

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE SALAHUDDIN PANHWAR
MR. JUSTICE ISHTIAQ IBRAHIM

Criminal Petition No.1385 and Jail Petition No.620 of 2023

(Against the judgment dated 11.10.2023, passed by the Lahore High Court, Lahore Rawalpindi Bench, Rawalpindi in Criminal Appeals No.141, 153 and 799 of 2022)

Mudassar Ali Khan
(in CrI.P No.1385/2023)

Zamanullah Khan and Rehman Said
(in JP No.620/2023)

...Petitioner(s)

VERSUS

The State through Prosecutor General, Punjab
(in both cases)

...Respondent(s)

For the Petitioner(s): Malik Muhammad Asif, ASC and Syed
Rifaqat Hussain Shah, AOR
(in both cases)

For the State: Rai Akhtar Hussain, Addl.PG, Punjab
(in both cases)

Date of hearing: 17.08.2026

JUDGMENT

ISHTIAQ IBRAHIM, J.- The prosecution case, as per First Information Report (“FIR”) No.38 dated 20.03.2020, under section 9(c) of the Control of Narcotic Substances Act, 1997 (“Act of 1997”) and sections 427 & 279 PPC, registered at Police Station Bahtar, is that on 20.03.2020, Atif Sattar SI (PW.2), along with other police officials on receipt of spy information about transportation of a huge quantity of narcotics in a Toyota Corolla car bearing registration No.LED-3670, coming from *Brahama* towards *Bahtar*, established a

nakabandi at Hissar Mor, Bahtar Road. At about 11:00 a.m., the said motorcar reached the place of *nakabandi* and, upon being signalled to stop, its driver accelerated the motorcar. Atif Sattar SI (PW.2) along with the accompanying police officials started chasing the motorcar and during the said chase, at a sharp turn near Jhang Mor, the driver of the motorcar lost its control and collided with coaster bearing registration No.RIR-4751 parked on the right side of the road. Petitioner Mudassar Ali Khan was found sitting on the driving seat and, upon search of the area near his feet, eight packets of *charas*, each weighing 1200 grams, wrapped in yellow-coloured tape and placed in a *Fouji*-coloured bag total weighing 9600 grams, were recovered. Likewise, nine packets of *charas*, each weighing 1200 grams, collectively weighing 10,800 grams lying in bag, were allegedly recovered from the lap of petitioner Zaman Ullah Khan, who was sitting on the front passenger seat. From the bag allegedly held by petitioner Rehman Said, who was sitting on the rear seat of the motorcar, eight packets of *charas*, each weighing 1200 grams, total 9600 grams were also recovered. Atif Sattar, SI, separated 60 grams of *charas* from each packet and prepared sealed parcels thereof for chemical analysis by the PFSA, Lahore. The remaining quantity of *charas* was also sealed in a separate parcel. The recovered narcotics, along with the Toyota Corolla car and the accidental coaster, were taken into possession through recovery memos Exh.PB to Exh.PE. Thereafter, he prepared complaint Exh.PF and transmitted the same to the police station, on the basis whereof FIR No.38 dated 20.03.2020 was registered against the petitioners.

2. Upon completion of investigation, report under section 173 Cr.P.C. was submitted against the petitioners before the learned Additional Sessions Judge/Judge Special Court (CNS), Fateh Jang ("Trial Court"). Upon conclusion of the trial, the learned Trial Court, vide judgment dated 25.01.2022, convicted the petitioners under section 9(c) of the Act of 1997 and sentenced each of them to imprisonment for life, along with a fine of Rs.100,000/- each and, in default thereof, to further undergo simple imprisonment for a

period of one year each. The benefit of section 382-B Cr.P.C. was also extended to them. The appeals preferred by the petitioners-convicts before the Lahore High Court, Rawalpindi Bench, Rawalpindi ("High Court"), were dismissed vide judgment dated 11.10.2023, hence, the instant petitions by the petitioners-convicts.

3. Having heard the learned counsel for the petitioners-convicts as well as the learned Additional Prosecutor General, Punjab, appearing on behalf of the State, and having perused the record with their able assistance, it transpires that Atif Sattar, SI (PW.2), seizing officer, and Shahid Mehmood, ASI (PW.4), a witness to the recovery memos, have furnished ocular account of apprehension of the petitioners-convicts and the alleged recovery of narcotics from their respective possession.

4. First, we proceed to examine the case of petitioners-convicts Zaman Ullah Khan and Rehman Said as their roles are distinguishable from the role of driver petitioner-convict Mudassar Ali Khan. Petitioner Zaman Ullah Khan was allegedly travelling on the front passenger seat, whereas petitioner Rehman Said was sitting on the rear seat of the motorcar. Atif Sattar SI (PW.2), and Shahid Mehmood ASI (PW.4), have furnished ocular account of the occurrence. According to their testimony when the motorcar of the petitioners-convicts was signalled, its driver accelerated the vehicle and attempted to escape, whereafter the police officials chased it and, after covering some distance, the motorcar collided with a coaster near Jhang Mor. If the petitioners-convicts Zaman Ullah Khan and Rehman Said were conscious that the police were in hot pursuit of their vehicle and that their apprehension was imminent, their continued retention of bags containing huge quantities of narcotics in such an exposed manner, without any attempt to conceal, abandon or otherwise dispose of the same, appears highly unnatural. The prosecution has not furnished any plausible explanation for such conduct. Rather, the story of the prosecution to the extent of the above named two petitioners-convicts seems to be an effort on the part of the Seizing Officer to implicate each and

every person sitting in the motorcar. The peculiar manner in which the narcotics are alleged to have remained in the lap of one petitioner and in the hands of the other throughout the police pursuit, collision and apprehension, coupled with the absence of any plausible explanation for such conduct, creates a reasonable doubt regarding the role of petitioners-convicts Zaman Ullah Khan and Rehman Said.

5. As regards petitioner-convict Mudassar Ali Khan, the prosecution has specifically attributed to him the role of driving the motorcar in question at the relevant time. He, being the driver of the motorcar, was in its exclusive possession and control. When he was signalled by the police to stop, he did not comply with the direction; rather, accelerated the vehicle in an attempt to flee from the pursuing police party. Such conduct of the petitioner-convict Mudassar Ali Khan, in the facts and circumstances of the case, is a strong relevant circumstance showing his conscious knowledge of the presence of narcotics in the vehicle and thus speaks about his guilty consciousness. Had there been no incriminating article in the motorcar, there was no apparent reason for him to disregard the signal of the police and attempt to escape. During the chase when he hit the motorcar with a coaster, petitioner Mudassar Ali Khan was apprehended by the police sitting on driving seat of the motorcar, whereupon eight packets of charas, collectively weighing 9,600 grams, were recovered from a bag lying near his feet. The role assigned to him is, therefore, materially distinguishable from that of petitioners-convicts Zaman Ullah Khan and Rehman Said. It cannot reasonably be expected that, while driving the vehicle at speed and simultaneously attempting to evade the police party, the petitioner would have had a fair opportunity to abandon, conceal, or otherwise dispose of the narcotics lying immediately near him. His attention, at that juncture, would necessarily have been directed towards maintaining control of the vehicle and making good his escape. Thus, the circumstance which renders the prosecution case doubtful regarding the recoveries allegedly made from the other two co-accused/petitioners does not carry the same evidentiary weight

in the case of the petitioner Mudassar Ali Khan. The prosecution witnesses have consistently and categorically attributed the recovery of the narcotics to him, and nothing material has been elicited from their cross-examination so as to discredit their testimony on this particular aspect of the case. We are, therefore, of the considered view that, notwithstanding the doubts arising in respect of the recoveries attributed to petitioners-convicts Zaman Ullah Khan and Rehman Said, the prosecution has succeeded in establishing, through confidence-inspiring and reliable evidence, that 9,600 grams of charas was recovered from the conscious possession of petitioner-convict Mudassar Ali Khan. The benefit of doubt available to the co-accused/petitioners, on account of the peculiar circumstances attending the recoveries allegedly effected from them, cannot, for that reason alone, be extended to the petitioner, whose case is on an entirely different footing. Consequently, to the extent of the role assigned to petitioner-convict Mudassar Ali Khan, the learned Courts below have rightly appreciated the evidence and correctly concluded that the prosecution succeeded in proving the charge against him beyond reasonable doubt. Since we have disbelieved the recovery of narcotics from possession of the other two accused/petitioners having not been proved by the prosecution through cogent and confidence inspiring evidence, therefore, the quantity of the narcotics allegedly shown recovered from their possession, cannot be attributed to petitioner Mudassar Ali Khan. He can be held liable for the recovery of only 9600 grams which has been shown recovered from a bag near his feet in the motorcar and duly proved by the prosecution, therefore, his conviction under section 9(c) of the Control of Narcotic Substances Act, 1997, therefore, calls for no interference. However, question of his sentence still requires consideration. The prosecution case reveals that there was unexplained delay of sixteen days in transmitting the samples to the PFSA, Lahore. Although such circumstance may not, in the facts of the present case, be sufficient to discard the recovery altogether, it is nevertheless a relevant factor while determining the appropriate quantum of sentence. We have also taken into consideration the circumstances attending the prosecution case

against the co-accused/petitioners, particularly the inherent improbability noticed above in relation to the alleged recoveries from petitioners-convicts Zaman Ullah Khan and Rehman Said. The quantity attributed to the present petitioner is 9,600 grams, which is below ten kilograms. Furthermore, the petitioner has remained in custody since his arrest on 20.03.2020 and has, thus, undergone sufficient period of incarceration and suffered the rigours and agonies of a protracted trial and prolonged detention. The cumulative effect of the aforementioned circumstances persuades us to take a lenient view in the matter of sentence of petitioner Mudassar Ali Khan.

6. For what has been discussed above, Criminal Petition No.1385 of 2023, filed by petitioner-convict Mudassar Ali Khan, is converted into an appeal and partly allowed. His conviction under section 9(c) of the Control of Narcotic Substances Act, 1997, recorded by the learned Courts below, is maintained; however, the sentence of imprisonment for life is reduced to fourteen years' rigorous imprisonment. The sentence of fine, along with the sentence in default thereof, is maintained. He shall be entitled to the benefit of section 382-B Cr.P.C.

7. Jail Petition No.620 of 2023, filed by petitioners-convicts Zaman Ullah Khan and Rehman Said, is converted into an appeal and allowed. Their convictions and sentences recorded by the learned Courts below are set aside and they are acquitted of the charge by extending to them the benefit of doubt. They shall be released forthwith, if not required to be detained in connection with any other case.

Judge

Judge

Judge

Islamabad the

17th August, 2026

Not Approved for Reporting

M.Siraj Afridi SPS

