

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

41/25

AFR
AD

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE ISHTIAQ IBRAHIM
MR. JUSTICE ALI BAQAR NAJAFI

Crl. P.L.A. No. 379/2025

(Against the judgement dated 15.01.2025
passed by Lahore High Court, Multan
Bench in Crl. Appeal No. 1060/2023)

MST. SABRAN BIBI

...Petitioner

VERSUS

THE STATE

...Respondent

For the Petitioner	: Mr. Abid Mehmood, ASC Mr. Anis Muhammad Shahzad, AOR
For the State	: Mr Sajjad Hussain Bhatti, ASC
Assisted By	: Ms. Tayyaba Munir, Judicial Law Clerk
Date of hearing	: 30.05.2025

JUDGMENT

Ishtiaq Ibrahim, J.- On receipt of spy information qua presence of petitioner Mst. Sabran Bibi having narcotics in her possession for the purpose of selling the same to customers at the edge of LBDC canal *Kachi Abadi* falling within the criminal jurisdiction of Police Station Ghalla Mandi Sahiwal, on 19.11.2022 Ghulam Abbas SI (PW.2) along with other police officials including a lady constable Aqsa Saddique No.1620 (PW.1) reached the spot and at 08.00 A.M. apprehended the petitioner having a blue colour polythene bag in her possession search of which led to the recovery of two pieces of chars, one weighing 1260 grams and another 1100 grams. The Seizing Officer separated 63 grams and 55 grams, respectively, from the recovered pieces as samples for chemical analysis by the FSL and sealed the same in parcels. He also sealed the remained quantity of

chars in separate parcel and thereafter took the same into possession through recovery memo Exh.PA in presence of its marginal witnesses. He drafted complaint Exh.PB on the basis of which FIR No. 1593/2022 dated 19.11.2022 under section 9(1)c Control of Narcotic Substances Act, 1997 (**“Act of 19097”**) was registered against the petitioner.

2. After facing regular trial, the learned Additional Sessions Judge Sahiwal (**“Trial Court”**) convicted the petitioner under section 9(1)c of the Act of 1997 and sentenced her to rigorous imprisonment for nine years along with a fine of Rs. 80,000/- and in default of payment, to further undergo two months of simple imprisonment. The benefit of Section 382-B Cr.P.C. was extended to her vide judgment dated 23.10.2023.

3. Aggrieved from her conviction and sentence, the petitioner preferred an appeal before the learned Lahore High Court, Multan Bench Multan, but the same was dismissed vide judgment dated 15.01.2025 (**“impugned judgment”**).

4. The instant petition has now been preferred by the petitioner-convict before this under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, assailing the impugned judgment of the learned Lahore High Court, Multan Bench dated 15.01.2025.

5. Arguments heard and record as well as evidence perused.

6. The occurrence as alleged in the FIR, took place on 19.11.2022 at 08:00 a.m. The place of occurrence, as shown in the site plan Exh.PD, is a straight *kacha* road leading for the East to the West, adjacent to the LBDC Canal near *kachi abadi*. The presence of the petitioner is shown at the bank of the canal towards the South. Towards the North of the road lies the canal itself while towards South, the *kachi abadi* of *Shareef Colony* is situated. A panoramic view of the site plan reveals that the place of occurrence is open and visible from a considerable distance, which renders the presence of any one approaching towards the place of presence of the petitioner, visible from sufficient long distance. It is not the prosecution’s case that the petitioner upon noticing the arrival of police officials, made any attempt to flee or to dispose of the contraband in the nearby canal. In this background, the easy arrest of the petitioner and recovery of narcotics from her possession, appears inherently improbable and does not appeal to reason or the conduct of an ordinary prudent person. The FIR also contains a categorical allegation that the petitioner was present at the spot selling narcotics. However,

no equipments such as digital or manual weighing scales, staplers, small empty sachets, paper slips or similar items which are normally kept by the narcotics sellers in their possession for selling narcotics in small quantity has been shown recovered. Neither any alleged customer was arrested at the spot nor has the prosecution associated any customer as a witness to lend credence to the allegation of the sale of narcotics against the petitioner. The site plan (Exh.PD) is silent with regard to the presence of any customer and the presence or positioning of the seizing officer, any accompanying police officials, or the witness to the alleged recovery proceedings. This glaring omission from the prosecution's own documentary evidence undermines the procedural sanctity and evidentiary reliability of the recovery proceedings.

7. We have also observed that contraband narcotics allegedly recovered from the petitioner were seized on 19.11.2022; however, the samples were dispatched for chemical analysis to the PFSA on 23.11.2022, after a delay of 4 days for which no explanation, much less plausible, has been furnished by the prosecution. In cases involving recovery of narcotic contraband, the chemical analysis report constitutes the cornerstone of the prosecution's evidence. Such an inordinate delay in forwarding the seized items to PFSA inevitably casts a shadow of doubt on the integrity and authenticity of the samples. In such view of the matter the possibility of tampering, substitution, or contamination of the seized narcotics cannot be excluded.

8. Yet there is another aspect which also makes the case of the prosecution doubtful. The petitioner has brought on record the Call Data Records (CDRs) of the seizing officer Ghulam Abbas, SI, and Lady Constable Aqsa Saddique (PW-1), which were not effectively rebutted by the prosecution. The CDRs reveal that at the time of occurrence, the mobile device attributed to PW-1 was located in Chak No. 1, Tehsil Burewala, District Vehari, far away from the place of occurrence. Similarly, the mobile data pertaining to SI Ghulam Abbas indicates his mobile cell number was connected to a cell tower situated in the area of Yosefwala other than the place of occurrence. The mere denial by the said prosecution witnesses that their mobile phones were not in their possession at the material time, unsupported by any corroborative evidence such as the production of a second SIM, mobile swap record, or any logical explanation, does not suffice to rebut the documentary evidence produced by the petitioner. It is trite law that where circumstances create reasonable doubt in a prudent mind regarding the truth of the prosecution's case, the accused is entitled to the benefit of such doubt as a matter of right, not of

concession. The doubts in the present case are not speculative or imaginary but are borne out of material contradictions and improbable aspects of the prosecution's case, which remain unexplained and unaddressed.

9. In response to Question No.6 in her statement recorded under Section 342 Cr.P.C, the petitioner has categorically stated that she was apprehended by the police from her residence a day prior to the registration of the instant FIR. The police demanded a huge amount for her release and upon her refusal, she was falsely implicated in the present case. In support of her stance, the petitioner has also referred to case FIR No.1045/2020 under Section 9-c of the Control of Narcotic Substances Act, 1997, lodged at Police Station Ghalla Mandi. According to the petitioner, in the aforesaid case 12 gold earrings and a *koka* (nose ornament) were forcibly removed from her person by the police but were neither reflected in the recovery memo nor in the written complaint. It is her claim that the said gold ornaments were subsequently handed over to her husband, indicating police intent to misappropriate her belongings. To substantiate this version, the petitioner produced the statements of prosecution witnesses recorded in the said case including Lady Constable Sajida Kausar No.264/LC who had acknowledged that the aforementioned gold items were indeed taken from the petitioner. Mushtaq Gul SI (PW-4), also admitted in his testimony that the same were later returned to the petitioner's husband. This sequence of events were in two separate criminal cases were registered against the petitioner within the same police station, and where both share common factual threads, raises serious questions about the prosecution's case. The consistent claim of the petitioner, supported by depositions from prosecution witnesses in the earlier case, lends material credence to her defence narrative. In such circumstances, the possibility of mala fide on the part of the police cannot be ruled out, particularly where animus and prior misconduct stand demonstrated on the record.

10. In a criminal case, it is the duty of the Court to review the entire evidence that has been produced by the prosecution and the defence. If, after an examination of the whole evidence, the Court is of the opinion that there is a reasonable possibility that the defence put forward by the accused might be true, it is clear that such a view reacts on the whole prosecution case. In these circumstances, the accused is entitled to the benefit of doubt, not as a matter of grace, but as of right, because the prosecution has not proved its case beyond reasonable doubt. Viewed in totality, the surrounding circumstances significantly reinforce the defence narrative and cast doubt on the prosecution's narrative.

Therefore, the instant petition is converted into an appeal and is allowed. The conviction and sentence of the petitioner/appellant are set aside; the petitioner is acquitted, and shall be set at liberty forthwith if not required in any other case.

Islamabad

30.05.2025.

M. Siraj Afridi, PS / Tayyaba Munir, LC

APPROVED FOR REPORTING