



DECISION IN THE MATTER OF:

PAKISTAN CRICKET BOARD

and

AHMAD SHEHZAD

Disciplinary Proceedings under the PCB Anti-Doping Rules 2016

The following is a decision / Agreed Sanction as provided under Article 8.4 of the PCB Anti-Doping Rules 2016 resolving the disciplinary proceedings brought by the Pakistan Cricket Board ("PCB") against Mr. Ahmad Shehzad ("AS") in respect of his alleged violation of the PCB Anti-Doping Rules 2016 (the "PCB Rules"), which are approved by the PCB Board of Governors.

Background

1. AS is a National cricketer who represented the Habib Bank Limited (HBL) Team and Baluchistan Regional Team in Domestic Cricket Tournaments and made his First Class cricket debut in 2007. He has represented the Pakistan National Teams in 13 International Test matches; 81 ODIs; and 57 T20Is, with his latest participation in Scotland vs Pakistan T20I held on 13th June 2018 at Edinburgh.

2. As a cricketer representing Baluchistan region, the HBL departmental team, having participated in Domestic Matches played under the jurisdiction of the PCB, and representing Pakistan as a part of its national cricket team in international Matches AS at all material times was bound by and required to comply with the PCB Rules by virtue of application of Article 1.1 of the PCB Rules.

In-Competition Test on 03rd May 2018

3. On 3rd May 2018, during the Pakistan Cup 2018 at Faisalabad, AS was selected at random to undergo an *In-Competition* Doping Test in line with Article 5.2 of the PCB Rules. According to the Doping Control Form, he provided a urine Sample at 10:20 pm after the day's end of the match.
4. As part of the testing process, AS completed a Doping Control Form. Section 3 of the Doping Control Form (Information for Analysis) requires the player to declare any prescription or non-prescription medication or supplements taken in the previous 7 days. The completed Doping Control Form did not reflect that AS had ingested any medication during the stipulated timeline.

Adverse Analytical Finding

5. The A Sample of the urine specimen collected from AS in Faisalabad on 3rd May 2018 was sent for analysis by National Dope Testing Laboratory India, a WADA-accredited anti-doping facility, and on 8th June 2018 it returned an Adverse Analytical Finding ("AAF") revealing that the concentration of 11-nor-Delta9-Tetra Hydro Cannabinol-9-Carboxylic acid ("THC") in the sample was 341 ng/ml i.e. a concentration greater than the threshold of 288 ng/ml.
6. THC is listed as a synthetic Cannabinoid under Section 8 of the 2018 WADA Prohibited List, and thus is categorized as a substance which is prohibited *In-Competition*. It is, therefore, classified as a Prohibited Substance for the purposes of the PCB Rules. Additionally, it falls under the definition of a Specified Substance as per Article 4.1.2 of the PCB Rules.
7. Consequently, on 12th June 2018, PCB requested an Independent Review Board comprising members of the Anti-Doping Organization of Pakistan (ADOP) to conduct a review of the entire matter in accordance with Article 7.2.1 of the PCB Rules, i.e., in order to determine: (a) whether the AAF was consistent with an applicable Therapeutic Use Exemption ("TUE"); or (b) whether there was any apparent departure from the International Standard for Testing and Investigations or International Standard for Laboratories that caused the AAF.

8. Upon completion of the review, it was confirmed to the PCB through the Review Board's Report dated 10th July 2018 that there was neither an applicable TUE nor any departure from the International Standard of Testing nor the International Standard for Laboratories, and therefore, there was a case for AS to answer for a violation of Articles 2.1 and 2.2 of the PCB Rules.
9. As a result of the finding of the Review Board, PCB issued a Notice of Charge ("**NOC**") to AS on 10th July 2018, alleging the commission of two anti-doping rule violations under Article 2.1 and 2.2 of the PCB Rules on the basis that THC, a Prohibited Substance for which AS did not hold a valid TUE, had been found to be present in the A Sample of the urine specimen that he had provided *In-Competition* in Faisalabad on 3rd May 2018. Pursuant to Article 7.7.2 of the PCB Rules, PCB also provisionally suspended AS with immediate effect through the NOC dated 10th July 2018, pending determination of whether the alleged violations of the PCB Rules had been committed or not.
10. Through the same NOC, AS was also given the option of having the B Sample of the same specimen analysed to see if it confirmed the AAF issued in respect of the A Sample. Further, AS was also provided the opportunity to contest the Provisional Suspension imposed on him pending the determination of the charges. AS has fully respected that Provisional Suspension since the date of imposition, i.e. 10th July 2018.

Response to the Notice of Charge

12. On 27th July 2018, AS responded to the Notice of Charge stating his desire to challenge the charges leveled against him and to initiate proceedings under Article 7.8.1 of the PCB Rules so that the matter may be referred to the Anti-Doping Tribunal.
13. AS chose not to exercise his right to have his B Sample analysed, thereby accepting the accuracy of the AAF in respect of the A Sample.
14. However, on 31st July 2018, AS approached the PCB by submitting a written application requesting PCB to initiate proceedings under Article 8.4 of the PCB Rules on a 'confidential and without prejudice' basis and filed a written statement explaining his version of events; his response to the Notice of Charge; and mitigating factors that he requested the PCB to consider in the matter.
15. Upon receipt and subsequent scrutiny of AS's written statement and submissions, PCB's Anti-Doping Manager and Legal Department sought further information and clarifications from AS. AS

submitted a revised written statement on 17th August 2018 and sought additional time to provide documents to substantiate his version of events whilst reiterating that he did not wish for adversarial proceedings to be initiated and thus for the matter not to be referred to the Anti-Doping Tribunal. AS was advised and he acknowledged that should PCB and AS not reach an Agreed Sanction the proceedings would have to be referred to the Anti-Doping Tribunal.

16. A meeting was then held on 15th September 2018 between AS and PCB officials (Chairman PCB, COO, PCB's Anti-Doping Manager, SGM Legal Affairs and AM Legal Affairs), wherein AS was provided an opportunity to explain his version of events and expound on the accuracy of the charges leveled against him. He reiterated the contents of his written statement submitted on 17th August 2018, provided additional supplementary information and documentation to substantiate his version of events, and pleaded that there was *No Significant Fault or Negligence* on his part which had resulted in the AAF.

17. AS explained that:

- (a) on the day he was scheduled to play the 3rd May 2018 Match of the Pakistan Cup at Iqbal Stadium, Faisalabad, he woke up feeling dizzy and nauseous and asked his wife to give him a medicine for treating the nausea who, instead of giving him the medicine he normally ingested i.e. Gravinate, unknowingly gave him a Dronabinol 5mg tablet;
- (b) the medicine Dronabinol that he had taken on 3rd May 2018 was prescribed to his mother who is suffering from cancer. Such medicine is usually prescribed to cancer patients for relief from symptoms of vomiting and nausea and contains the Prohibited Substance THC. AS provided PCB with the relevant prescription for Dronabinol from a clinic in United States of America along with his mother's medical record; and
- (c) his wife usually administered his mother's medicine and when on the morning (3rd May 2018) of an important match of the Baluchistan Region team, of which he was the captain, he suffered from severe nausea and attempted use of natural remedies such as eating yoghurt and lemon juice but to no avail, AS requested his wife to give him a medicine to alleviate nausea symptoms; and thus ended up ingesting Dronabinol which resulted in the presence of the Prohibited Substance (THC) in his body.

18. In response to queries raised by the PCB Officials, AS stated that he did not disclose and write Dronabinol on the Dope Control Form as he could not recall the name of the medicine. He advised that he attempted to call his wife to enquire about the name of the medicine but was unable to get in touch as she did not answer his calls. AS acknowledged that he should not have made such an omission and confirmed that he accepted this as negligence on his part. He added that he had already suffered irreparably due to the Provisional Suspension by not being eligible to play in various international matches as well as domestic tournaments, including Pakistan's Tour to England and the 2018 Asia Cup.
19. AS provided the following evidence to support his version of events:
- (a) Statements from Physiotherapist and the Dope Control Officer present at the time of testing;
 - (b) His mother's Prescription Slip for Dronabinol and relevant medical record; and
 - (c) Character Certificates from PCB's Head Coach, Mickey Arthur and Cricketers Misbah-ul-Haq and Shoaib Malik.
20. In addition, PCB has obtained the following independent advice:
- a. The Prohibited Substance ingested by AS was not a performance enhancing drug and, therefore, there could be no intent to cheat.
 - b. That ingestion of one tablet of Dronabinol in the morning of 3rd May 2018 before provision of a urine sample at 10.20 pm on 3rd May 2018 is not inconsistent with the finding of THC in that urine at an estimated concentration of 341 ng/ml.

Finding

21. Based on the foregoing evidence, PCB is satisfied to the requisite standard (*greater than a mere balance of probability but less than proof beyond a reasonable doubt*) that the presence of THC in AS's urine sample was caused by the ingestion of one tablet of Dronabinol 5mg in the circumstances described above. It is also satisfied that AS had no intent to cheat or to enhance his sporting performance.

No Significant Fault or Negligence

22. PCB Rules define 'No Significant Fault or Negligence' (in Appendix 1) as follows:

"The Cricketer or other Person establishing that his/her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Cricketer must also establish how the Prohibited Substance entered his or her system."

23. Article 10.5.1.1 of the PCB Rules states:

"Where the anti-doping rule violation involves a Specified Substance, and the Cricketer or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Cricketer or other Person's degree of Fault."

24. The PCB Rules define 'Fault' (also in Appendix 1) as:

"... any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Cricketer or other Person's degree of Fault include, for example, the Cricketer's or other Person's experience, whether the Cricketer or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Cricketer and the level of care and investigation exercised by the Cricketer in relation to what should have been the perceived level of risk. In assessing the Cricketer or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Cricketer's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that a Cricketer would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Cricketer only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2."

25. In assessing AS's Fault in the given circumstances, PCB has taken into account and found the following factors to be relevant:

- (a) AS cannot claim lack of knowledge or education as an excuse. He was fully aware of his responsibilities as a national cricketer bound by the PCB Rules, and had been provided with anti-doping education regarding the degree of care expected of those in his

position with regards to the medication that they take. Indeed, AS has admitted that he was also aware of this requirement.

- (b) AS cannot escape responsibility by saying he relied on his wife to provide him the correct medication. His conduct in respect of complying with and adhering to PCB Rules falls short of the requisite standard. A cricketer of AS's standing and experience is expected to set a better example. See, e.g. IAAF v AFI & Asisini et al, CAS 2012/A/2763, award dated 30th November 2012, paragraph 9.22 ("*CAS jurisprudence is clear that athletes cannot shift their responsibility onto third parties simply by claiming that they were acting under instruction or they were doing what they were told... that would be all too simple and would completely frustrate all the efforts being made in the fight against doping*").
- (c) As noted above, PCB accepts that AS has established how the Prohibited Substance found its way into his system.
- (d) The Prohibited Substance ingested by AS was not a performance enhancing drug and, therefore, there could be no intent to cheat.
- (e) AS's eagerness to admit and approach the PCB for Agreed Sanctions under Article 8.4 of the PCB Rules at the first reasonable opportunity.
- (f) AS has expressed significant remorse, and has fully cooperated with the PCB in the process leading to this outcome, with a significant saving in time and costs, both of which are scarce resources.
- (g) AS's past clean record in relation to PCB and ICC Anti-Doping Rules.

26. In view of all the above circumstances, AS cannot be said to have exercised every practical step reasonably open to him to ensure that he did not take a Prohibited Substance either intentionally or inadvertently, and therefore, he cannot be said to have acted with No Fault or Negligence; however, AS's "*Fault*" for his ingestion of THC was not "*Significant*" within the meaning of Article 10.5.1.1 of the PCB Rules, and therefore, discretion exists to reduce the presumptive two year sanction under Article 10.2.2 to a period of Ineligibility in the range of 0-24 months.

Period of Ineligibility

28. PCB has carefully considered the evidence presented, the submissions put forth by AS, the findings of its officials who afforded AS a personal hearing and reviewed other cases of similar ingestion of Prohibited Substances.
29. Based on the above, PCB has determined that a period of Ineligibility of four (04) months is reasonable and appropriate in all of the circumstances of this case.
30. During the period of Ineligibility, Article 10.11.1.1 of the PCB Rules states:

"No Cricketer or other Person who has been declared Ineligible may, during the period of Ineligibility, play, coach or otherwise participate or be involved in any capacity in: (a) a Match or any other function, Event or activity (other than authorised anti-doping education or rehabilitation programs) authorised, organised, sanctioned, recognised or supported in any way by the National Cricket Federation or by anybody that is a member of, or affiliated to, or licensed by the National Cricket Federation; (b) any Match or any other function, Event or activity authorised or organised by any professional league or any international or national level tournament/Event organisation (whether or not the party authorising or organising the Match or event in question is a Signatory, any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a Signatory's member organisation); (c) any elite or national-level sporting activity funded by a government agency; or (d) a Competition or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by any Signatory, Signatory's member organisation, or a club or other member organisation of a Signatory's member organisation. Without prejudice to the generality of the foregoing, such Cricketer or other Person shall not, during any period of Ineligibility, be given accreditation for, or otherwise granted access to, any Match, function, event or activity of the type referred to in this Article and any such accreditation previously issued shall be withdrawn. In addition, the National Cricket Federation shall take all steps within its power to have the period of Ineligibility recognised and enforced by all other relevant parties, including all other Signatories pursuant to Article 15 of the World Anti-Doping Code."


Conclusion

31. In conclusion:

- (a) AS accepts that he has committed anti-doping rule violations under Article 2.1 and 2.2 of the PCB Rules;
- (b) PCB is satisfied, on a balance of probabilities, that AS did not ingest the Prohibited Substance with the intent to cheat and that enough evidence has been provided to substantiate his version of events, and in all the circumstances he bears No Significant Fault or Negligence. For the sake of clarity, AS accepts that there was a degree of Fault/Negligence on his part, in that he failed under the circumstances to disclose ingestion of the medicine on the day of the *In-Competition* Test and that he should not have ingested a medicine that had not been prescribed to him by a reliable medical practitioner;
- (c) a period of Ineligibility of four (4) months shall be imposed. The period of the Provisional Suspension shall be credited against the total period of ineligibility, such that the period of Ineligibility shall expire at 11:59pm on 10th November 2018;
- (d) AS shall deliver lectures on anti-doping at such places and to such audiences as and when the PCB requires;
- (e) in line with Article 8.4 of the PCB Rules, the disciplinary proceedings brought by the PCB against AS are discontinued without the need for a further hearing; and
- (f) in line with Article 8.4 of the PCB Rules, AS waives his right of appeal against the decision and the sanction set out herein.

NB: All capitalized terms used in this document shall have the meanings ascribed to them the PCB Rules.

Dated: 5th October 2018


Ehsan Mani
Chairman PCB

