

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE JAMAL KHAN MANDOKHAIL

JAIL PETITION NO. 95 OF 2017

(On appeal against the judgment dated
15.12.2016 passed by the Lahore High Court,
Multan Bench in Criminal Appeal No. 319/2014)

Faisal Shahzad

... Petitioner

VERSUS

The State

... Respondent

For the Petitioner: Sardar Muhammad Latif Khan Khosa, Sr. ASC
Syed Iqbal Hussain Shah, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Mr. Muhammad Jaffer, Addl. P.G. Punjab

Date of Hearing: 14.03.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner was tried by the learned Additional Sessions Judge, Multan in terms of the case registered vide FIR No. 33/2012 under Section 9(c) of the Control of Narcotic Substances Act, 1997, at Police Station Daulat Gate, Multan as contraband charas weighing 10 kilograms and opium weighing 5 kilograms was recovered from him. The learned Trial Court vide its judgment dated 30.06.2014 convicted the petitioner under Section 9(c) of the Control of Narcotic Substances Act, 1997, and sentenced him to imprisonment for life. He was also directed to pay a fine of Rs.100,000/- or in default whereof to further undergo SI for one year. Benefit of Section 382-B Cr.P.C. was also extended to him. In appeal the learned High Court maintained the conviction and sentences recorded against the petitioner by the learned Trial Court.

2. *The prosecution story as given in the judgment of the learned Trial Court reads as under:-*

"2. Brief facts of the prosecution case as disclosed in the complaint Ex.PA lodged by Muhammad Saeed Akhtar Inspector are that on 27.02.2012 he was present at Chowk Aaam Khas Bagh alongwith Muhammad Hanif Tasi, Muhammad Khan Tasi, Muhammad Jamil, Jan Muhammad, Muhammad Khalid and Lal Khan constables and Muhammad Rashid driver where he received spy information that one person was coming from shrine of Hafiz Jamal with huge quantity of narcotic whereupon he constituted a raiding party and reached at Hafiz Jamal chowk. One person having a gatoo came from Hafiz Jamal Darbar. On the pointation of the informer, he was apprehended who disclosed his name as Faisal Shehzad. After search of the Gatoo of the accused Faisal Shahzad ten packets of charas and five packets of opium were recovered. On weigh of the charas it was found 10 kgs and each packet was of one kg of the charas. The opium was in the shape of pieces which weighed 05 kgs. Each packet was found one kg of opium. Ten grams of charas was separated out of recovered charas from each packet for chemical analysis. Likewise, ten grams of opium from each packet was separated out of the recovered opium for analysis. All the packets of charas and opium were taken into possession through recovery memo which is attested by the PWs. He then drafted the complaint and sent it to the P.S. through Muhammad Khalid constable for registration of the case whereupon the instant case was registered."

3. *After completion of investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. In order to prove its case the prosecution produced as many as six witnesses. When examined under Section 342 Cr.P.C., the petitioner stated that he is innocent and has been falsely implicated in the case. The petitioner firstly opted to appear as his own witness in terms of Section 340(2) Cr.P.C. in disproof of the allegations leveled against him but subsequently he refused to appear. Even he did not produce any evidence in his defence.*

4. *Learned counsel for the petitioner contended that the petitioner has been falsely implicated in this case and the Police has planted a fake case upon him. Contends that the narcotic was allegedly recovered from the petitioner in the broad daylight in a busy thoroughfare but none from the public was associated in the case to depose against him. Contends that the prosecution could not prove safe custody of the allegedly recovered narcotics and its safe transmission to the Police station and then to the Laboratory for chemical analysis, therefore, the same*

cannot be used against the petitioner to sustain his conviction. In support of his argument, learned counsel relied upon Qaiser Khan Vs. The State (2021 SCMR 363), Mst. Sakina Ramzan Vs. The State (2021 SCMR 451), Mst. Razia Sultana Vs. The State (2019 SCMR 1300) and Zahir Shah Vs. The State (2019 SCMR 2004). Further contends that the narcotic was allegedly recovered from a 'gatoos' but the same was not produced in evidence, therefore, the recovery loses its relevance. In support of his argument, he relied on Amjad Ali Vs. The State (2012 SCMR 577). In the alternative, he contended that it is a case of lesser penalty, as according to him, it is only the basket/sack/pouch/doda of the opium, which contains narcotic substance but nothing is available in evidence to show as to what actually was recovered from the possession of the petitioner, therefore, the same may be considered as a mitigating circumstance. In support of his argument, he relied upon Zulfiqar Vs. The State (2021 SCMR 531).

5. On the other hand, learned Law Officer has supported the impugned judgment. He contended that the petitioner was caught red handed while transporting a huge quantity of narcotics, the Police officials had no enmity to falsely involve him in the present case and the safe custody of the narcotic and then its safe transmission to the Chemical Examiner has been proved to the hilt, therefore, he does not deserve any leniency by this Court.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on record.

It is a case which was lodged with promptitude on the basis of spy information, which was supplied to the law enforcing agency prior to conducting raid by the raiding party comprising of number of police officials and it had already established a picket at the particular place on the basis of the said information. The petitioner was caught red handed by the Police and a huge quantity of 10 kilograms of contraband charas and 5 kilograms of opium was recovered from him, which was contained in a sack/gatoos in 15 separate packets. The prosecution case hinges upon the statements of Falak Sher, H.C. (PW-1), Mumtaz Hussain, constable (PW-2),

Muhammad Asghar Tasi (PW-3), Muhammad Hanif Tasi (PW-4), Shaukat Hussain, SI (PW-5) and Muhammad Saeed Akhtar, Inspector (PW-6). All these witnesses have narrated the prosecution story in a natural manner and remained consistent throughout and their testimony could not be shattered by the defence despite lengthy cross-examination. The said witnesses had no enmity with the petitioner to falsely implicate him in the present case. Even otherwise a huge quantity of 10 kilograms of contraband charas and 5 kilograms of opium in no circumstances can be planted by the Investigating Officer of his own. This Court in a number of judgments has held that testimony of police officials is as good as any other private witness unless it is proved that they have animus against the accused. However, no such thing could be brought on record by the petitioner in this case. This Court has time and again held that reluctance of general public to become witness in such like cases has become judicially recognized fact and there is no way out to consider statement of official witnesses, as no legal bar or restriction has been imposed in such regard. Police officials are as good witnesses and could be relied upon, if their testimonies remain un-shattered during cross-examination. The police officials separated 10 grams of charas and 10 grams of opium from each packet in a prescribed manner and put the samples in 15 separate packets and then sent the same to the office of Chemical Examiner for its analysis. The reports of the Chemical Examiner show that all the 15 packets contain contraband charas and opium.

7. *So far as the argument of the learned counsel for the petitioner that the safe custody of the allegedly recovered narcotic and its safe transmission to the Police Station and then to the Chemical Examiner is not established, therefore, the same cannot be used against the petitioner to sustain his conviction is concerned, we have noted that the learned High Court in paragraph 4 of the impugned judgment has dealt with this issue in detail. The 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 alongwith road certificate for their onward 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. The case law relied upon by the learned counsel for the petitioner in this regard is distinguishable as in the cases referred by him either the safe custody and transmission from the 'maalkhana' to the chemical examiner was not proved, the police constable who delivered the sealed samples to the Chemical Examiner was not produced in evidence or his statement could not be recorded or the officer of the Anti Narcotics Force through whom the sample was dispatched to the Chemical Examiner was not produced in evidence but as discussed above the same is not the case here. This Court in a recent judgment passed in Jail Petition No. 637/2016 has held that the Control of Narcotic Substances (Government Analysts) Rules, 2001 virtually place no bar on the Investigating Officer to send the samples within a certain/specified period of time. These Rules are stricto sensu directory and not mandatory in any manner. It does not spell out that if there is any lapse, it would automatically become instrumental to discard the whole prosecution case. The Control of Narcotic Substances (Government Analysts) Rules, 2001, cannot control the substantive provisions of the Control of Narcotic Substances Act, 1997 and cannot in any manner frustrate the salient features of the prosecution case, which otherwise hinges upon (i) receipt of information, (ii) action by the concerned law enforcing agency, (iii) recovery of contraband narcotics, (iv) the report of chemical examiner regarding analysis of the recovered contraband, (v) the finding of fact by the courts below after recording of evidence i.e. (a) witnesses of the raiding party, (b) the recovery witnesses, (c) Investigating Officer and all other attending circumstances. If the series of acts which ultimately resulted into recovery of contraband narcotic are kept in juxtaposition with the alleged violation of the Rules, it cannot by any stretch of imagination be considered reasonable in law to smash the

whole prosecution case on its salient features. Even otherwise, in terms of Section 29 of the Control of Narcotic Substances Act, 1997, manner and standard of proof in cases registered under the Act is slightly different as in terms of the said Act the accused is presumed to have committed the offence unless the contrary is proved.

8. *The learned counsel argued that the narcotics was allegedly recovered from a 'gatoo'/sack but the same was not produced in evidence, therefore, in view of the law laid down by this Court in Amjad Ali Vs. The State (2012 SCMR 577) the recovery loses its relevance. However, this argument of the learned counsel is misconceived because in Amjad Ali supra case 20 kilograms charas was recovered from a spare wheel of the car, which was not produced in evidence and this Court considered its production in evidence necessary only to verify as to whether could it contain such a huge quantity of narcotics in question. In the present case the petitioner was carrying narcotics in a sack/'gatoo', which is usually made of polythene/cloth/plastic and is commonly used by the people in our society to carry heavy things and the same can easily carry a weight of 15 kilograms. The 'gatoo' is just a cloth or plastic bag, so the real thing to look at is that the petitioner was carrying a huge quantity of narcotics in it, therefore, the non-production of the gatoo is of no avail to the petitioner. In the alternative, learned counsel had prayed that it's a case of lesser punishment and in support of his argument, he has placed reliance on Zulfiqar Vs. State (2021 SCMR 531). However, we have noted that in the said Zulfiqar supra case, 15 kilograms of poast/opium was recovered from the accused and nothing was brought on record as to whether was it only the doda/basket/pouch or was it the whole poppy plant. This Court while holding that it is only the basket/sack/pouch also known as 'doda' excluding the seed, which contains narcotics, considered it as a mitigating circumstance and reduced the quantum of punishment. However, in the present case a huge quantity of 10 kilograms of contraband charas and 5 kilograms of opium was recovered in pure form from the possession of the petitioner. Even if we keep aside the recovery of 5 kilograms of opium for the reason that it is unknown as to in which shape the opium was*

recovered, even then the recovery of 10 kilograms of contraband charas alone is sufficient to sustain the conviction of the petitioner.

9. *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.*

10. *For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused.*

JUDGE

JUDGE

JUDGE

Islamabad, the
14th of March, 2022
Approved For Reporting
Khurram