offence by recording valid reasons in the impugned judgment and as such the appeal in hand filed by the appellant against his conviction is found devoid of any force and the same is accordingly dismissed.

Announced  
Dt. 19.09.2022

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Office  
21/09/2022  
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