

IN THE SUPREME COURT OF PAKISTAN  
( Appellate Jurisdiction )

**Present:**

Justice Jamal Khan Mandokhail  
Justice Syed Hasan Azhar Rizvi  
Justice Naeem Akhtar Afghan

CRIMINAL PETITION NO.130-Q OF 2021

(On appeal against the judgment dated 30.11.2021 passed by the High Court of Balochistan, Quetta in CrI. A. No.04/2021)

Sarfraz Ahmed ... .. Petitioner

## Versus

The State ... ... Respondent

For the petitioner : Mr. Manzoor Ahmed Rahmani, ASC  
(via video link from Quetta)

For the State : Ms. Rubina Butt, ASC as State counsel  
(on behalf of Govt. of Balochistan).  
Habibullah, SI/SHO

Date of hearing : 22.05.2024

## ORDER

**NAEEM AKHTAR AFGHAN, J.** On the basis of *Murasillah* sent by SI/SHO Habibullah (PW.1) from the National Highway about eight kilometers away from Police Station (**PS**) City Kalat to the Officer Incharge PS City Kalat on 27 August 2020 at 3.20 am, FIR No.34 of 2020 was registered against the petitioner u/s 9 (c) of Control of Narcotic Substances Act, 1997 (**'CNSA 1997'**) with PS City Kalat on 27 August 2020 at 4.30 am.

2. As per contents of the FIR, while patrolling on the National Highway, PW.1 received information through special informer that huge quantity of contraband is going to be smuggled from Quetta to Karachi due to which the National Highway was block raided. Checking of vehicles coming from Quetta was started. A *mini wagon* bearing registration No.BMA-934 was stopped at 3.20 am. The driver disclosed his name as Sarfraz Ahmed s/o Ijaz Ahmed (the petitioner) resident of Jam Colony, Hub Chowki. On checking, secret cavities were found in the floor of the vehicle wherefrom 150 pieces of baked Charas were recovered. On weighing, the same were found 146.200 Kgs. One small piece from each of the 150 pieces of the baked Charas (total weighing 1.350 Kg) were

separated for analysis and sealed in parcel No.1 while the remaining baked Charas weighing 144.850 Kgs was sealed in parcel No.2. Recovery memos of the contraband, sample parcel and vehicle were prepared in presence of the witnesses.

3. During investigation parcel No. 1 was sent to Forensic Science Laboratory (**FSL**) for analysis. Awaiting report of FSL, incomplete Challan was submitted. After receiving report of FSL supplementary Challan was submitted whereafter the trial commenced before the Court of learned Special Judge Control of Narcotic Substances, Kalat (**'the Trial Court'**). The petitioner did not plead guilty to the charge under section 9(c) of CNSA 1997. The prosecution witnesses were examined. Statement of petitioner was recorded u/s 342 of the Criminal Procedure Code (**'Cr.P.C.'**). The petitioner neither recorded his statement on oath u/s 340 (2) Cr.P.C. nor produced any defence witness.

4. On conclusion of trial the petitioner was convicted u/s 9 (c) of CNSA 1997 by the Trial Court *vide* judgment dated 29 December 2020 and he was awarded sentence of rigorous imprisonment (**RI**) for twenty five years with fine of Rs.100,000/- and in default of payment of fine to further undergo six months S.I. with benefit of section 382-B Cr.P.C. The Trial Court further ordered that the contraband and vehicle be confiscated in favour of the State.

5. The petitioner challenged his conviction and sentence by filing appeal before the High Court of Balochistan (**'the Appellate Court'**). The appeal has been dismissed *vide* impugned judgment dated 30 November 2021 against which the petitioner has filed the instant Criminal petition for leave to appeal.

6. After hearing learned counsel for the petitioner and the learned State counsel we have perused the available record. It reveals that instead of separately sealing the 150 pieces of the separated samples (total weighing 1.350 Kgs) in 150 separate parcels, the same were sealed in one parcel i.e. parcel No. 1 in flagrant violation of the dictum laid down by this Court in the case of **"Muhammad Hashim v. The State"**<sup>1</sup>.

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<sup>1</sup> PLD 2004 SC 856

7. In his statement recorded at the trial, PW.1 has not stated that he had handed over parcel No.1 and parcel No.2 to Ali Muhammad SI/investigating officer (PW.4) on 27 August 2020 at the place of recovery.

8. In his examination-in-chief, PW.4 has not mentioned that he had handed over parcel No.1 and parcel No.2 to the *Moharrar* of PS Kalat. However, while responding to a question of learned defence counsel during cross-examination, PW.4 answered that he had handed over both the parcels to *Moharrar* of PS Kalat and parked the seized vehicle in the premises of PS Kalat.

9. In order to prove the safe custody of the parcels of the contraband, *Moharrar* (Abdul Qayyum) of PS Kalat has not been produced at the trial by the prosecution. In the cases of **“Said Wazir v. The State”**<sup>2</sup>, **“Muhammad Shoaib v. The State”**<sup>3</sup> and **“Ishaq v. The State”**<sup>4</sup> it has been held that due to non-appearance of the *Moharrar* at the trial, the safe custody of the parcel of the contraband as well as the sample parcel has not been established by the prosecution.

In the case of **“Zahir Shah v. The State”**<sup>5</sup> it has been laid as follows by this Court:

*“This court has repeatedly held that safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspicious, safe and secure. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analysis, thus, rendering it incapable of sustaining conviction.”*

10. To prove the existence of secret cavities in the floor of the vehicle and for corroborating the statements of the prosecution witnesses about recovery of 150 pieces of contraband therefrom, the seized vehicle was not produced at the trial by the prosecution

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<sup>2</sup> 2023 SCMR 1144

<sup>3</sup> 2022 SCMR 1006

<sup>4</sup> 2022 SCMR 1422

<sup>5</sup> 2019 SCMR 2004

and in this regard no explanation has been offered by the prosecution.

11. No driving license was recovered from the petitioner. Ownership of the petitioner for the seized vehicle has also not been proved by the prosecution. No probe was made during investigation about the ownership of the vehicle with reference to its registration number.

12. In view of all the above infirmities it is concluded that the prosecution has failed to prove the charge against the petitioner beyond reasonable doubt. It is further concluded that the conviction and sentence awarded to the petitioner by the Trial Court and maintained by the Appellate Court is result of mis-appreciating the evidence available on record and same is violative of the dictum laid down by this Court in the above referred judgments.

13. For the above reasons drawn today, *vide* our short order dated 22 May 2024 (reproduced herein below), the petition was converted into appeal and same was allowed:

*"For reasons to be recorded later, this petition is converted into appeal and allowed. The judgment dated 30.11.2021 passed by the High Court of Balochistan is set aside and petitioner Sarfraz Ahmed is acquitted of the charge in this case. He shall be released from jail forthwith if not require in any other case."*

**Judge**

**Judge**

**Judge**

Islamabad  
22.05.2024  
Atif/Zohaib\*

**NOT APPROVED FOR REPORTING**