

Narcotics : Crim. Revision Apph Allowed

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CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Cr. Appeal No. 270 of 2012 a/w Others

Jahanzeb Khan & others Vs. The State

HIGH COURT OF SINDH

Composition of Bench.

D.B.

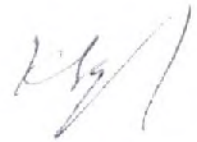
Mr. Justice Muhammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi

Dates of hearing: 19-05-2020 & 20-05-20

Decided on : 29-05-2020

(a) Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment \*/Order is based upon or enunciates a principle of law  
\*/decides a question of law which is of first impression/distinguishes/. Over-rules/  
reverses/explains a previous decision.

\* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first  
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the  
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

**IN THE HIGH COURT OF SINDH AT KARACHI**

Special Appeal No. 270/2012

Jahanzeb Khan S/o Zahir Shah,  
Muslim, Adult, R/o C.B.H.  
House No. 188, Chareeb-Abad,  
Hyderabad.....

Applicant/Accused

Versus

The State.....Respondent

FIR No. 04 & 05/2005

U/s: 6/9-C, CNS Act 1997

P.S: ANF, Gulshan-e-Iqbal

**APPEAL U/S 48 OF (CONTROL OF NARCOTICS  
SUBSTANCES) ACT 1997**

Being aggrieved and dissatisfied with the consolidated judgment of two amalgamated cases passed by the Special Court No.-1, dated 18-07-2012 (Control of Narcotics Substances) Karachi, (Jahanzeb and Others V/s the state) by Mr. Zakir Hussain Judge of Special Court No.1 whereby the Trial Court was pleased to convicted the appellant U/s 14 and Sentenced under section 15 read with section 9-C, of the Act for the term of R.I. already undergone as UIP, with benefit of section 382-B, Cr.P.C, alongwith others and the appellant thus preferred this appeal on the following facts and grounds:-

**FACTS**

That the appellant alongwith three others was involved in FIR No. 05/05 U/s 6/9-C, CNS Act 1997, P.S Gulshan Iqbal Karachi. That the brief facts <sup>and</sup> that as per the aforesaid FIR that ANF HEADED BY INSPECTOR Jahangir of PS. Anf-1, Karachi, on spy information, apprehended the appellant alongwith Imran Amin S/o Aminudin and Ghulam Ali S/o Ahmed Barwani, while they were together being on their way in the car bearing registration No. AGX-042, and as a result of the search thereof, secured out of its trunk three nylon bags full of 50

**IN THE HIGH COURT OF SINDH AT KARACHI**

Special Appeal No. 377/2012

PRESENTED  
21-7-2012  
4/9/2012  
2626

Jahanzeb Khan S/o Zahir Shah,  
Muslim, Adult, R/o C.B.H.  
House No. 188, Ghareeb-Abad,  
Hyderabad.....

Applicant/Accused

Versus

The State.....Respondent

FIR No. 04/2005  
U/s: 6/9-C, CNS Act 1997  
P.S: ANF, Gulshan-e-Iqbal

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**FACTS**

That the appellant alongwith three others was involved in FIR No. 05/05 U/s 6/9-C, CNS Act 1997, P.S Gulshan Iqbal Karachi. That the brief facts are that as per the aforesaid FIR that ANF HEADED BY INSPECTOR Jahangir of PS. Anf-1, Karachi, on spy information, apprehended the appellant alongwith Imran Amin S/o Aminudin and Ghulam Ali S/o Ahmed Barwani, while they were together being on their way in the car bearing registration No. AGX-042, and as a result of the search thereof, secured out of its trunk three nylon bags full of 50



PRESENTED

26-11-2012

Dr. Habibullah (Judg.)

IN THE HONOURABLE HIGH COURT OF SINDH AT  
KARACHI

(REVISIONAL JURISDICTION)

Cr. Revision No. 254 of 2012

The State/Anti Narcotics Force  
through its Assistant Director (Law)  
Government of Pakistan,  
Anti Narcotics Force G-13, Block-8  
Khayaban-e-Jami, Clifton,  
Karachi.

Applicant

VERSUS

1. Jahanzeb S/O Zahir Shah  
Muslim, Adult, R/O House No. 112 Pathan Colony  
Hyderabad
2. Ghulam Ali S/O Ahmed Barwani  
Muslim, Adult, R/O House near Main Jama-e-Masjid  
Ibrahim Haideri Karachi
3. Muhammad Haseel S/O Chakar  
Muslim, Adult, R/O Haroon Royal City Flat No. C-402,  
Block-19 Gulistan-e-Jauhar Karachi
4. Imran Ameen S/O Ammenuddin  
Since deceased

Accused/Respondents

CRIMINAL REVISION U/S 439 Cr.P.C

Being aggrieved by and dissatisfied with the impugned judgment dated 18/07/12, passed by the Hon'ble Judge Special Court-I, CNS Karachi, in special case No. 56&57/2005 arising out of FIRs No. 14&05/2005, State V/S Jahanzeb & others, convicting the accused persons U/S 14&15, 9 C CNS Act 1997 and sentenced to suffer RI for a term of undergone period, the Applicant hereby file the instant criminal revision and pray that this Hon'ble Court may be pleased to call R&P of special case No. 56&57/2005 State V/s Jahazeb & others from the learned special court CNS I Karachi, and after perusal reasonably enhance the period of sentence to the respondent

Narcotics.  
~~1998~~ : Crim. Rev. Appl. Allowed

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## HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.270 of 2012.  
Criminal Appeal No.271 of 2012.

Present:

*Mr. Justice Mohammad Karim Khan Agha*  
*Mr. Justice Zulfiqar Ali Sangi*

Appellant: Jahanzeb Khan S/o. Zahir Shah through  
Mr. Muhammad Yaseen Azad, Advocate.

Respondent: The State through Mr. Habib Ahmed,  
Special Prosecutor ANF.

**Crl. Revision Application No.254 of 2012**

Applicant/State: Through Mr. Habib Ahmed, Special Prosecutor ANF.

Respondents: Jahanzeb Khan and Ghulam Ali through Mr.  
Muhammad Yaseen Azad, Advocate.

Date of hearing: 19.05.2020 and 20.05.2020.

Date of Announcement: 29.05.2020.

### J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J:-** Accused Jahanzeb Khan S/o. Zahir Shah was tried by learned Judge Special Court-I (Control of Narcotic Substances), Karachi in Special Case No. 56 of 2005 arising out of Crime No.04/2005 and Special Case No.57/2005 arising out of Crime No.05/2005 u/s. 6/9(c) of Control of Narcotics Substance Act, 1997 registered at P.S. ANF-Gulshan-e-Iqbal, Karachi. After trial vide judgment dated 18.07.2012 the appellant Jahanzeb Khan S/o. Zahir Shah was convicted and sentenced to suffer the term of R.I. he had already undergone as UTP. Benefit of Section 382-B of Cr.P.C. was also been extended to the appellant.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge Special Court-I, CNS, Karachi the aforesaid appeal has been preferred by the appellant, while the A.N.F. has filed the Criminal Revision Application No.254/2012 for enhancement of sentence against the order of the Judge Special



Court-I, CNS, Karachi dated 18.07.2012 in respect of Respondents Jahanzeb Khan and Ghulam Ali both of whom have been served notice of the same.

3. The brief facts of the prosecution case are that the ANF police headed by Inspector Jehangir of PS ANF-I, Karachi on spy information, apprehended the accused persons namely **Jehanzeb Khan S/o. Zahir Shah**, **Imran Ameen S/o. Ameenuddin**, **Ghulam Ali S/o. Ahmed Barwani** while they were driving together in the car bearing Regn. No. AGX-042 and as a result of the search thereof, secured out of its trunk three nylon bags full of 50 packets of two slabs of chars of 1 Kg. each, thus totaling 150 Kg. They arrested the culprits and seized the narcotics and the car aforesaid under a memo prepared to such effect on the spot thereof on 26.05.2005 at 0635 hours, before the official mashirs namely HC Jaffar Nadim and PC Parvez Shah. The dashboard of the car was found to have contained a document showing the same as being on rent in favour of one Rehan Ameen son of Ameenuddin, so given by its owner namely Rashid Ali S/o. Muhammad Yousaf who had obtained the same on leasing from the local leasing firm. The ANF officials on search of the person of the culprits aforesaid secured their respective belongings under the same memo and left such place for their police station aforesaid where the seizing officer named above registered the FIR No.05/2005 for the offence of section 6 punishable under section 9(c) of the CNS Act, 1997 against the culprits 4 in number including the apprehended persons aforesaid and their associate namely Rehan Ameen and then began to investigate the same. During the course of investigation on the same day on disclosure of the accused persons, he formed a raiding party and reached the house bearing No.D-1685, situated in Banghoria Goth, Block-8, F.B. Area, Karachi on pointation of the accused who caused the door thereof to be made open from inside by their associate namely Muhammad Hasil S/o. Chakar, later inserted as accused in the matter in hand. They entered the house and secured out of the heap of the cut piece cloths, narcotics of like nature being kept in bags 21 in number each carrying 40 packets except one which carried 50 packets, each weighing one Kg. being slabs two in number, totaling 850 Kg. The officer arrested the accused persons in the instant crime and seized secured the narcotics under seal cover under the memo prepared to such effect on such spot. They came to the police station where the officer aforesaid registered another FIR bearing No.04/2005 against all the accused persons aforesaid for the same offence and began to investigate the same too. He recorded the statements of the witnesses and dispatched the crime property in toto in both the crimes aforesaid, to the expert

for test and report. He completed the investigation and submitted two charge sheets against the culprits aforesaid showing one of them namely Rehan Ameen S/o. Ameenuddin absconding for trial by the court accordingly. The court having declared the absconding one proclaimed offender and amalgamated both the cases, framed charge of both the crimes together against the accused persons on the facts aforesaid to which they pleaded not guilty and claimed trial.

4. To prove its case the prosecution examined 03 prosecution witnesses and exhibited various documents and other items and thereafter the side of the prosecution was closed. The statement of the accused person was recorded u/s. 342 Cr.P.C in which he denied the allegations against him. He did not examine himself on oath or call any witness in support of his defence case.

5. Learned Special Court-I (C.N.S.) Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 18.07.2012 convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 18.07.2012 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that with regard to the car aspect of the case there is no evidence that he was the owner of the car and therefore nothing to link him to the knowledge of the narcotics which were seized from the car and that there was a violation of S.103 Cr.PC. With regard to the seizure of narcotics at the house there was no evidence that the appellant owned the house, that once again there was a violation of S.103 Cr.PC, that the arrival entry for the police reaching the house was not produced, that the police had no legal authority to search the house, that the narcotics recovered from the house had nothing to do with the appellant, that the complainant was also the IO, and that there had been gross irregularities by the police in conducting the investigation and thus the appellant should be acquitted of the charge by extending him the benefit of the doubt and in the alternative if the appeal is dismissed by this court there is no evidence to justify the enhancement of sentence in respect of either respondents Jehanzeb or Ghulam Ali and as such the



criminal revision filed by the ANF should be dismissed. In support of his contentions he placed reliance on **Khursheed Khan v. The State** (2012 P. Cr. 1/1151), **Zafar Iqbal v. The State and others** (2012 YLR 598) **Mst. Razia Sultana v. The State and another** (2019 SCMR 1300) **Rizwan Ahmed Qureshi and others v. The State and others** (PLD 2017 Sindh 653), **Muhammad Arshad Hussain alias Gul Khan v. The State** (2012 YLR 1630), **Ameer Zeb v. The State** (PLD 2012 Supreme Court 380), **The State through Deputy Attorney-General v. Muhammad Siddique** (1996 SCMR 246), **The State through Regional Director ANF v. Imam Bakhsh and others** (2018 SCMR 2039) and **Bonifacio A. Burayag v. The State** (PLD 1991 Supreme Court 988).

8. On the other hand learned Special Prosecutor ANF has fully supported the impugned judgment in terms of its finding of guilt. He however has contended that the trial court has erroneously not convicted the appellant and the respondent Ghulam Ali under S.6/9 © CNS Act 1997 as the prosecution has proved its case beyond a reasonable doubt in respect of this offence against the appellant and the respondents Jehanzeb and Ghulam Ali and as such both their sentences should be enhanced to either death or life imprisonment pursuant to S.9© CNS Act 1997 as the recovery of narcotics was beyond 10 Kg's and which is the only sentence available under the law. In particular he has contended that the appellant was the driver of the vehicle and therefore had actual knowledge of the narcotics, that the narcotics (charas) were recovered on the spot from the dikki of the car which were sealed on the spot and weighed 150 KG's and their chemical test proved positive whereas respondent Ghulam Ali was a passenger in the car. With regard to the recovery of the narcotics at the house of Jehanzeb's friend this was made on the pointation of the appellant and respondent Ghulam Ali where 850 Kgs of charas was recovered which were subject to a positive chemical test and as such the prosecution had proved its case beyond a reasonable doubt under S.6/9 (c) CNS Act 1997 and as such both the offences for which the appellant and respondent Ghulam Ali were convicted should be changed to that under S.6/9 (c) CNS Act 1997 and thier sentences enhanced accordingly to either life imprisonment or death as these were the only sentences available for a conviction under S.6/9 (c) CNS Act 1997 under the law and since the prosecution had proved its case beyond a reasonable doubt under S.6/9 (c) CNS Act 1997 the appeal should be dismissed and the sentences of both the respondents be enhanced to either life imprisonment or death. In support of his contentions, he placed reliance on **Nazir Shehzad and others v. The State** (2009 SCMR 1440),



Mir Muhammad v. The State (1995 SCMR 614), State through Director ANF Peshawar v. Fakhar Zaman (2019 SCMR 1122), State through Regional Director ANF Peshawar v. Sohail Khan (2019 SCMR 1288), State through Director ANF Peshawar v. Muhammad Ramzan and others (2019 SCMR 1295) and Tasneem Jalal v. Deputy Director ANF and others (2010 SCMR 454).

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. We at the outset find that the Criminal Revision filed by the ANF is maintainable pursuant to the case of **The State V Mst.Fazeelat Bibi** (PLD 2013 SC 361), that this court has the power to change offences for which an appellant is convicted for under S.423 Cr.PC provided he had notice of the same through the charge which he did in this case, that both the FIR's can be tried together as they form a part of the same transaction on the same day as per S.234 Cr.PC and that this court in its discretion has the power to enhance sentences if they are not in accordance with law as per the case of **Abdul Malik V The State** (PLD 2006 SC 365)

11. After our reassessment of the evidence we are of the view that the prosecution has proved its case beyond a reasonable doubt against the appellant for the offense u/s 6/9 © CNS Act 1997 for the following reasons:-

(a) The FIR's were lodged with promptitude giving no time for concoction and the S.161 statements of the PW's were recorded promptly which were not significantly improved upon by any PW at the time of giving evidence. If the ANF police had wanted to falsely implicate the appellant then there was no need to make a second recovery at a house as the police had already secured a very large recovery of narcotics from the car which the appellant was driving and thus would not have bothered with taking the time and effort to stage a false recovery at a house.

(b) It is settled by now that there is no restriction on the complainant being the IO provided that no animosity or enmity is alleged against him by the accused and none has been alleged in this case. In this respect reliance is placed on **Zafar V State** (2008 SCMR 1254)

(c) That the arrest and recovery was made on the spot and

the appellant was caught red handed with the narcotics by the police whilst driving the vehicle and even tried to flee the scene whose evidence fully corroborates each other in all material respects as well as the prosecution case. It is well settled by now that the evidence of a police witness is as reliable as any other witness provided that no enmity exists between them and the accused and in this case no enmity has been suggested against any of the police PW's and as such the police had no reason to implicate the appellant in a false case. Thus we believe the police evidence which is corroborative in all material respects which includes the appellant being the driver of the car who attempted to escape from the scene when the car was stopped by the police and the recovery of the narcotics from the dikki of the car. Reliance in this respect is placed on **Mushtaq Ahmed V The State** (2020 SCMR 474) where it was held in material part as under at para 3;

*"Prosecution case is linged upon the statements of Aamir Masood, TSI (PW-2) and Abid Hussain, 336-C (PW-3); being officials of the Republic, they do not seem to have an axe to grind against the petitioner, intercepted at a public place during routine search. Contraband, considerable in quantity, cannot be possibly foisted to fabricate a fake charge, that too, without any apparent reason; while furnishing evidence, both the witnesses remained throughout consistent and confidence inspiring and as such can be relied upon without a demur."*

(d) That the spy information about the car including its registration number, the fact that the appellant would be driving it and the route it would take fully corroborates the prosecution case since this is the car in which the appellant was driving, stopped and arrested whilst proceeding along the informed route and the narcotics discovered which was recovered along with the car and returned to its actual owner.

(e) That there are no major contradictions in the evidence of the PW's and it is well settled by now that minor contradictions which do not effect the materiality of the evidence can be ignored. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793).

(f) **Most significantly** the narcotics were recovered from the dikki of the car in which the appellant was driving and as such there is *no doubt that the accused had actual knowledge* of the narcotics which were being transported. The car was recovered along with the narcotics. In this respect in the similar case of **Nadir Khan V State** (1998 SCMR 1899) it was held as under,

*"We have gone through the evidence on record and find that the petitioners had the charge of vehicle for a long journey starting from Peshawar and terminating at*



*Karachi. They had the driving licenses also. As being person incharge of the vehicle for such a long journey, they must be saddled with the necessary knowledge with regard to the vehicle and its contents. The probabilities or the presumptions are all dependents on the circumstances of each case and in the present case the circumstances fully establish their knowledge and awareness of the contents and their explanation showing the ignorance actually strengthens that conclusion rather than weakening it" (bold added).*

In this regard reliance is also placed on **Hussain Shah and others V The State** (PLD 2020 SC 132).

Furthermore, Under S.29 CNS Act 1997 once the recovery has been proven as in this case the onus shifts to the accused to show his innocence in that at least he had no knowledge of the narcotics. The appellant has not been able to do so in this case. In the case of **Mehboob-Ur-Rehman V State** (2010 MLD 481) it was held as under in this respect at P485 Para 14

*"Under the provisions of section 29 of the C.N.S. Act once the recovery of contrabands was made from a private car which was by then in control of the two appellants, the burden to explain the possession whether actual or constructive was on the appellants to discharge but neither they have led any evidence in defence nor have appeared in disproof of the prosecution evidence under section 340(2), Cr.P.C. thus the charge laid upon them has remained un rebutted".*

(g) That it would be extremely difficult to foist such a large amount of charas in the car being in total 150 KG's and in the house being in total 850 KG's as mentioned in **Mustaq Ahmed's case** (Supra) and **The State V Abdali Shah** (2009 SCMR 291).

(h) That there was no delay in sending the chemical report for analysis which turned out to be positive.

(i) That the recovered narcotics were kept in safe custody from the time of their recovery to the time when they were taken for chemical analysis and no suggestion of tampering with the same has even been made. The narcotics were sealed on the spot, remained sealed in the malkhana before being transported to the chemical examiner and reached the chemical examiner in a sealed condition as per the chemical report. In this respect reliance is placed on the recent Supreme Court case of **Zahid and Riaz Ali V State** dated 03-03-2020 (unreported) in Jail Appeal No.172 of 2018. Although this case concerned rape since it concerned the safe custody of certain swabs being sent to the chemical examiner we consider its findings to be equally applicable to

the safe custody of narcotics being sent to the chemical examiner which held as under at para 5 in material part;

*"The chemical examiner's report produced by the lady doctor states that the seals of specimens sent for chemical examination were received intact and it was the chemical examiner who had broken open the seals, therefore, the contention of the petitioners' learned counsel regarding the safe transmission of the specimens is discounted both by this fact as well as by the fact that no question was put regarding tampering of the said seals."*

(j) That the appellant within 4 hours of his arrest along with other co-accused lead the ANF police on his pointation to a house where co-accused was residing where on his pointation 850kg's of charas was recovered. The police did not know of the location of this house where large amounts of narcotics were kept before the appellant and his co-accused lead them to it and as such this further fortifies the fact that the appellant was involved in the narcotics business. The appellant after knocking on the door of the house even called for the person inside by name i.e Hasil Baloch who opened the door and also became an accused in this case.

(k) That although no independent mashir was associated with the arrest and recovery of the appellant at his car it has come in evidence in respect of his arrest and recovery whilst driving the car that no private person was prepared to become an independent mashir at the time of arrest and recovery despite being asked. Even otherwise S.103 Cr.P.C is excluded for offenses falling under the Control of Narcotic Substances Act 1997 by virtue of S.25 of that Act and as such the lack of an independent mushir at the house when the narcotics were recovered on pointation is of no consequence. In this respect reliance is placed on the case of **Muhammad Hanif V The State** (2003 SCMR 1237).

(l) That in dealing with narcotics cases the courts are supposed to adopt a dynamic approach and not acquit the accused on technicalities. In this respect reliance is placed on **Ghualm Qadir V The State** (PLD 2006 SC 61) which held as under at para 8 P.66.

*"We are not agreeable with the contention of the learned counsel because fact remains that "Poppy Flowers" were found lying on the roof of the vehicle therefore, the technicality, which is being pointed out by the learned counsel, would not be sufficient to acquit him. In addition to it in such-like cases Courts are supposed to dispose of the matter with dynamic approach, instead of acquitting the drug paddlers on technicalities, as it has been held in (1993 SCMR 785) and (PLD 1996 SC 305)". (bold added).*



(m) No doubt it is for the prosecution to prove its case against the accused beyond a reasonable doubt (which we find that it had done in this case) but we have also considered the defence case which we disbelieve. This is because the appellant simply raised the defence that he was innocent. The appellant did not examine himself on oath and did not call any PW in support of his defense case.

12. Thus, for the reasons mentioned above, we find that the prosecution has proved its case beyond a reasonable doubt against the appellant for offences under S.6/9(c) CNS Act 1997 and by exercising our discretionary powers under S.423 Cr.PC hereby vary the conviction of the appellant to that under S.6/9(c) CNS Act 1997 and dismiss the appeal.

13. With regard to the criminal revision applications in the case of **Abdul Malik** (Supra) it was held as under at P.384 para's 19 and 20 as under;

*"19. In R. v. Newsome & Browne (1970 (20) Q.B. 711), the U.K. Court of Appeal laid down four broad principles/guidelines in this regard where the Court could interfere and enhance the sentence. Those are as under:-*

- (i) Where the sentence was not justified by law.*
- (ii) Where a person was sentenced upon a wrong factual basis.*
- (iii) Matters improperly taken into consideration or fresh matter to be taken into account.*
- (iv) The sentence manifestly in excessive or wrong principle.*

*These are mere guidelines and their application would depend on each case. The cases entailing capital charge are to be decided with utmost care. When law vests a discretion in Court to award sentence of death or life imprisonment, it casts a heavy duty to balance the various considerations which underlie these sentencing provisions. The circumstances surrounding the offence, the question of mens rea, the principle of proportionality sentence, of the gravity of the offence charged, the consideration of prevention or of deterrence and of rehabilitation may also be kept in view if the circumstances of the cases and the law applicable so warrant.*

*20. There is no rule of general application that the serving out of sentence during the pendency of appeal or revision, by itself, would constitute a bar for enhancement of sentence or that any exercise to that effect would be violative of Article 13 of the Constitution. This could be one factor which the*

*Court may consider, along with other factors and the principles referred to in para 18 above, while deciding the question of enhancement" (bold added)*

14. This court can only hand down sentences mandated by law and as such in a conviction under S.6/9(c) CNS Act 1997 the only discretion which the courts have is whether to hand down the death sentence or a sentence of life imprisonment. In this respect reliance is placed on **State through Director ANF Peshawar v. Fakhar Zaman** (2019 SCMR 1122) which held as under at P.1124 at Para 3.

*"The impugned order would not commend well with the law, unambiguously providing a sentence, not less than imprisonment for life as well as fine in case an offender is held guilty of possessing contraband in excess of ten kilograms as is the case with the respondent and therefore impugned view taken by the High Court is open to exception, warranting interference by this Court; consequently this appeal is allowed, impugned judgment dated 28.5.2013 is set aside and the sentence awarded by the learned trial Court is restored, however, with benefit of section 382-B of the Code ibid. Perpetual warrants of arrest shall be issued to arrest the respondent so as to serve out the sentence handed down by the learned High Court".*

15. Likewise in the cases of **State through Regional Director ANF Peshawar v. Sohail Khan** (2019 SCMR 1288) and **State through Director ANF Peshawar v. Muhammad Ramzan and others** (2019 SCMR 1295)

16. Since we have convicted the appellant Jehanzeb under S.6/9(c) CNS Act 1997 for having over 10KG's of charas in his possession the only lawful sentence is either death or life imprisonment we hereby allow the ANF's Criminal Revision Application in respect of the appellant Jehanzeb and enhance the sentence of appellant Jehanzeb to life imprisonment and a fine of Rs. one million. He shall have the benefit of S.382 B Cr.PC and any time already served in jail. In the present case we also order the Director ANF to immediately arrest the appellant Jehanzeb and return him to jail custody in order to serve out the remainder of his sentence.

17. With regard to the enhancement of the sentence of respondent Ghulam Ali we find that he was only a **passenger** in the car at the time of his arrest and the recovery of the narcotics and that he only on joint pointation showed the police to the house where other narcotics were kept and thus we find no reason



to enhance his sentence and as such ANF's criminal revision application in respect of respondent Ghulam Ali is hereby dismissed.

18. The appeal and criminal revision applications are disposed of in the above terms.