

## **HIGH COURT OF AZAD JAMMU AND KASHMIR**

1. Cri. Appeal No.27/2024.  
Date of Institution 08.02.2024.  
Date of Decision 16.12.2025

Faizan Muzaffar S/o Zarar Khan R/o Kathai Jhelum Valley,  
Tehsil Hattian Bala District Jhelum Valley, Azad Jammu and  
Kashmir.

Petitioners-Accused.

Vs.

The State through Advocate General Azad Jammu & Kashmir  
having its office at Supreme Court Building Muzaffarabad Azad  
Kashmir.

Respondent.

2. Cri. Appeal No.35/2024.  
Date of Institution 23.02.2024.

1. Arshad Ul Zaman S/o Sardar Khan R/o Swabi presently  
Fazaia Colony Rawalpindi in judicial lockup Center Jail Rara  
District Muzaffarabad, Azad Jammu and Kashmir;
2. Muhammad Islam S/o Muhammad Ayub R/o Akwaroa  
Khatak Tehsil Jhangira District Noshera presently in judicial  
lockup Center Jail Rara District Muzaffarabad, Azad Jammu  
and Kashmir.

Petitioners-Accused.

Vs.

The State through Advocate General Azad Jammu & Kashmir  
having its office at Supreme Court Building Muzaffarabad Azad  
Kashmir.

Respondent.

### **CRIMINAL APPEALS**

<b>BEFORE:-</b>	<b>Justice Sardar Liaqat Hussain,</b>	<b>C J</b>
	<b>Justice Syed Shahid Bahar,</b>	<b>J.</b>

**PRESENT:**

M/s Tahir Aziz Khan and Raja Tariq Bashir Khan, Advocates for the appellants.

AAG for the State.

**Judgment:-**

**(Justice Syed Shahid Bahar, J.)** As the titled appeals arisen out of the common judgment therefore, heard together and dispose of through this single judgment.

2. The captioned appeals have been directed against the judgment dated 26.01.2024 passed by the Session Judge/Special Judge CNSA Jhelum Valley/Hattian Bala whereby the appellants were **[convicted]** and awarded **[life imprisonment]** and Rs.1,00,000/- fine under Section 9(c), CNSA.

3. Precise facts of both the titled appeals are that the convict appellants were tried in offence under Section 9 (c) before Sessions Judge/Special Judge CNSA Jhelum Valley. According to FIR, Manzar Hussain SI/SHO Police Station City Jhelum Valley, received an information from convert source that Faizan Khan from Kathai started extraordinary movements from Saran to Chikar link Road. On this information, Manzar Hussain SI/SHO Police Station City

Jhelum Valley reached with raiding party at 11:45 at Bhagsar Turn Saran wherein they found Suzuki Pickup in which two persons were sitting in the Suzuki. It was further alleged that one person namely Faizan Khan was standing near the Suzuki Pickup, who saw the police party and ran away from the spot, however, the two persons were riding in a Suzuki. As such they were taken into custody and the police started investigation, one told his name as M. Aslam S/o Ayub Khan R/o Akora Khatak whereas other told his name as Arshad Khan S/o Sardar Khan R/o Swabi. During search of the Suzuki, police recovered 15 packets of Charas/Garda weighing 15 kg wrapped in yellow tap under the quarter panel of vehicle. Upon search, in the pocket of Muhammad Islam accused Infinix mobile was recovered along with Mobile, a chit was recovered wherein a mobile number 0341-1152111 of Faizan Khan and 15 packet written and another mobile No. 0324-8503850 Nasir Khan along with 10 packet was written. It was further alleged that the said Charas was transported from Peshawar to District Bagh.

4. After usual investigation, report under Section 173, Cr.P.C was presented before the Court of competent jurisdiction. The convict appellants were examined under Section 265-D, Cr.P.C on 02.07.2022 wherein they pleaded not guilty and opted for the trial of the case. The prosecution was directed to lead the evidence. In support of its case, prosecution examined 11 P.Ws. After completion of prosecution evidence, convict-appellants were examined under Section 342 Cr.P.C wherein they against refuted the allegations and submitted that false evidence has been produced against them on account of enmity. The learned trial Court on completion of trial and after hearing the learned counsel for the parties **[convicted]** all the three accused persons namely Muhammad Islam, Arshad Zaman and Faizan Khan for life imprisonment along with Rs.1,00,000/- each as fine, in default of payment of fine, they shall undergo 03/03 S.I. They were also given the benefit of Sections 382-B, Cr.P.C vide the judgment dated 26.01.2024, hence, the instant appeals.

5. Mr. Tahir Aziz Khan, the learned advocate for the appellant Faizan Muzaffar argued that the judgment passed by the trial Court is against the law and facts. The learned counsel contended that the appellant has been falsely implicated in the case and that the entire prosecution case is riddled with material contradictions and procedural irregularities which render the prosecution's version doubtful and untrustworthy. The learned counsel submitted that no recovery has been made from Faizan and he was not present at the time of occurrence and this fact has been admitted by I.O that at the time of occurrence Faizan was at Gharthan 15 km away from occurrence and mobile data also proves that at the time of alleged occurrence/recovery Faizan was present at Gharthan 15 KM away from the occurrence. He further maintained that the alleged occurrence was at midnight and no source of light has been shown. He contended that the alleged Suzuki from where the alleged recovery was shown to be recovered not present in the Court. The learned counsel argued that the Mobile data on the basis of which the police connected the Faizan with the accused

proves that Faizan was not there and no record was shown which could establish that the Faizan was connected with the accused. The learned counsel maintained that the call data was neither exhibited nor put in 342 Cr.P.C. The learned counsel further argued that the FIR was lodged by SHO Police Station Hattian Bala, however, the investigation was initiated by SHO Police Station Chanari which is against the law and rules and without any legal backing. The learned placed reliance following case law:

2020 SCMR 687

2020 SCMR 690

2021 SCMR 522

2022 SCMR 705

6. Raja Tariq Bashir, the learned counsel for the appellant Arshad Zaman and another, argued that all the witnesses are police officials and no private witness was mentioned. It was argued that the prosecution failed to establish a safe and unbroken chain of custody of the recovered contraband which mandatory requirement in narcotics case. The learned counsel further argued that the prosecution evidence was replete with contradictions and

discrepancies were fatal to the charge but the learned court below failed to appreciate the law and evidence. He maintained that the whole proceedings conducted against the provision of CNSA and rules made thereunder so the appellant is entitled to be acquitted from the charge. The learned counsel contended that FSL report was not tendered in evidence and the said report was not put to the accused while recording his statement under Section 342 Cr.P.C. which was mandatory in nature. The learned counsel argued that the parcel prepared for forensic examination and the quantity measured by the Lab and remaining quantity mentioned in the document was quite different and the case of the prosecution, thus, is not trustworthy as when the discrepancy in the weight of the samples is found at the time it was taken in the laboratory. He maintained that the appellant has been wrongly convicted as attending circumstances of the case were not accounted for.

7. Conversely, the learned AAG, appearing on behalf of the State, opposed the submissions made by the learned counsel for appellants-accused. The learned AAG argued that

accused are nominated in F.I.R. and huge amount of 'Chars' was recovered from their possession. He further added that huge quantity of contraband was recovered from the appellants for which they were convicted so the sentence awarded to them does commensurate to the nature of offence committed by them; they deserve no leniency of reduction of their sentence. The learned AAG contended that the appellants were arrested red handed and huge quantity of narcotics was recovered from them which was in their exclusive possession and control and the recovery has been proved by the prosecution through cogent and confidence inspiring evidence. The learned further maintained that the PWs have no ill-will or enmity with the appellants; their testimony cannot be discarded on mere ground that they are police officials. He argued that plantation of such huge quantity of narcotics in absence of any serious enmity of the police officials does not appeal to a prudent mind, therefore, the appellants cannot be straightforwardly acquitted on the sole ground of variation in the quantity of narcotics and at the most they can be held guilty for the quantity produced and



exhibited before the court below which also exceed 15 KG through punishment awarded by the trial Court in such eventualities would be sufficient to meet the ends of justice. He sought dismissal of appeals.

8. We have considered the respective submission advanced from both the sides and perused the record carefully.

9. In relation to appeal No. 27/2024, the appellant seeks indulgence of this Court for setting aside the judgment dated 26.01.2024 passed by learned Session Judge/Special Judge Control of Narcotics Court, Jhelum Valley whereby the appellant has been convicted and sentenced in offence under Section 9-C as under:

- (i) Life imprisonment along-with Rs. 1,00,000/- fine and in default therefore, he has to undergone 03 months further imprisonment.
- (ii) Benefit of Section 382-B, Cr.P.C has also been extended to appellant.

In appeal No. 35/2024, the appellants Arshad ul Zamna and Muhammad Islam have been convicted and sentenced in the office under Section 9-C as under:

- (i) Life imprisonment alongwith 01/01 Lac fine each and in default thereof, he has to undergone 03/03 months further imprisonment.
- (ii) Benefit of Section 382-B Cr.P.C has also been extended to appellants.

10. According to the prosecution's story, it has been informed that one Faizan Khan from Kathai started extraordinary movements from Saran to Chikar line Road. Manzar Hussain Chugtai SI/SHO Police Station Jhelum Valley with raided party at 11:45 reached at Bhagsar Turn Saran where Suzuki Pickup No. 1578/GAS was parked and to persons namely Faizan Khan was standing near the Suzuki Pickup which has been absconded while the Police search investigation 15 kg chars was recovered from the vehicle which was wrapped in a yellow cover. The police investigated the name and address of the persons sitting in the Pickup looking suspicious one told his name as M. Aslam S/o Ayub Khan R/o Akora Khatak whereas the other told his name as Arshad Khan Son of Sardar Khan R/o Swabi, upon search of vehicle the police party recovered 15 packet of Charas/Garda weighing 15 K. G wrapped in yellow tape under the backside shield of vehicle etc.

11. Be that as it may, a material piece of incriminating evidence that is (Forensic Report) was not put to the accused during their examination under Section 342 Cr.P.C., it is a case

of liability of huge quantity of contraband; Forensic Report is just a supportive piece of evidence which corroborates the substantial evidence adduced by the prosecution. In our estimation, this supportive piece of evidence should have been put to the accused keeping in view the stringent punishment provided under Section 9 (c) which speaks for only “death penalty” or “life imprisonment”. Any material not put to the accused cannot be used against them. In such like eventuality, this Court as being Appellate Court has two choices, either to set aside the conviction where prejudice is irreparable or remand the case if omission is purely procedural and all other evidence is otherwise brought on record. This option is to avoid a complete failure of justice. This judicial power takes breath from **[Section 232, Cr.P.C]** which allows remand for recording evidence, which includes examination of the accused again under Section 342 Cr.P.C, power in this regard under Section 232 Cr.P.C is to be read with Section 540 & 428 Cr.P.C. Failure to put incriminating material/evidence to the accused violates fair trial, appellate court may remand the case to trial court to record statement

afresh.<sup>1</sup> Omission discussed above is curable through remand under Section 428 Cr.P.C.

12. In the present case, the omission goes to the root of the prosecution's case, as the Forensic Report forms a substantive link in the chain of evidence, the failure of the trial court to confront the accused with such incriminating material has caused serious prejudice to the defense. Therefore, in the interest of justice and in exercise of powers conferred under Section 232 read with Sections 540 & 428 Cr.P.C, it is appropriate to remand the case for the limited purpose of confronting the accused with the said forensic evidence.

13. Before parting with the judgment it is necessary to observe here that major loopholes in investigation cannot be taken lightly, particularly held under the special law providing stringent sentences. Inspector General of Police is directed to arrange special courses for the police officers for the purpose

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<sup>1</sup> Mohammad Sharif Vs State (PLD 2003 SC 704); Ghulam Yasin Vs State (2008 SCMR 105) and; State Vs Ahmed Omar Sheikh (2021 SCMR 873)

of dealing with the matters of investigation under special laws in order to ensure the proper investigation.

The crux of above discussion is that the impugned judgment dated 26.01.2024 passed by Session Judge/Special Judge CNSA Jhelum Valley/Hattian Bala is hereby **[set aside]** and the case at hand is **[remanded]** to the trial Court for decision afresh on the limited purpose of confronting the accused with the said forensic evidence and complete the trial from the point at which the said material irregularity occurred and not from the very beginning; within a period of 2 months. No other aspect of the trial shall be reopened. Copy of judgment be sent to the IGP for compliance.

**Muzaffarabad,**

**16.12.2025(A)**

**Chief Justice**

**Judge**

**Approved for reporting**

**Chief Justice**

**Judge**