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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

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

JAIL PETITION NO.343 OF 2023 (19.07.23)

(Against the judgment dated 26.06.2023 passed by the High Court of Balochistan Quetta in Cr.Appeal. No.250 of 2023).

Zakir Ali.

...Petitioner (s)

Versus

The State.

...Respondent(s)

For the Petitioner (s):

Mr. Mir Aurangzeb, AOR.

For the State:

Ms. Robina Butt ASC (State counsel
Balochistan).

Date of hearing:

24.04.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- Through this Jail Petition, the petitioner/convict, Zakir Ali, has called in question the legality and propriety of the judgment dated 26.06.2023 passed by the learned High Court of Balochistan, Quetta, whereby appeal filed by the petitioner against his conviction and sentence recorded by the learned Special Judge CNS/Sessions Judge, Sariab, Quetta in case FIR No. 180/2021 dated 05.12.2021 registered under Section 9(c) of the Control of Narcotic Substances Act, 1997 (CNSA), was dismissed, thereby maintaining his conviction and sentence.

2. The petitioner was tried for possessing 1800 grams of Methamphetamine (commonly known as "Ice"), allegedly recovered from his possession on 05.12.2021. After a full-dress trial, the learned Trial Court vide judgment dated 31.05.2023, convicted the petitioner under Section 9(c) of the CNSA and sentenced him to nine years of rigorous imprisonment and a fine of Rs.100,000/-, and in default thereof, to

undergo one month simple imprisonment. The benefit of Section 382-B, Cr.P.C., was, however, extended to him. The said conviction and sentence were upheld by the learned High Court dismissing the petitioner's appeal, hence the instant petition.

3. The prosecution's case as per FIR is that upon receipt of spy information qua presence of the petitioner at *Zamindar Street Shahji Chowk* dealing in the detestable business of narcotics, on 05.12.2021 Attiq-ur-Rehman SHO (PW-2), who, while patrolling with other police officials reached the spot and at 12.10. a.m apprehended the petitioner. He allegedly recovered 1800 grams of Methamphetamine contained in two plastic boxes from possession of the petitioner. From each box, he separated 10 grams as samples for chemical analysis by the FSL and sealed the same in parcels (Nos. 1 & 2), while the remaining quantity was sealed by him in parcels 1-A & 2-A. He drafted *Murasila* and sent the same to Police Station on the basis of which FIR (*ibid*) was registered against the petitioner.

4. We have heard the arguments of learned counsel for the petitioner and learned counsel appearing on behalf of the State and perused the record as well as evidence on record.

5. A careful analysis of the testimonies of the prosecution's witnesses, especially, Attiq ur Rehman SHO (PW-2)/the Seizing Officer, Muhammad Ali Moharrir (PW.3) and Nadar Khan ASI (PW.5)/the Investigating Officer reveal material gaps and contradictions regarding the safe custody and transmission of the recovered substance from the spot to the Police Station and then samples to the FSL. It is noteworthy that police official Hassan Ali, who allegedly conveyed the *murasila* and case property to the Police Station on the basis of which FIR was registered, was neither cited nor examined as a witness. The non-production of Hassan Ali, is a serious blow the prosecution's case as in absence of his statement, there is no other evidence to prove safe transmission of the cases property and samples from the spot to the Police Station. The Seizing Officer/complainant did not mention in his statement or in his cross-examination the specific act of sending the narcotics to the Police Station or to the FSL. Muhammad Ali Moharrir (PW.3), admitted that the parcels were handed to him by the Investigating Officer without the issuance of any receipt and did not produce Register No.19 on record. Nadar Khan ASI/ I.O., failed to mention the name of the person through whom the samples

were sent to the FSL, although the FSL report mentions his own name. He also admitted not recording the statements of key persons under Section 161 Cr.P.C., and failed to exhibit any documentary trail evidencing a secure chain of custody of the samples from the spot to the FSL. The law by now is well-settled that in narcotics cases, due to the severity of punishment involved, the prosecution must establish an unbroken, secure, and reliable chain of custody of the recovered contraband from the point of seizure to its receipt at the forensic laboratory. Any lacuna or discrepancy in this regard renders the entire process suspect and the report of the chemical examiner inadmissible or at the very least unreliable. The importance of maintaining a meticulously documented chain of custody has been emphasized in several authoritative pronouncements of this Court, particularly in cases of “Javed Iqbal v. The State” **(2023 SCMR 139)** “Qaiser Khan v. The State” **(2021 SCMR 363)** “Mst. Sakina Ramzan v. The State” **(2021 SCMR 451)** “Zubair Khan v. The State” **(2021 SCMR 492)** “Asif Ali and another v. The State” **(2024 SCMR 1408)**. In Javed Iqbal’s case (*supra*), this Court held that “It is the duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing in such like offences, the benefit must be extended to the accused.” The sanctity of the chain of custody serves as the linchpin of evidentiary reliability in narcotics prosecutions. Where the prosecution fails to conclusively establish the movement and security of narcotic samples at every stage, from the point of recovery to chemical analysis, the benefit of such material lapses must be extended to the accused, in line with the fundamental principle that in case of doubt, the benefit must go to the accused. In case titled, “Abdul Ghani and others vs the State and others” **(PLJ 2019 SC (Cr.C) 462)** this Court, without discussing the merits of the case, on the sole ground of missing chain of safe transmission of the samples from the spot till receipt in the FSL and non-production of the relevant witnesses in whose custody the samples remained, acquitted the convict/appellant by setting aside the concurrent findings of the two courts below. Relevant paragraph of the judgment (*supra*) is reproduced below for the sake of convenience and ready reference.

6. In the case at hand, the prosecution has manifestly failed to discharge this burden. The unexplained and undocumented transmission of samples, non-examination of key witnesses, failure to produce chain-of-custody registers, and contradictory statements of the prosecution witnesses cumulatively cast a serious doubt on the integrity of the evidence. Consequently, the chemical examiner's report becomes unsafe to rely upon and cannot be made the sole basis for conviction.

7. In view of the foregoing discussion the learned courts below have erred in law while recording conviction of the petitioner thereby totally overlooking the law settled by this court. Consequently, the instant petition is converted into an appeal and the same is allowed. The impugned judgments passed by the learned Trial Court and the learned High, are set aside. The appellant is acquitted of the charge leveled against him. He shall be released forthwith, if not required to be detained in any other case.

Islamabad

24.04.2025

Approved for reporting

M.Siraj Afridi PS