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Court(of)	
Restoration Application No.	980/ 2023

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1 19.13	2.2023	The ap	olication fo	r restoration	n of service	appe	eal
	no.	820/2021	submitted t	today by M	r. Nasir Ma	ahmo	od
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In Re: Restant Apple No. 980/2023 Appeal No. 826 /2081 Attiq ur Rehman Versus Inspector General of Police, KPK & others Respondents

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Sr. No	Documents	Annex	Pages
1.	Application for restoration		1-2
2.	Copy of adjourned sine die order dated 12.09.2023	A [‡]	, 3
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Through

Applicant

Advocate Supreme Court

Dated: 19.12.2023

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR
In Re: Restoration Appli. No. 980/2023 Khyling Properties
Appeal No. 820 /2024 Dated 19
Attiq ur Rehman Ex-Constable no. 739 District Hangu R/o Village Shanki Banda, Takht Nasrati District Karak
Appellant
Versus
 Inspector General of Police, Khyber Pakhtunkhwa, Peshawar. Regional Police Officer Kohat Region, Kohat. District Police Officer, Hangu.
Respondents
APPLICATION FOR RESTORATION OF SERVICE APPEAL NO. 820/2020 WHICH WAS ADJOURNED SINE-DIE VIDE ORDER

DATED 12.09.2023 DUE TO PENDENCY OF CR. APPEAL NO.

Respectfully Sheweth:

180-B/2023.

- 1. That the above noted service appeal was pending adjudication before this Hon'ble Tribunal which was adjourned Sine-die vide order dated 12/09/2023 due to pendency of Cr. Appeal No. 180-B/2023.
- 2. That this Hon'ble Tribunal was pleased to allow the application for sine die adjournment of the instant service appeal till the decision of Cr. Appeal No. 180-B/2023 pending before Honorable Peshawar High Court, Bannu



bench vide order dated 12/09/2023. (Copy of the order dated 12.09.2023 is attached herewith as **Annex-A**)

3. That the above noted Cr. Appeal No. 180-B/2023 filed by the petitioner, which was duly accepted and the order/judgement dated 03.05.2023 of the Additional Session Judge, Karak was set aside by Honorable Peshawar High Court Bannu Bench vide order dated 13.11.2023 and the appellant/ petitioner was acquitted from the charges leveled against him. (Copy of the Judgement dated 13.11.2023 is attached herein as **Annex-B**)

It is, therefore, humbly prayed that on acceptance of this application, the above noted service appeal may kindly be restored, in the interest of justice.

Applicant

Through

Nasir Mehmood

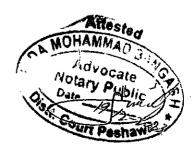
Advocate Supreme Court

Dated: 19.12.2023

AFFIDAVIT:

I, do hereby solemnly affirm and declare that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 820 /2020

Attiq ur Rehman Ex-Constable No. 739 District Hangu R/o Village Shanki Banda, Takht Nasrati District Karak

.....APPELLANT

VERSUS

- 1- Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- Regional Police Officer Kohat Region, Kohat.
- 3- District Police Officer, Hangu.

.....RESPONDENTS

PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE IMPUGNED ORDER DATED 09.12.2020 WHEREBYM
APPEAL OF THE APPELLANT REJECTED WHICH WAS
FILED AGAINST THE ORDER DATED 30.09.2020 PASSED
BY RESPONDENT NO.3 WHEREBY APPELLANT WAS
DISMISSED FROM SERVICE.

PRAYER:

That on acceptance of this appeal the impugned order dated 09.12.2020 and 30.09.2020 passed by respondent No.2 and 3 may kindly be set aside and the appellant

Service Appeal No.820/2021

<u>ORDER</u>

12th Sept. 2023

Atig-in-Rahman & Got Amen A SA

Kalim Arshad Khan, Chairman: Learned counsel for appellant and

Mr. Muhammad Jan, District Attorney for respondents present.

- 2. During the pendency of the appeal, the appellant was convicted by learned Additional Sessions Judge-II, Karak and against the conviction, the appellant had filed appeal before the Hon'ble Peshawar High Court, Bannu Bench. This is an application for adjournment of the appeal till the decision in the criminal appeal filed against his conviction in the Hon'ble Peshawar High Court, Bannu Bench. Learned District Attorney has not objected on such adjournment. Adjourned sine die. The parties or any of them may get it restored and get it decided after decision of the criminal appeal by the Hon'ble Peshawar High Court. Consign.
- 3. Pronounced in open Court at Peshawar under our hands and seal of the Tribunal on this 12th day of September, 2023.

(Muhammad Akbar Khan) Member (E)

(Kalim Arshad Khan)

Mutazem Shah *

Date of Presentation of Application 1/11/23

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Chairman

Khyber Pakhtunkhye

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Annen Ba (4)

IN THE PESHAWAR HIGH COURT BANNU BENCH, BANNU

Cr. Appeal No. 180 -B/2023

Atiq Ur Rehman Son of Muhammad Aslam Khan Resident of Tehsil Takht-e-Nasrati District Karak. (Appellant Convict)

VERSUS

The State.(Respondent)

<u>CASE FIR NO. 490 DATED 24-07-2020 UNDER SECTION</u> <u>9 (D)CNSA POLICE STATION KARAK DISTRICT</u> <u>KARAK.</u>

APPEAL UNDER SECTION 48 OF CNSA, 1997, AGAINST THE JUDGMENT AND ORDER DATED 03/05/2023 OF THE LEAREND ADDITIONAL SESSIONS JUDGE-II/JUDGE SPECIAL COURT KARAK, WHEREIN APPELLANT HAS BEEN CONVICTED AND SENTENCED UNDER SECTION 9 (D) KP OF CNSA, 2019, TO RIGOROUS IMPRISONMENT FOR 10 YEARS WITH FINE OF Rs. 500,000/- IN DEFAULT OF WHICH THE ACCUSED SHALL UNDERGO FOUR MONTHS SIMPLE IMPRISIONMENT, BENEFIT OF SECTION 382-B Cr.P.C HAS BEEN EXTENDED TO THE APPELLANT/CONVICT.



Respectfully Sheweth;

Brief foday accused accused complain (Copy of Additional Registrar)

Brief facts of the case in hand are that, the appellant along-with coaccused had been charged in the above captioned FIR, by the complainant, for carrying contrabands.

(Copy of FIR No.490/2020 is hereby annexed as Annexure-A)

Person War High Course Manau Beard

- That, the appellant was arrested, in the case; and was charge sheeted and tried by the learned Additional Session Judge-II/Judge Special Court Karak, for the offence alleged.
- That, on conclusion of trial the appellant alongwith co-accused has been convicted and sentenced to rigorous imprisonment for 10 years with fine of Rs. 500,000/- in default of which he has to further undergo four months simple imprisonment, benefit of section 382-B Cr.P.C, has been awarded, to be extended to the appellant, vide the impugned Order and Judgment dated 03/05/2023.

(Copy of impugned Judgment dated 03/05/2023 is hereby annexed as Annexure-B)

4) That, being innocent and aggrieved by the impugned judgment and order dated 03/05/2023, the appellant seeks the interference of this Honourable Court on inter alia the following grounds.

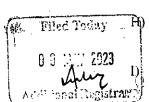
GROUNDS:

- A) That the impugned Judgment / Order of learned Additional Session Judge-II/Judge Special Court Karak dated 03/05/2023 is against law and facts.
- B) That, the appellant is absolutely innocent and has falsely been implicated in the instant case with ulterior motives.
- C) That, no recovery whatsoever has been made from the appellant, but the alleged recovery has been planted against the appellant, by the complainant for ulterior motives, to indulge the appellant in a criminal case and to show efficiency.
 -) That, story of the FIR and case of the prosecution is full of doubts.
- E) That, all the prosecution witnesses are typical police witnesses, without nay exception and have given stereo typed statements.
- F) That, all the statements do not corroborate the guilt of the appellant and suffer from major discrepancies.
- G) That, site plan, recovery memos, forensic report and story of the FIR all are at variance and completely negates the version of prosecution.

That, the impugned Judgment & Order dated 03/05/2023 is the outcome of mis-reading and non-reading of evidence.

That, guilt of the appellant has not been proved beyond every shadow of doubt and prosecution has badly failed to make out a case of conviction against the appellant.

D) E)





3

(b)

In view of the above stated reasons and others to be stated at the time of arguments, it is, therefore, most humbly prayed, that this Honourable Court may very graciously be please to set aside the impugned judgment and order dated 03/05/2023, of the learned Additional Session Judge-II/Judge Special Court Karak, and to acquit the appellant in accordance with law to meet the ends of justice.

APPELLANT

THROUGH

AHMAD FAROOQ KHATTAK

ADVOCATE SUPREME COURT

DATED: /05/2023

CERTIFICATE:

It is certified that no such like Cr. Appeal has ever been moved before any forum or pending by the appellant.

APPELLANT

THROUGH

AHMAD FAROOQ KHATTAK ADVOCATE SUPREME COURT

DATED: /05/2023

ATTESTED

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Judgment Sheet PESHAWAR HIGH COURT, BANNU BENCH?

(Judicial Department)

Cr.A No.180-B/2023

Atiq-ur-Rehman

The State

JUDGMENT

For appellant: Mr. Ahmad Farooq Khattak Advocate

For State: Mr. Umer Qayyum Khan, A.A.G.

Date of hearing: 13.11.2023

Dr. Khurshid Iqbal, J.-

1. By this single opinion, I propose to dispose of the instant criminal appeal and Criminal Appeal #204-B/2023. Both the appeals have arisen from a judgment, dated 03.05.2023, passed by the learned Additional Sessions Judge-II/Special Court, Karak. Through this judgment, based on FIR #490, dated 24.07.2020, registered at Police Station Karak, District Karak, the appellants Atiq-ur-Rehman and Javed Maqbool were convicted and sentenced under section 9(d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019, each to 10 years of rigorous imprisonment. They were also fined Rs.5,00,000/- (five hundred thousand rupees) each or were to undergo 04 months of simple imprisonment in default. The benefit under section 382-B Cr.P.C was extended to them.

2. Briefly, on 24.07.2020, the complainant Zafar Ali Khan, SHO, along with police personnel, was stationed at a barricade at Toll Plaza Karak. Meanwhile, a black motorcar with Registration No.KX.485/Islamabad approached from Kohat side and was stopped for a routine check. The driver and front







seater were searched, but yielded no incriminating result. The driver disclosed his name as Atiq-ur-Rehman, while the front seater as Javed Maqbool. During the search of the motorcar, the SHO discovered a bag near the feet of the front seater containing seven packets of charas, each weighing 1000 grams, totaling 7000 grams. Representative samples of five grams from each packet were separated and sealed for transmission to the FSL for chemical analysis. The remaining charas was packed and sealed in a separate parcel, as documented in the recovery memo Ex.PW-2/1. Both accused were subsequently arrested, and a murasila report was drafted and sent to the police station for case registration. Hence, the FIR.

After the completion of investigation, complete challan 3. under section 173 Cr.P.C was drawn and submitted against the appellants. The appellants being on bail were summoned by the trial court. They appeared and were provided the copies of the statements and documents within the meaning of section 265-C Cr.P.C. Charge was framed against them, to which they pleaded not guilty and claimed trial. The prosecution examined 05 witnesses. The appellants were examined under section 342 Cr.P.C, wherein they denied the charges and refuted the evidence of the prosecution. The appellant Atiq-ur-Rehman didn't avail the opportunity to record evidence in his defence, however, he opted to give statement on oath as required under section 340(2) Cr.P.C. The appellant Javed Maqbool, though didn't opt to give statement on oath under section 340(2) Cr.P.C, however, he availed the opportunity to produce one Usman Ghani as DW-01 in his defence witness. The witness deposed that he is a Manager of Mukhlis Rent-a-Car, whereas the appellant Javed Maqbool is his driver. On the day of the occurrence, he added, the appellant Atiq-ur-Rehman hired his







car for shifting his ailing relatives to District Karak and when they reached the spot, the occurrence took place. He, thus, claimed that his driver is absolutely innocent. After the arguments were addressed at the bar, the trial court found the appellants guilty and, therefore, convicted and sentenced them as stated above. Hence, these appeals.

- 4. Arguments heard. Record perused.
- To begin with, firstly, the chain of safe custody of the 5. recovered contraband is found as broken and suspicious. The prosecution witnesses maintained contradictions among themselves. The Seizing Officer (PW-02) asserted handing over the recovered contraband in a sealed condition to the I.O. at the spot, a claim negated by the I.O. Instead, the I.O. stated that the Seizing Officer had only displayed the recovered contraband in a sealed condition at the spot, promptly returning it to the former given that the latter was short of police personnel. Additionally, the Muharrir (PW-04) stated that the recovered contraband was handed over to him by PW-02 upon his arrival at the police station, intending to keep it in the safe custody of the Mall Khana. However, as per PW-02, he had not handed over the case property to the Muharrir. Given these contradictions and inconsistencies, the safe custody cannot be held to have been established through a well-knit chain.
- 6. Secondly, the copy of Register No.XIX concerning the safe custody was not placed on the record, and the samples' parcels were not dispatched to the FSL within the prescribed period. They were sent to the FSL after an unexplained delay of 31 days. This Court acknowledges that Rule 4 of the Control of Narcotic Substances (Government Analysts) Rules, 2001, in this regard, is of a directory nature. This fact alone may not be







considered fatal to the prosecution's case. However, when the chain of safe custody is otherwise broken and suspicious, as is the situation in the present case, the unexplained delay can be taken into consideration against the prosecution. This is due to its direct nexus with the chain of safe custody. The omission becomes yet another circumstance shaking the very foundation of the charge against the appellants. It is a well-established principle that any defect in the chain of safe custody must be resolved in favour of the accused. The prosecution is not solely burdened with producing witnesses to depose against an accused person regarding the factum of recovery. It is equally duty bound to prove that the recovered items were safely moved from one official to another right from the stage of recovery until their receipt at the FSL. A reference, for instance, may be made to Ayaz Hussain Vs State (2023 YLR 242 Karachi). Recently, the Supreme Court in Javed Ighal Vs The State (2023) SCMR 139) observed:



The safe custody and safe transmission of the sample parcels was not established by the prosecution and this defect on the part of the prosecution by itself is sufficient to extend benefit of doubt to the appellant. It is to be noted that in the cases of 9(c) of CNSA, it is duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing in such like offences the benefit must have been extended to the accused.

7. Thirdly, the prosecution witnesses remained inconsistent with each other on material aspects of the case. The



complainant stated that they departed from the police station at 08:00 a.m. But PW-03 Constable Bilal, who accompanied him, disclosed a different time, i.e., 12:00 noon. The I.O. stated that he received the copy of the FIR at 14:25 hours. The complainant mentioned that the I.O. reached at the spot at 14:30 hours, meaning thereby that one can reach from the spot to the police station and vice versa within 05 minutes. In the context, the testimony of the complainant regarding the time he allegedly spent at the spot becomes unbelievable. He stated to have spent about two hours at the spot on the preparation of the samples' parcels. If this time is kept in view, then, it becomes impossible that he drafted the murasila at 13:35 hours when the recovery was allegedly made at 13:20 hours. Moreover, if the two hours are added to the time of the occurrence and/or the time of the report, then, it becomes impracticable that the FIR could have been chalked out at 14:20 hours. Moreover, in the FIR, it has been mentioned that the complainant had taken representative samples from each and every packet. When asked, he showed inability as to whether he had taken the representative samples from all the recovered packets or not. The glaring inconsistencies in the testimonies regarding crucial timeline details cast doubt on the truthfulness and reliability of the prosecution's narrative. These disparities create a substantial doubt in establishing a coherent and credible account of the events.

8. Fourthly, it has been mentioned in the FIR that the charas recovered were 'garda'. The FSL report reveals that the samples' parcels contained solid charas. The contradiction between the initial claim in the FIR and the subsequent revelation in the FSL report raises concerns about the truthfulness of the information provided by the complainant.





The discrepancy in the nature of the recovered substance undermines the consistency and reliability of the prosecution's case.

- 9. Fifthly, the recovery was allegedly effected from a black-colored bag, which was not taken possession. The failure to take possession of the alleged bag, a key element in the recovery process, poses a notable gap in the instant case. It raises concerns about the chain of custody and the overall reliability of the evidence presented. It needs no emphasis that establishing possession is crucial for substantiating the claim made in the FIR, and the lack of documentation on this aspect has marred the credibility of the prosecution's narrative.
- Sixthly, the complainant has put a monogram of 'GM' on 10. the parcels he allegedly prepared at the spot. When asked, he conceded that the monogram does not stand for his name. He also admitted that there is no official in the police station for whose name the monogram may stand. When it neither stands for the name of the complainant, nor for the name of any other official posted at the police station, then, it was for the prosecution to explain plausibly why such a monogram has been used for the purpose. The prosecution has, however, advanced no plausible explanation to this effect. The inclusion of an unidentified monogram on the parcels, coupled with the prosecution's failure to offer a plausible explanation, adds another layer of uncertainty to the proceedings. This unexplained use of the monogram raises questions about the integrity of the evidence presented and the credibility of the proceedings carried out by the complainant. The courts' precedents in similar cases underscore the significance of addressing such omissions to maintain the trustworthiness of the legal process. Reference may be made to Muhammad Sajjad



(13)

v. State (2023 YLR 408 Peshawar), Usman Shah v. State (2022 YLR 821 Peshawar), Suleman v. State (2022 MLD 1612 Peshawar), and Ayaz alias Imran v. State (2021 YLR 1613 Peshawar).

Before delving into the reappraisal of the statement under 11. section 340(2) Cr.P.C or the defence evidence produced by the appellant, it is crucial to establish a foundational premise. Within the realm of administration of criminal justice, the presumption of innocence is a cardinal principle, dictating that every accused is presumed as innocent unless proven guilty. The crux of this principle is grounded in the doctrine that it is the prosecution and the prosecution alone to prove the guilt of the accused. If, however, the prosecution falls short of meeting this burden by failing to provide credible and overwhelming evidence, the accused would, then, be entitled to the presumption of innocence. This fundamental principle underscores a dedication to fairness and due process, emphasizing that an accused person should only be held guilty when the prosecution convincingly establishes their culpability beyond reasonable doubt. In such instances, where the prosecution fails in discharging its initial burden, the defence plea holds little weight for reappraisal. Given the failure of the prosecution to adequately discharge its initial burden, there remains no need to reassess the defence plea.

ALL STATES

12. Upon meticulous consideration of the manifold omissions and contradictions elucidated in the prosecution's case, this court arrives at the inevitable conclusion that the doubts cast upon the integrity of the evidence are insurmountable. The broken chain of safe custody, the unexplained delay, and the inconsistencies in the witnesses' testimonies collectively create a substantial shadow of





uncertainty over the entire proceedings. Given the cardinal principle that any doubt must be resolved in favor of the accused, and in adherence to the established legal precedents, the benefit of doubt is extended to the appellants. The material doubts in the prosecution case leave the court with no alternative, but to record the acquittal of the appellants. Both the appeals succeed and are allowed, resulting in setting aside the impugned judgment, dated 03.05.2023. The appellants are acquitted. They shall be set free provided their detention is not otherwise required.

13. The foregoing are the reasons for my short order of even date.

Announced
13.11.2023
(Ghafoor Zaman)

TIFIED TO BE TRUE COPY

Peshawar High Cours annu Benom Authorised Under Article 87 of The Qanun e-Shahadai Ordinance 1984

(S.B) Hon'ble Mr. Justice Dr. Khurshid Iqbal

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JON TONP بنام دعوى 2. بإعث تحرمرة نكه مقدمه مندرج عنوان بالامل اپن طرف سے داسطے بیردی وجواب دہی وکل کاردا کی متعلقہ آن مقام سيد المسادي ملي المسادي الله المسالية المسادي مقرركر كے اقر اركيا جاتا ہے۔كەصا حب موصوف كومقدمه كىكل كارواكى كاكائل اختيار ، وگا۔ نيز وسیل صاحب کوراضی نامه کرنے وتقرر ثالت و فیصله برحلف دیے جواب دہی اورا تبال دعوی اور بسورت ومحرى كرني اجراءا ورصولي چيك وروپيدار عرضي دعوى اور درخواست برشم كي تقيديق زرایں پردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری میطرفہ یا بیل کی برامدگی ادرمنسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی دبیروی کرنے کا ختیار ہوگا۔ازبصورت ضرورت مقدمہ ندکور کے کل باجزوی کاروائی کے واسطے اوروکیل با مخارقا نونی کوایے ہمراہ یا اپنے بجائے تقرر کا اختیار موگا۔اورصا حب مقررشدہ کوہمی وہی جملہ ندکور، بااختیارات حاصل ہوں مے اوراس کاساخت برواخة منظور قبول موكار دوران مقدمه ميس جوخرجدد مرجاندالتواع مقدمه كسبب سهوموكار كوكى تاريخ بيشى مقام دوره يربهو يا حديد والمربورة وكيل صاحب يابند بول مح - كربيروى ندکورکر میں لہذا د کالت نا میکھدیا کے سند کے لئے منظور ہے۔

بمقام