

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi

Mr. Justice Jamal Khan Mandokhail

Mr. Justice Malik Shahzad Ahmad Khan

Criminal Petition No. 69-Q of 2022

(Against the judgment dated 19.09.2022 passed by the High Court of Balochistan, Quetta passed in Criminal Appeal No. 232 of 2022)

Hasrat Khan

.Petitioners

Versus

The State

.Respondents

For the petitioners:

Mr. Shamsuddin Achakzai, ASC

For the State:

Mr. Abdul Mateen, DPG
Mr. Zahoor Ahmed Baloch, Addl.
A.G.

On Court's Notice:

Mr. Jehanzaib, Prosecutor-General,
Balochistan
Mr. Asif Reki, Advocate-General,
Balochistan
Mr. Sohail Khalid, D.I.G.
(Investigation), Quetta
Mr. Zeeshan Raza, Director, Excise
& Taxation, Quetta
Mr. M. Younas, Retd. I.O.
Mr. Muhammad Anwar Baloch, S.I.
Haji Khan Mohammad, I.O. Excise
Department.

Date of Hearing:

01.08.2024

ORDER

YAHYA AFRIDI, J.- Hasrat Khan ("**Petitioner**") was convicted by the learned Special Judge, Barkhan at Rakhni, under Section 9(c) of the Control of Narcotic Substances Act, 1997 ("**Act**") and was sentenced to imprisonment for life with a fine of Rs.100,000 or in default of payment of fine to further undergo simple imprisonment for a period of six months. The benefit of Section 382-B, Code of Criminal

Procedure, 1898, was also extended to him. The Petitioner challenged his conviction and sentence before the High Court through Criminal Appeal No. 232/2022, which was dismissed and the conviction and sentence recorded by the trial court was upheld and maintained. Hence, the present petition.

2. We have heard the learned counsel for the parties and have gone through the record with their assistance.

3. Three hundred and twenty (320) packets of *charas* weighing one kilogram each were recovered from the vehicle driven by the Petitioner, and the prosecution was able to prove through independent and reliable evidence, Petitioner's conscious possession thereof. After the recovery of the said contrabands, one consolidated sample weighing 3.200 Kilograms was secured, which was subsequently tested positive by the Federal Narcotics Testing Laboratory Balochistan, Quetta ("**Laboratory**").

4. To prove the recovery of the contrabands from the Petitioner, its safe custody with the police, and finally the safe transmission thereof to the Laboratory, the prosecution produced five witnesses. In this regard, we note that Azad Khan, Inspector ("**PW1**"), is the recovery witness, who delivered the recovered substance to Haji Khan Muhammad, Inspector ("**PW5**"), who prepared one parcel of 3.200 Kilograms of the contraband substance for chemical analysis and nine parcels for *Malkhana*. One of the prepared parcels was handed over to Shah Muhammad, Constable ("**PW4**"), who delivered the same to the Laboratory for Chemical Analysis, and subsequently tested positive. The remaining nine parcels were handed over to Asadullah, *Moharrir* ("**PW3**"), who kept the same in the *Malkhana*.

5. We note that the safe custody and safe transmission of the sample of the recovered substance from the local Police Station to the Laboratory has been proved by the prosecution before the trial court. Subsequently, a report received from the Laboratory in that respect was in the positive. The witnesses of the recovery were public servants who had made consistent statements against the Petitioner, and they had no background of ill-will against the Petitioner, to falsely implicate him. Both the courts below had undertaken an exhaustive analysis of the evidence available on the record and had then concurred in their conclusion regarding guilt of the Petitioner having been proved to the hilt and upon our own independent evaluation of the evidence we have not been able to take a view of the matter different from that concurrently taken by the courts below.

6. The most striking feature of the present case is the gross negligence and callous attitude in the investigation of the present case; only one consolidated sample weighing 3.200 Kilograms was separated from the recovered *charas* contained in 320 separate packets (total weight 320 Kilograms) for chemical analysis. The mode and manner of obtaining sample in the present case was a clear violation of the law settled and declared by this Court in the case of **Ameer Zeb v. The State (PLD 2012 SC 380)**; wherein it was clearly laid down that the samples had to be separated from each and every packet of the narcotic substance recovered and each such sample had to be tested by the Chemical Examiner separately. In the present case, admittedly, one consolidated sample weighed 3.200 kilograms and, thus, only 3.200 kilograms of *charas* could be considered for the purposes of the conviction and sentence of Petitioner.

7. In view of the above, this petition is dismissed to the extent of the Petitioner's conviction under Section 9(c) of the Control of Narcotic Substances Act, 1997 but is converted into an appeal and partly allowed to the extent of the Petitioner's sentence which is reduced to rigorous imprisonment for six years and 6 months and a fine of Rs.30,000/- (Rupees thirty thousand only) or in default of payment thereof to further under simple imprisonment for six months. The benefit under section 382-B, Cr.P.C. shall be extended to the Petitioner.

8. We have, while hearing cases relating to narcotic substances in Balochistan, observed gross negligence and a callous attitude in the investigation and prosecuting of such cases. This trend was more evident in cases of recovery of huge quantities of narcotic substances. We were, therefore, constrained to call the officials concerned, and that too before passing any final orders. Our order dated 29.07.2024 reads:

"We have noted a sorry state of affairs in the manner and mode of investigating cases of huge quantity of narcotics. This belated disregard to the mandate of law as settled by this Court in various pronouncements warrants urgent attention. Lest this Court passes any finding which may prejudice the case of the parties in the instant petition, we would like to first hear the relevant officers dealing with the investigation and prosecution relating to cases of narcotics in the Province of Balochistan. Therefore, the learned Prosecutor-General, Balochistan, Director General, Excise & Taxation, Balochistan, Deputy Inspector General of Police, (Investigation) Balochistan and the Investigating Officer alongwith the 'Police File' should appear on the next date of hearing. Learned Advocate-General, Balochistan, present in Court in some other case, assures that he will inform all concerned officials.

2. To come up for hearing at **11.00 A.M.** on **01.08.2024.**"

9. In compliance of the above order, learned Prosecutor-General, Balochistan; learned Advocate-General, Balochistan; Deputy Inspector General of Police, (Investigation), Quetta; Director, Excise &

Taxation Department, Quetta and the Investigating Officer of this case appeared.

10. At the outset, the Investigating Officer in the present case, who has since retired from service, when confronted with blatant lapse in obtaining the separate sample from each of 320 packets containing narcotic substance for chemical analysis, responded that he did so to save the public exchequer from the fee to be paid for the chemical analysis of each packet of the recovered contraband. Such a response is totally unacceptable, especially when large quantity of narcotics is involved.

11. The heads of investigation and prosecuting agencies in the Province of Balochistan present before the Court were unable to explain or justify the serious lapses in the investigation and a noticed careless approach by the prosecution department in proceeding with such grave offenses. A consensus emerged amongst the heads of both the investigating agencies and the prosecution department: first, that investigators and prosecutors require to be properly sensitized about the importance of handling such matters with utmost care; second, that capacity building was urgently needed for both investigating and prosecuting narcotics cases involving such substantial quantities; and that a close, constant and prudent supervisory mechanism of investigation and prosecution of those involved in narcotic substances. And as a starting point, the learned Advocate-General of Balochistan suggested that he would reach out to the Balochistan Judicial Academy to impart the essential information and necessary training to the investigating officers and prosecutors on recent developments in the law related to investigation and prosecution of narcotics substances.

12. A copy of this judgment be forwarded to the worthy Chief Secretary, Government of Balochistan and the worthy Inspector of Police, Balochistan for information, compliance and necessary action.

Sd/- Justice Yahya Afridi, J
Sd/- Justice Jamal Khan Mandhokhail, J
Sd/. Justice Malik Shahzad Ahmed Khan, J

Quetta
01.08.2024
Approved for reporting.

Arif