

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Justice Muhammad Hashim Khan Kakar
Justice Muhammad Shafi Saddiqui
Justice Ishtiaq Ibrahim

Criminal Petition No. 1187/2021

(Against the order/judgment dated 20.09.2021
passed by the High Court of Balochistan, Quetta,
in CrI. A. No. (T)67/2021)

Jeehand

Petitioner(s)

Versus

The State through Prosecutor General Balochistan

Respondent(s)

For the Petitioner(s):

Mr. Muhamamd Shabbir Rajput, ASC
Mr. Asif Ali Talpur, ASC

For the State:

Ms. Rubina Butt, State Counsel

Date of Hearing:

10.03.2025

JUDGMENT

Muhammad Hashim Khan Kakar, J. Petitioner, Jeehand son of Ghulam Jan, was booked in the FIR No. 215/2020, lodged at Police Station City, District Kech on 31.10.2020 under section 9(c) of the Control of Narcotic Substances Act, 1997 ("the Act of 1997"). After investigation and regular trial, the learned Special Judge under Control of Narcotic Substances Act, Turbat convicted the petitioner through judgment dated 25.05.2021 under section 9(c) of the Act of 1997 and sentenced him to suffer Rigorous Imprisonment for life with fine of Rs.500,000/-and in default whereof to further undergo Simple Imprisonment of one year with benefit of section 382-B Cr.P.C. He assailed his conviction and sentence before the High Court of Balochistan by means of Criminal Appeal No. (T)67/2021 which also remained unsuccessful. Hence, the present petition for leave to appeal.

2. Briefly, the prosecution case, as set forth in the record is that on 31 October 2020, complainant Imam Bakhsh Baloch, IP/SHO, along with

other police officials was patrolling in the area of Police Station City, District Kech, when he received a spy information that a huge quantity of narcotics was being transported from Satellite Town to another location in a white Toyota Corolla bearing registration number, ANR-958-Sindh. Upon receiving this information, the police party established a checkpoint (Naka) at Satellite Town Main Road near Ayesha Masjid. At 2:40 p.m, the vehicle was intercepted and the driver was identified as the petitioner and his co-accused was seated on the rear passenger seat. The complainant conducted the search of the vehicle and recovered 100 packets of *charas*, each weighing 1,000 grams which were concealed in the compartments beneath the rear seat and the trunk of the vehicle.

3. We heard the petitioner's learned counsel who adamantly argued that the prosecution had not proven its case against the petitioner beyond reasonable doubt and that, as a result, the petition should be accepted and petitioner may be acquitted. The learned State Counsel on the other hand argued that the instant petition may be dismissed since the prosecution has successfully established the petitioner's guilt.

4. It is a well-established principle of criminal jurisprudence of law arising out of maxim "*Communi observantia non est recedendum*" that when law required a thing to be done in a particular manner, the same must be done accordingly and if the prescribed procedure was not followed, it would be presumed that the same had not been done in accordance with law, as held in the case of *Noman Mansoor v State* (PLD 2024 SC 805). This principle becomes more inflexible in cases arising out of the special enactments like the Act of 1997, which carries stringent provisions for an accused. Where the sentence is severe very strong evidence is required to prove the charge; reliance can be placed on the cases of *Ahmed Ali v State* (2023 SCMR 781), *Ameer Zeb v State* (PLD 2012 SC 380) and *Muhammad Hashim v State* (PLD 2004 SC 856). Similarly, the rules and regulations have the force and effect of law. The rules and regulations are the product of delegated power to create new or additional legal provisions that have the effect of law.

5. After hearing the learned counsel for the parties and perusal of the record, we have straightforwardly observed that the prosecution has failed to prove its case against the petitioner beyond the shadow of doubt for the following reasons:

- i) No documentary evidence whatsoever has been brought on record by the prosecution to establish safe custody and transmission. Neither entry of Register No. XIX was tendered in evidence nor Road Certificate as contemplated by rule 22.70, Form 22.70 and Rule 22.72, Form 10.17 of Police Rules, 1934. So, this sole contour of the case creates a dent in the case of the prosecution. This Court in the case of *Asif Ali v State* (2024 SCMR 1408) observed as under:

“Rule 22.70 of the Police Rules, 1934 (‘the Police Rules’) mandates that Register No. XIX shall be maintained in Form 22.70 of the Police Rules in the police station wherein, with the exception of articles already included in Register No. XVI, every article placed in the store room (Malkhana) shall be entered and the removal of any such article shall also be noted in the appropriate column.”

We have noted that in the instant case, safe custody and safe transmission of the alleged drugs from the spot of recovery till its receipt by the Narcotic Testing Laboratory are not satisfactorily established. The Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when it is produced before the court, remains in safe custody and is not hampered with until that time. A complete mechanism is provided in the Police Rules qua safe custody and safe transmission of the case property to concerned laboratory and then to the Trial Court.

Mr. Zakir Ali, in-charge store room, appeared as PW-3 and stated that on 31 October 2020, the investigating officer, Liaquat Ali, handed over parcels No. 1 to 104 and the Corolla car to him which he entered in Registered No. XIX. On 1 November 2020 after receiving English docket, he sent the parcels to Karachi Laboratory through Muhammad Rahim,

however, the said witness did not produce copy of Register No. XIX. Keeping in view the glaring contradiction between the statements of said witness recorded under section 161 Cr.P.C. and statement recorded before the Trial Court in respect of number of parcels handed over to him by the investigating officer, the prosecution should have proved the safe custody of parcels by production of Register No. XIX in which entry was made regarding receipt and placing of parcels in the store room. Under Article 129(g) of Qanun-e-Shahadat Order, 1984 ("the Order") it can be presumed that the prosecution did not produce Register No. XIX because the in-charge of the store room had not entered the receipt of parcels in the said register. Under Article 102 of the Order, in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under Article 76. Therefore, oral testimony of PW-3 with regard to the safe custody of parcels was not admissible under Article 102 of the Order. Hence prosecution failed to prove safe custody of the parcels beyond shadow of doubt.

- ii) It is a case of prior information that too in the court timings but the seizing officer neither tried to obtain search warrants as required by section 20 of the Act of 1997 nor he has offered any reason/justification for his non-compliance of the command of section 20. Similarly, the prior information was never recorded in Register No. II as contemplated by rule 22.49 (n) of the Police Rules. This Court, in the case of *Zain Shahid v State* (2024 SCMR 843), in paragraph 8 has observed as under:

"The case against the petitioner was initiated upon a spy information, but such information was not reduced into writing. Fair play demands that spy information should be reduced into writing in order to safeguard innocent persons against false implication."

It is also astonishing that the prosecution has also not complied with Rule 4 of the Control of Narcotic Substances (Government Analysts) Rules, 2001 as the samples of the seized contraband were sent to FSL Karachi without any explanation, bypassing the Forensic Science Laboratory in Quetta, which was the nearest designated laboratory. Such a deviation

from the prescribed procedure without justification amounts to a material irregularity, which casts doubt on the forensic analysis. Likewise, the learned counsel also drew the attention of this Court to the flawed forensic examination process contending that the collective report of 100 samples issued by the FSL Karachi is in direct violation of the principles laid down in *Ameer Zeb's* case (PLD 2012 SC 380), which mandates that each sample must be tested separately and individual reports must be prepared for each sample. A collective forensic report not only diminishes the credibility of the chemical examination but also raises serious questions regarding the representative nature of the samples sent for analysis.

6. In view of the serious procedural violations, absence of credible forensic evidence and failure to establish safe custody and transmission, we find that the prosecution has not proved its case beyond reasonable doubt. Therefore, this petition is converted into an appeal and allowed. The impugned judgement dated 20.09.2021 passed by the High Court is set aside and the petitioner is acquitted of the charge. He be released forthwith if not required in any other case.

7. Before parting with the judgement in hand, we have painfully observed in a number of cases that the legislation had introduced the Act of 1997 to curb the menace of drug abuse, prohibit possession of narcotic substances and rehabilitate victims of drug abuse, however, the Anti-Narcotics Force and Police Authorities have failed to adhere to the provisions of the Act of 1997. The law enforcing and investigating agencies are only dealing with the peddlers and if investigation is carried out in accordance with the provisions of the Act of 1997, it would bring to justice the whole chain i.e., cultivator/manufacturer, peddler, seller and drug abuser, and would serve as deterrent factor in the society. The manner in which narcotics cases are being investigated favours the real culprits and only drug peddlers are caught and sent to jail. Nobody dares to investigate the giants who derive profits out of such illicit drug/narcotic deals. Their assets are never investigated. We are afraid that the two ends i.e., drug dealer, cultivator, manufacturer and the drug/narcotic abusers are never held accountable. This would never have been the intention of the legislature while enacting the Act of 1997. The law enforcing agencies,

particularly the Anti-Narcotics Force, has failed to adhere to the provisions of the Act of 1997 as well as the SOPs adopted by the force for investigation of criminal cases, which are very comprehensive and cover every aspect of a criminal case registered under the Act of 1997. In most of the cases, the provisions of the Act of 1997, the rules made thereunder and the SOPs adopted by the force, to the extent of tracing assets and discovering the complete chain of culprits, have not been complied with. As a result of such incomplete investigation, the society will face the menace of narcotics/drugs abuse forever. If the State prefers to penalize citizens for possessing fruit of the forbidden tree and opts not to cut that forbidden tree and holding its beneficiaries accountable, the outcome would be absurd. Similarly, not investigating the main culprits/sources of narcotic substances in a criminal case would grant them a license to violate the Act of 1997 and cause irreparable damage to the society.

8. When a criminal case is registered on the allegation of possession of narcotic substances, the accused is arrested at the spot. Then the line of investigation (without prejudice to the Act of 1997 and the rules made thereunder) should be:

- (i) to investigate from whom the recovered narcotic substance was received/purchased by the accused;
- (ii) to whom the delivery of narcotic substance was intended;
- (iii) to investigate the purpose/ultimate utilization for the recovered narcotic substance;
- (iv) to trace the drug abusers (for their rehabilitation);
- (v) who are deriving financial benefits and the use/purpose of the delivered finance/assets;
- (vi) who are the persons engaged in the business in contravention of the Act of 1997 (starting from cultivator/manufacturer to the end abuser); and
- (vii) which are the assets so derived by persons engaged in dealing with narcotics.

9. The Act of 1997 provides for a comprehensive mechanism to deal with all matters so as to curb the menace of drug abuse, which in fact is a great threat to the society and adversely affecting the citizens. It is

mandatory for the investigating agencies to conduct investigation on true lines in accordance with the spirit of the Act of 1997.

10. Office is directed to transmit copies of this judgment to the Secretary, Ministry of Interior and Narcotics Control, Islamabad, Director-General, Anti-Narcotics Force, Inspector Generals of Police, Punjab, Baluchistan, Sindh, Khyber Pakhtunkhwa, Islamabad Capital Territory, Attorney General for Pakistan, Advocate Generals and Prosecutor Generals for information, compliance and circulation amongst the relevant quarters. The Director-General ANF, shall depute a monitoring unit or assign responsibility to a team of officers who shall supervise and recommend disciplinary proceeding against the investigating officers for conducting investigations against the spirit of the Act of 1997.

ISLAMABAD

10.03.2025

(Farrukh/Mahnoor Omer LC)

Announced in open Court at Islamabad on 14.3.2025

Approved for Reporting