

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

33/25

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE SALAHUDDIN PANHWAR
MR. JUSTICE ISHTIAQ IBRAHIM

A9

Jail Petition No. 27/2019

*(Against the judgement dated 06.12.2018
passed by Sindh High Court, Sukkur Bench
in Crl. appeal No. D-90/2012 & Crl. appeal
No. D-87/2012)*

***Ghazi Khan Pathan &
Marzak Khan***

...Petitioner(s)

Versus

The State

...Respondent

For the Petitioner:

Mr. Burhan Latif Khaisori, ASC

For the State:

Mr. Saleem Akhtar Buriro, Add PG, Sindh

Date of hearing:

23.04.2025

Assisted by:

Ms. Tayyaba Munir, Law Clerk

JUDGMENT

Ishtiaq Ibrahim, J.- The instant jail petition has been filed before this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, against the judgment dated 06.12.2018 passed by the learned High Court of Sindh, Sukkur Bench whereby the findings of the learned Sessions Judge/Special Judge (CNSA), Naushehro Feroze, were upheld in entirety.

2. Brief facts forming the background of Jail Petition No. 27/2019 are that on 24.01.2011 a team comprising the Excise Inspector Rehmat Ali Khushk of Excise Police Station Kandiaro Circle along with another Excise Inspector namely Bisharat Khushk, accompanied by subordinate staff, were conducting routine checking of vehicles at Rasool Abad Check Post. Pursuant to a spy report, information was received regarding the movement of a vehicle suspected of transporting narcotics. During this duty, a truck arriving from the direction of Sukkur, was signaled to stop. Instead of complying with the signal to stop, the truck accelerated in an attempt to evade interception;

however, the excise police successfully pursued and intercepted the vehicle which bore the number LSJ 5900. Two individuals were found aboard the vehicle — Ghazi Khan, who was driving, and Marzak Khan, seated in the front passenger seat. Upon initial inquiry, they identified themselves as the drivers of the said truck and stated that they were transporting oranges to Karachi. A personal search of both was carried out which led to the recovery of national identity cards, driving licenses, and currency notes — two notes of Rs.1000 from Marzak and three such notes from Ghazi. Subsequently, a thorough inspection of the vehicle was undertaken, during which secret cavities were discovered within the driver cabin of the truck. From these concealed compartments, 30 sealed packets, each weighing approximately one kilogram and containing charas/hasish, along with a cache of weapons and ammunition, were recovered including light machine gun, 2 rocket launchers, 40 hand grenades, 11 mortars of rocket launchers, 4 suicide jackets, 4 batteries, 4 remote control devices, 1 big size mortar 107 MMHG, 4 Klashnikov, 1260 bullets of Klashnikov and 30 magazines. The discovery of these hidden compartments and the nature of the recovered items gave rise to serious inferences regarding the use of the vehicle for transporting contraband and unlawful weaponry under the guise of legitimate cargo which led to registration of FIR No. 1/2011, u/s 6,7 & 9 (c) Control of Narcotic Substances Act 1997 registered at Police Station Khandioro. A separate FIR No. 9/2011 was also registered at Police Station Halani under section 4 (b) Explosive Substance Act, 1908, 13-A (c) Arms Ordinance read with Section 6 and 7 of Anti Terrorism Act, 1997.

3. On completion of investigation, challan was submitted against the petitioners before the learned special judge CNS, Naushehro Feroze. On conclusion of trial, the learned judge convicted both the petitioners vide judgement dated 10.10.2012 u/s 9 (c) Control of Narcotic Substances Act, 1997 and sentenced them to suffer rigorous imprisonment for life and to pay an amount of Rs. 5,00,000/- as fine and in default, to suffer rigorous imprisonment for 3 more years. The petitioners filed criminal appeal No. D-90/2012 and criminal appeal No. D-87/2012 before Sindh High Court which maintained the findings of learned Sessions Judge/Special Judge (CNSA), Naushehro Feroze in its entirety vide judgement dated 06.12.2018, leading to the jail petition no. 27/2019 before this Court.

4. Arguments advanced on behalf of the parties have been duly considered and the record has been meticulously examined.

5. During the trial, all the prosecution witnesses were thoroughly examined and we are of the view that the learned courts below have rightly concluded the testimonies of witnesses to be consistent, cogent, and trustworthy. It is pertinent to observe that although the prosecution witnesses were all personnel of the Excise Police, their status as official witnesses does not, per se, diminish the evidentiary value of their statements. It is a settled principle of law that official witnesses are competent unless mala fide, enmity, or ulterior motive is convincingly established on the record — which, in the present case, is conspicuously absent. In fact, it has emerged on record that all the prosecution witnesses belong to the Excise Department of Sindh, whereas the accused persons are from Khyber Pakhtunkhwa; and there exists no past animosity between them that may give rise to suspicion of false implication. Reliance in this regard is placed upon Nazir Ahmed v. The State (2023 SCMR 1299) where it was held by this Court that:

[7]. "This Court in a number of cases has held that testimony of official witnesses 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."

6. Furthermore, the intercepted truck was under the control and custody of the driver, Petitioner Ghazi Khan, which legally amounts to his constructive possession of the narcotics recovered from the vehicle. To further elucidate the role of drivers under the doctrine of constructive possession, it is significant to note that in other jurisdictions such as the United States, the Court in State v. Wallace [372 Md. 137, 812 A.2d 291 (2002)] opined that drivers of vehicles are perceived to have heightened control over the contents of their vehicles supporting the idea of presumption of knowledge or constructive possession. It therefore is a settled principle of law that in such circumstances, the driver is deemed responsible for the contraband found in the vehicle under his charge, and it is presumed that he had knowledge of its presence. Reliance in this regard is placed on Kashif Ameer Vs. The State (PLD 2010 SC 1052) in which this Court held that:

"It is well settled principle that a person who is on driving seat of the vehicle, shall be held responsible for transportation of the narcotics having knowledge of the same as no condition or

qualification has been made in section 9(b) of CNSA that the possession should be an exclusive one and can be joint one with two or more persons. Further, when a person is driving the vehicle, he is incharge of the same and it would be under his control and possession, hence, whatever articles lying in it would be under his control and possession.”

7. In the situation at hand, when the petitioner, Ghazi Khan was signaled to stop the vehicle, he instead accelerated, a clear indication of his intent to flee. This action speaks volumes — speeding up in response to a police signal strongly suggests that the petitioner had something to hide. The situation becomes even more telling when, upon searching the vehicle, narcotics were uncovered from secret compartments within the truck's cabin body. Such conduct leaves no room for doubt: the petitioner Ghazi Khan not only had knowledge of the contraband but was in clear constructive possession of the contraband narcotics. In this regard, the petitioner Ghazi Khan has been rightly found guilty of committing an offence falling within the ambit of Sections 6 and 7 of the Control of Narcotic Substances Act, 1997, and punishable under Section 9(c) of the said Act by the lower courts.

8. To the extent of petitioner Marzak Khan, it is important to note that he was sitting in front seat at the time of interception. As such, attributing the illicit narcotics found in the vehicle to him cannot be justified in the absence of any evidence linking him to the possession or control of the vehicle as prosecution failed to provide evidence that he was aware of the narcotics in the vehicle. Since he lacked a possessory right in, or control over, the vehicle, it cannot be inferred that he had knowledge of the narcotics. We have found that the Petitioner, Marzak Khan, was neither conscious nor aware of the narcotics present in the vehicle. Thus, we find no reasonable grounds to uphold his conviction. Reliance in this regard is placed upon case of Shahzada v. State (2010 SCMR 841) in which it was held:

[6]. “We have heard the learned counsel for the parties and have perused the record of this case very carefully. As regards the appellants, who were simply sitting in the car, their case is distinguishable from the case of the Driver and for involvement of such persons the prosecution is required to lead some evidence to show that they had knowledge of the property lying in the car or they had abetted or conspired with the Driver in the commission of the crime. No such evidence has been led by the prosecution to prove the above aspects of the case so as to make the appellants responsible for the commission of the crime along with the Driver.

If the property would have been lying open within the view of the appellants or they knew the placement of the property then the situation would have been different. In such a situation, the appellants were required to explain their position, as required under Article 122 of Qanun-e-Shahadat Order, 1984 and without such explanation their involvement in the case would have been proved. As the property was not within their view and they had no knowledge of the placement of the property, therefore, they cannot be held responsible and in joint possession of the property with the Driver. As such the case of the prosecution against the appellants is highly doubtful''

9. Accordingly, the petition is dismissed to the extent of petitioner Ghazi Khan, while the conviction by the learned High Court Sindh is upheld and leave is refused. The sentence awarded to petitioner Ghazi Khan is to run concurrently with the sentence awarded to him in Jail Petition No. 16/2019 arising out of FIR No. 09/2011, within the meaning of section 397 Cr.P.C. Benefit of Section 382-B, Cr.P.C., is also extended to him as both convictions arise out of the same transaction. Reliance in this regard is placed upon Shaista Bibi & another v. Superintendent Central Jail Mach (PLD 2015 SC 15). Whereas, to the extent of petitioner Marzak Khan, the petition is converted into an appeal and the same is allowed, and he is acquitted of the charges leveled against him and he shall be released forthwith if not required to be detained in any other case.

Crl.M.A No. 136/2024

The above mentioned application for suspension of conviction & sentences on behalf of the petitioners have become infructuous on decision of the main jail petitions and is accordingly dismissed.

Islamabad

23rd April 2025

Approved for reporting.

M.Siraj Afridi PS / Tayyaba Munir Law Clerk