SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Muhammad Hashim Khan Kakar
Mr. Justice Salahuddin Panhwar
Mr. Justice Ishtiaq Ibrahim

CRIMINAL PETITION NO.172-P/2026
(Against the judgment dated 09.04.2026, passed by the Peshawar High Court, Peshawar in Criminal Appeal No.1065-P of 2025)

Taimoor Khan

…Petitioner(s)

VERSUS

The State

…Respondent(s)

For the Petitioner(s): Ms. Farhana Naz Marwat, ASC

For the State: Mr. Danial Khan, Addl. AG, KP

Date of hearing: 21.10.2026

JUDGMENT

ISHTIAQ IBRAHIM, J.- Briefly stated, the prosecution's case, as set forth in FIR No.1541 dated 01.12.2023, registered under Section 9(d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 (the "Act of 2019"), at Police Station Chamkani, is that on 01.12.2023, at about 1200 hours, during a nakabandi at Motorway, the petitioner, Taimoor Khan, while driving a Suzuki Alto motorcar bearing registration No. AXW.980, was intercepted by Asad Khan ASI (PW.5), accompanied by other police officials. Upon search of the said vehicle, two white polythene sacks were allegedly recovered from its boot, each containing 20 packets of charas, weighing 1,200 grams per packet, thus making the total recovered quantity 48 kilograms. The Seizing Officer (PW.5), separated 05 grams from each packet as a sample for chemical analysis by the Forensic Science Laboratory (FSL) and took the remaining quantity into possession

vide recovery memo Exh.PW.5/1. Thereafter, he prepared murasila Exh.PA/1, on the basis of which the aforesaid FIR was registered against the petitioner.

2. Upon completion of the investigation, a report under Section 173 Cr.P.C. was submitted against the petitioner before the learned Additional Sessions Judge-XX/Judge Special Court, Peshawar (the "trial Court"). On conclusion of the trial, the learned trial Court, vide judgment dated 18.09.2025, convicted the petitioner under Section 9(d) of the Act of 2019 and sentenced him to imprisonment for life, along with a fine of Rs.500,000/-, and, in default of payment thereof, to undergo simple imprisonment for six months. The benefit of Section 382-B Cr.P.C. was also extended to him. The petitioner's appeal was dismissed by the Peshawar High Court, Peshawar, vide judgment dated 09.04.2026, whereby his conviction and sentence were maintained. Hence, the instant petition for leave to appeal.

3. We have heard the learned counsel for the petitioner and the learned Additional Advocate General, Khyber Pakhtunkhwa, appearing on behalf of the State, and have perused the available record with their assistance.

4. The principal question requiring determination is whether the prosecution succeeded in proving, beyond reasonable doubt, the alleged recovery of 48 kilograms of charas from the motorcar of the petitioner contained in two sacks each containing 20 packets. A careful examination of the evidence on record reveals material discrepancies concerning the identification, production and exhibition of the case property, which goes to the very root of the prosecution case. Asad Khan, ASI, the seizing officer, in the *murasila* , FIR, recovery memo and his statement before the Court, consistently maintained that two sacks, each containing 20 packets of charas, were recovered from the trunk of the motorcar being driven by the petitioner. He further deposed that 05 grams of charas were separated from each packet as a sample for chemical analysis by the Forensic Science Laboratory (FSL), and he sealed the same in parcels Nos.1 to 40, and the remaining charas contained in the two

sacks was sealed separately in parcels Nos.41 and 42. Murad Ali, No.1288, a marginal witness to the recovery memo, was examined on 16.07.2025. He also deposed that two sacks, each containing 20 packets of charas, had been recovered from the trunk of the petitioner's motorcar. During his examination-in-chief, the case property in the shape of one sack was produced and exhibited as Exh.P.1. In cross-examination, he categorically admitted that Exh.P.1 did not bear any description indicating that it contained 40 packets. He further admitted that no parcel number was available on Exh.P.1. He conceded that the motorcar in question had not been produced before the Court and that only one sack, rather than the two sacks allegedly recovered, was available before the Court. The matter does not end here. On the request of the prosecution, PW Murad Khan was re-examined on 21.07.2025, and in his statements parcels Nos.41 and 43 were produced and exhibited as Exh.P.2 and Exh.P.3, respectively. Consequently, three exhibits, namely Exh.P.1, Exh.P.2 and Exh.P.3, came to be shown as the case property. However, the record is completely silent as to when, how and under what circumstances the case property was repacked or sealed in three separate parcels, particularly when the seizing officer had categorically stated that the remaining charas had been sealed in two separate parcels. More importantly, when the subsequent case property was exhibited as Exh.P.2 and P.3, neither the prosecution nor PW Murad Ali sought cancellation or withdrawal of the earlier exhibit, Exh.P.1, nor was any explanation furnished to reconcile the earlier and subsequent production of the alleged case property. The prosecution thus failed to establish with the requisite clarity and certainty whether Exh.P.1 pertained to the instant case or some other case, or whether Exh.P.2 and Exh.P.3 represented the actual case property allegedly recovered from the petitioner. This uncertainty about the case property creates serious doubts in the prosecution’s case. The prosecution has failed to furnish a satisfactory explanation for the material inconsistencies surrounding the production and exhibition of the case property.

5. Yet there is another aspect which makes the prosecution's case further doubtful. A perusal of the record reveals that the Alto motorcar bearing registration No. AXW.980 was neither produced before the trial Court nor exhibited through the testimony of Asad Khan, ASI (PW.5), the Seizing officer, or Murad Ali Constable (PW.6), a marginal witness to the recovery memo. The import of this omission cannot be oversighted, as the prosecution's entire case rests upon the assertion that the contraband charas was recovered from the boot of the said vehicle. The motorcar was, therefore, not merely an incidental piece of evidence but the very place of the alleged recovery and a material link in the prosecution's case. Its production was particularly important to enable the trial Court to examine the prosecution's version in the light of the physical object from which the contraband was allegedly recovered. The record further reveals that no order of the competent Court is available to establish that the vehicle was released on superdari or otherwise lawfully disposed of. Moreover, the extract of Register No.19 contains entries relating to the case property, the samples and the parcel containing the USB pertaining to the motorcar, but no entry regarding the motorcar itself. Thus, neither its custody and whereabouts nor the circumstances explaining its non-production have been satisfactorily accounted for by the prosecution. In the absence of any plausible explanation, the non-production of the vehicle, coupled with the absence of a corresponding entry in Register No.19 and any judicial order regarding its release or disposal, gives rise to a serious deficiency in the prosecution evidence. It is a settled principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt and that the accused is entitled to the benefit of every reasonable doubt emerging from the evidence and in the instant case the prosecution has failed to discharge the said duty.

6. For the foregoing reasons, this petition is converted into an appeal and allowed. The impugned judgments passed by the learned Courts below are set aside. Extending the benefit of doubt, the

appellant Taimoor Khan is acquitted of the charge. He shall be released forthwith, if not required to be detained in any other case.

Judge

Judge

Judge

(Peshawar)
21st October, 2026
NOT APPROVED FOR REPORTING
M.Siraj Afridi PS