

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal No.D-45 of 2019

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Zulfiqar Ali Sangi.

Date of hearing: 04.09.2019

Date of decision: 04.09.2019

Appellant: Haji Khan
Through Mr. Shakir Ali Talpur, Advocate.

The State Through Mr. Muhammad Ayoob Kassar,
Special Prosecutor for ANF.

J U D G M E N T

MUHAMMAD IQBAL KALHORO,J:- Appellant was tried by learned Sessions/Special Judge (CNS), Hyderabad in special case No.58 of 2016 arising out of Crime No.D040401816 registered at P.S ANF, Hyderabad u/s 9(c) of Control of Narcotics Substances Act, 1997 for keeping in possession one kilogram opium and 1100 grams of charas and through impugned judgment was convicted and sentenced to undergo a jail term of six years and to pay fine of Rs.30,000/-, and in default thereof to suffer imprisonment for six months more with benefit of section 382, Cr.P.C duly extended to him.

2. Today, the appellant has been produced in custody and is represented by his Counsel who at the very outset has submitted that he would not press this appeal on merits if the sentence awarded to the appellant is reduced to the period provided in sentencing policy articulated in Ghulam Murtaza's case reported in PLD 2009 Lahore 362.

3. On the other hand, learned Special Prosecutor for ANF has opposed reduction of sentence.

4. We have considered submissions of the parties and perused the material available on record. There is no material to show that the appellant has even been involved in likewise cases in the past and appears to be first offender. Per sentencing policy provided in Ghulam Murtaza's case (supra), the sentence for possessing opium exceeding 600 grams upto 1000

grams is 1 year and 8 months and fine of Rs.7,000/- and in default thereof S.I for 4 months, whereas, for keeping in possession charas exceeding 1 kilogram upto 2 kilogram, imprisonment provided is 4 years 6 months with fine of Rs.20,000/- and in default thereof to suffer S.I for 5 months more. The Jail Superintendent, Central Prison, Hyderabad has submitted a fresh Jail Roll of the appellant which shows that appellant has remained in jail for 03 years 04 months and 09 days, has earned remission of 01 year and 24 days, which comes to be 04 years 05 months and 03 days and, whereas, his remaining period of sentence is 02 years and 27 days.

5. The sentence provided in Ghulam Murtaza's case for possessing the narcotics as stated above maximally is 04 years 06 months and fine of Rs.20,000/-. The appellant however has been convicted by the trial court to suffer R.I 06 years term in jail which palpably is against the sentencing policy provided therein. It appears that the learned trial court has counted the sentence provided for possessing charas separately from the sentence for possessing opium and after adding both the sentences has sentenced the appellant for 06 years which appears to be against the natural norms of justice as the two sentences for possessing charas and opium cannot be awarded separately and / or the accused to undergo the same consecutively. In view of such fact, we do not find any legal impediment in accepting the request of learned defense Counsel to reduce the sentence of the appellant to the period provided in the sentencing policy in Ghulam Murtaza's case. Accordingly, this appeal is dismissed on merits and conviction of the appellant is maintained, however his sentence is reduced to 4 years 6 months with fine of Rs.20,000/- and in default thereof to suffer S.I for 5 months more. The benefit u/s 382-B, Cr.P.C is extended to the appellant.

In the above terms this appeal is disposed of.

JUDGE

JUDGE