

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE YAHYA AFRIDI  
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**CRIMINAL PETITION NO. 733-L OF 2018**

(On appeal against judgment dated 25.04.2018  
passed by the Lahore High Court, Lahore in  
Criminal Appeal No. 65533/2017)

Barkhurdar

... Petitioner

**VERSUS**

The State and another

... Respondents

For the Petitioner: Rai Zamir-ul-Hassan, ASC  
(Through video link from Lahore)

For the State: Mr. Irfan Zia, DPG, Punjab

Date of Hearing: 09.06.2023

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** The petitioner was proceeded against in terms of the case registered vide FIR No. 69 dated 27.04.2017 under Section 9(c) of the Control of Narcotics Substances Act, 1997 at Police Station Kandiwal, District Chiniot as ten kilograms poppy plant was recovered from him. The learned Trial Court vide its judgment dated 14.07.2017 convicted the petitioner under Section 9 (c) of the CNSA, 1997, and sentenced him to rigorous imprisonment for eleven years with fine of Rs.15,500/- or in default whereof to further undergo SI for eight months. Benefit of Section 382-B Cr.P.C. was also extended in his favour. The learned High Court vide impugned judgment maintained the conviction and sentence recorded by the learned Trial Court.

2. The prosecution story as narrated in the impugned judgment reads as under:-

"2. The prosecution story as alleged in the FIR lodged on the written complaint of Rashid Hassan, ASI (PW-2), the complainant is that on 27.04.2017, the complainant (PW-2) along with Jaffer Ali 219/C (given up PW), Jaffer Ali 220/C (PW-3) and Saba Hussain 500/High Court (given up PW) was present at Thatha Sargana in connection with patrolling, in the meanwhile, the complainant (PW-2) received a secret information that the accused-Barkhurdar while carrying poppy plants, was coming towards Jhanda Burj from chowk Sheraykianwala and if a raid was conducted, the accused-Barkhurdar could have been apprehended, whereupon the complainant along with police party reached at the spot and overpowered the accused-Barkhurdar. During search, poppy plants weighing 10 kilograms were recovered from the sack, which was taken into possession by the complainant (PW-2) vide recovery memo (Ex.PB). Out of the recovered substance, a sample of poppy plants weighing 500 grams was separated for narcotic analysis by embossing a seal of BH. Thereafter, the complainant (PW-2) drafted a complaint (Ex.PA/1) and sent the same to the police station through Saba Hussain 500/High Court (given up PW) for registration of formal FIR."

3. At the very outset, learned counsel for the petitioner contended that the petitioner has been falsely implicated in this case and the Police has planted a fake case upon him. Contends that the allegedly recovered poppy straw is largely used for fodder of animals, therefore, it should not be considered as narcotics substance. In support of the argument, he relied on Zulfiqar @ Zulfa Vs. The State (2021 SCMR 531). Lastly contends that the reasons given by the learned High Court to sustain conviction of the petitioner are speculative and artificial in nature, therefore, the impugned judgment may be set at naught.

4. On the other hand, learned Law Officer supported the impugned judgment. He contended that the petitioner was caught red handed with a huge quantity of narcotics and the Police had no enmity with him to falsely implicate him in the present case, therefore, he deserves no leniency from this Court.

5. We have heard learned counsel for the petitioner as also learned Law Officer and have perused the case record.

6. As per the prosecution story, on a spy information that the petitioner is carrying a huge quantity of narcotics, the Police party set a blockade and apprehended the petitioner and recovered poppy plants weighing ten kilograms from him. However, there is nothing in evidence as to what actually was recovered from the possession of the petitioner. Was it only the doda/basket/pouch or it was the whole plant with stems and flowers. In Zulfiqar @ Zulfa Vs. The State (2021 SCMR 531) this Court while relying on earlier judgments of this Court has defined as to what actually is the poast/opium. It would be in order to reproduce the relevant portion of the judgment, which reads as under:-

"In Section 2(t) of the Control of Narcotics Substances Act, 1997, 'opium' has been defined as under:-

*"(t) "opium" means:-*

- (i) poppy straw, that is to say, all parts of the poppy plant (papaver somniferum or any other species of Papaver) after mowing, other than the seeds,*
- (ii) the spontaneously coagulated juice of capsules of poppy which has not been submitted to any manipulations other than those necessary for packing and transport; and*
- (iii) any mixture, with or without natural materials, of any of the above forms of opium, but does not includes any preparation containing not more than 0.2 per cent of morphine;"*

7. As per definition clause of CNSA, after mowing, all parts of the poppy plant except seeds are considered to be poppy straw. However, this Court in the case reported as Taimoor Khan Vs. State (2016 SCMR 621) while referring to earlier judgment of this Court reported at Muhammad Imran v. The State (2011 SCMR 1954) has held that it is only the basket, sack or pouch (also known as 'Doda') excluding the seeds, which contains narcotic substance and that all poppy straw may not necessarily be 'poast'/doda because poppy straw can be any other part of the mowed poppy plant as well, excluding the seeds. It would be advantageous to reproduce the relevant portion of the said judgment, which reads as under:-

*"What exactly is that which is called 'Poast'?*

*It has been agreed before us by the learned counsel for all the parties and it is also borne out from the authoritative works referred to above that in the local parlance Poast is the name given to that part of a poppy plant which has the shape of a basket, sack or pouch and it contains the seeds of such plant.*

*This natural pouch or bulb made of the skin of the plant is meant by the nature to hold and protect the seeds of the plant contained therein. In some parts of this country this natural pouch of the poppy plant is also known as Doda. The Control of Narcotic Substances Act, 1997 calls this part of a poppy plant as 'capsule' of poppy and this finds a specific mention in section 2(t) (ii) of the said Act. The authoritative works mentioned above as well as the learned counsel for all the parties before us are also in agreement that if an unripe capsule of a poppy plant is given an incision then a fluid oozes out of the same containing meconic acid and a number of alkaloids including narcotine and morphine which fluid thickens within a short time and becomes brown in colour and such substance is pure opium. It is also agreed at all hands that even ripe and dry capsules of poppy contain morphine and other alkaloids, i.e. opium, although less in quantity, which can be used for sedative and narcotic action. Most of the authoritative works produced by the learned counsel for the parties also confirm that alkaloids can be extracted even from a mature and dry plant of poppy or poppy straw whether it is in its natural shape or is in a crushed form. However, the seeds contained in a capsule of a poppy are free from morphine. After its mowing every part of a poppy plant, including its capsule/Poast/Doda but excluding the seeds, is generally called poppy straw and, thus, every Poast/Doda is a part of a poppy straw but all poppy straw may not necessarily be Poast/Doda because poppy straw can be any other part of the mowed poppy plant as well, excluding the seeds.*

8. From the above, it is clear that 'Poast' is the name given to that part of a poppy plant which has the shape of a basket, sack or pouch and it contains the seeds of such plant."

7. In the Zulfiqar supra case, the Court further observed that in common parlance, it has been seen that oftenly stems and leaves of the poppy plants are used as animal food. The plant can reach the height of about 1-5 meters (3-16 feet). The poppy plant is a spontaneous plant and is often seen grown on roadsides. Poppy straw is derived from the plant *Papaver somniferum*, which has been cultivated in many countries of Europe and Asia for centuries. This has medicinal impact as well, which is largely used as a tonic for wellness of nervous system. The purpose of its cultivation was actually the production of poppy seeds. The latter is used as a food stuff and as a raw material for manufacturing poppy-seed oil, which is used for making various varnishes, paints and soaps etc. Therefore, every cultivation of poppy straw unless it is proved that it is made for the sole purpose of extracting narcotics after a proper method cannot be considered a criminal act. It has also not been brought on

record as to whether from the ten kilograms of the recovered poppy plant, how much quantity was the sack/pouch/doda as it is only the sack/pouch/doda which contains narcotic substance. Therefore, in absence of such report, it is difficult to determine as to whether the case against the petitioner falls within the purview of Section 9(a), 9(b) or 9(c) of the Act. The peculiar facts and circumstances of the present case are sufficient to cast a shadow of doubt on the prosecution case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt.

8. For what has been discussed above, this petition is converted into appeal, allowed and the impugned judgment is set aside. The petitioner is acquitted of the charge. He shall be released from jail unless detained/required in any other case. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the  
9<sup>th</sup> of June, 2023  
Not Approved For Reporting  
**Khurram**