

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

BENCH -VII

PRESENT:

JUSTICE MUHAMMAD HASHIM KHAN KAKAR
JUSTICE ISHTIAQ IBRAHIM
JUSTICE ALI BAQAR NAJAFI

JAIL PETITION NO.375/2023

(Against the judgment dated 11.05.2023, in Crl.Appeal
No.246657/2018, passed by the Lahore High Court, Lahore)

*Gul Muhammad,
Muhammad Ibrahim; and
Mst. Sumaira Bibi*

...Petitioner (s)

Versus

The State

...Respondent(s)

For the Petitioner(s):	Mr. Muhammad Amjad Iqbal, ASC
For the State:	Ch. Irfan Zia Addl. PG, Punjab
Date of hearing:	16.06.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- On 21.05.2017 at 12:25 p.m., Afzal Hussain Sub-Inspector (S.I.) (not produced as PW being dead during trial) along with other police officials at Pindi Bhattian Interchange intercepted a Honda Reborn motorcar bearing Registration No. LB-324-ICT, being driven by petitioner Muhammad Ibrahim. On search of the motorcar, Afzal Hussain SI, recovered 11 packets of *charas* from near the feet of petitioner Muhammad Ibrahim, each packet weighing 1200 grams, making the total of 13.200 kilograms while an amount of Rs. 20,700/- in cash, a Q-Mobile phone and a Computerized National Identity Card (CNIC) were recovered from his personal possession. Likewise, from near the footwell of petitioner Gul Muhammad, seated in the front seat of the motorcar, 10 packets of *charas*, each packet weighing 1200 grams, making the total of 12 kilograms, were recovered while his personal search led to the recovery of a Q-Mobile phone and a CNIC. From the possession of petitioner Mst. Sumaira Bibi, seated in the rear seat of the motorcar, a Q-Mobile phone was recovered by lady Constable Shazia Bashir (PW.2). The seizing officer separated 60 grams from each packet of chars as representative samples for chemical analysis by the Punjab

Forensic Science Agency (PFSA) and sealed the same in parcels. The remaining narcotic substance was also sealed in separate parcels and taken into possession by the seizing officer through a recovery memo Exh.PB. Thereafter, the Seizing Officer drafted a written complaint and dispatched the same to Police Station Saddar Pindi Bhattian District Hafizabad, whereupon FIR No. 191/2017 dated 21.05.2017 was registered against the petitioners under Section 9(c) of the Control of Narcotic Substances Act, 1997 (**"the Act of 1997"**).

2. Upon conclusion of the trial, petitioners Muhammad Ibrahim and Gul Muhammad were convicted under Section 9(c) of the Act of 1997 and sentenced to undergo imprisonment for life each and to pay a fine of Rs. 100,000/- each and in default thereof they were directed to further undergo simple imprisonment for one year each. Petitioner Mst. Sumaira Bibi was similarly convicted under the same provision and sentenced to undergo simple imprisonment for sixteen years and eight months and to pay a fine of Rs. 66,000/- and in default thereof to further undergo simple imprisonment for eight months by the learned Additional Sessions Judge/Special Court, Pindi Bhattian vide judgment dated 26.09.2018.

3. Aggrieved of their conviction and sentences, the petitioners-convicts preferred Criminal Appeal No. 246657/2018 before the learned Lahore High Court, Lahore, which was dismissed vide judgment dated 12.05.2023 (**"impugned judgment"**).

4. We have heard the arguments of learned counsel for the petitioners and the learned Additional Prosecutor General, Punjab, appearing on behalf of the State and perused the record, evidence and the impugned judgment with their valuable assistance.

5. The role of petitioner Mst. Sumaira Bibi as is manifest from the record and evidence led by the prosecution is that she was merely seated in the rear seat of the motorcar being driven by petitioner/convict Muhammad Ibrahim. No contraband narcotic substance has been shown to have been recovered from direct possession of petitioner Mst. Sumaira Bibi or on her pointation by the Seizing Officer. In this view of the matter, her role is clearly distinguishable from that of the petitioners/co-convicts Muhammad Ibrahim and Gul Muhammad. The former was driving the motorcar and the latter was occupying its front seat at the relevant time. From near their footwell substantial quantities of *charas* were recovered. No evidence whatsoever has been brought on record by the prosecution to prove conscious knowledge of petitioner Mst. Sumaira Bibi with regard to presence of the narcotics shown recovered near the footwell of the

male petitioners-convicts or her nexus with the same. Although the prosecution alleged in the FIR that petitioner Mst. Sumaira Bibi had abetted the commission of the offence, however, such an allegation, not corroborated by cogent and credible evidence, cannot by itself justify her conviction. In order to establish the charge of abetment, it was incumbent upon the prosecution to adduce evidence demonstrating that petitioner Mst. Sumaira Bibi had knowledge of the presence of the narcotics in the motorcar or had actively participated in the planning or execution of the offence. However, no such evidence direct or circumstantial, has been brought on record against her by the prosecution. There is no material to suggest that the narcotics were lying in open view or were visible to petitioner Mst. Sumaira Bibi or that she was in a position to exercise any control or dominion over the same. The recovery from the vehicle, per se, without linkage to her conscious possession, is not sufficient to attract criminal liability. The concept of "possession" under the law postulates not merely physical proximity but conscious and volitional control over the substance in question. In the absence of such evidence, the foundational requirement of "conscious possession" remains un-fulfilled. It may further be noted that under Article 122 of the Qanun-e-Shahadat Order, 1984, the burden to explain facts within the special knowledge of an accused arises only when the prosecution succeeds in first establishing a *prima facie* case. No such case has been made out by the prosecution against petitioner Mst. Sumaira Bibi, therefore, no adverse inference can be drawn from her silence or lack of explanation. It is a well-settled principle of criminal jurisprudence that suspicion, however grave, cannot take the place of proof, and that the benefit of doubt, if arising from the record, must always be extended to the accused. The prosecution's case against petitioner Mst. Sumaira Bibi is fraught with material infirmities and does not meet the standard of proof required for sustaining a conviction. Her mere presence in the vehicle without any proof of her nexus with the recovered contraband narcotics or evidence of her participation or knowledge, is not sufficient to bring home guilt beyond reasonable doubt. Consequently, the conviction and sentence awarded to petitioner Mst. Sumaira Bibi recorded by the two courts below is not sustainable in the eye of law.

6. On meticulous examination of the record we have noted that the prosecution has successfully established the recovery of narcotics from possession of petitioners-convicts Gul Muhammad and Muhammad

Ibrahim through unimpeachable ocular and documentary evidence. Specifically, it stands proved that 11 packets of *chars*, each weighing 1200 grams, totaling 13.200 kilograms, were recovered from near the footwell of petitioner Muhammad Ibrahim, while 10 packets of *chars*, also weighing 1200 grams each, totaling 12 kilograms, were recovered from near the footwell of petitioner Gul Muhammad, who was seated in the front seat of the motorcar. The prosecution has substantiated the said recovery through the credible and confidence-inspiring testimony of Umer Daraz HC (PW.3) and Lady Constable Shazia Bashir (PW.2), who have furnished a consistent and trustworthy ocular account of the occurrence. Furthermore, the prosecution has satisfactorily demonstrated the safe custody and unimpaired transmission of the sealed samples from the place of recovery to the Police Station and thereafter to the Punjab Forensic Science Agency (PFSA), through the statements of Muhammad Arif SI (PW.4)/the Investigating Officer and Ghulam Abbas HC (PW.6)/ Moharrir of the Police Station. The positive report of the PFSA (Exh.PF) lends further corroboration to the prosecution case. All prosecution witnesses have been subjected to extensive cross-examination, yet nothing material or beneficial to the defence or adverse to the prosecution could be elicited therefrom. Admittedly, all the prosecution witnesses are police officials; however, it is now a well-settled principle of law, reiterated in a catena of judgments of this Court, that the testimony of police officials cannot be discarded merely on account of their official status unless mala fides, bias, or prior enmity is proved, which in the instant case has not been established by the defence.

7. The concurrent findings recorded by both the learned courts below to the extent of conviction and sentence of petitioners Gul Muhammad and Muhammad Ibrahim are based on a thorough appraisal of the evidence available on the record and suffer from no legal or factual infirmity. In view of the above, we find no ground to interfere with the conviction of the petitioners Muhammad Ibrahim and Gul Muhammad, who have been rightly held guilty of the offence under the Control of Narcotic Substances Act, 1997. The sentence awarded to them by the courts below is in accordance with law. Accordingly, Jail petition No.375 of 2023, is dismissed to the extent of the above-named petitioners-convicts and leave is refused.

8. To the extent of petitioner Mst. Sumair Bibi, the Jail Petition No.375 of 2023 is converted into appeal and is allowed. Her conviction

and sentence recorded by the courts below are set-aside and she is acquitted from the charge in the instant case. She be set-at liberty forthwith if not confined in any other case.

Announced in open Court at Islamabad on 15th Sept 2023

Approved for reporting.
M.Siraj Afridi PS