

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Jail Appeal No.D-102 & 106 of 2024

Before:

Mr. Justice Arshad Hussain Khan.

Mr. Justice Dr. Syed Fiaz ul Hassan Shah.

Appellants: Nek Jan son of Zamit Khan and Muhammad
Imran son of Ghulam Farid,
Through M/s Sadam Hussain Khoso and
Amjad Hussain Rajpar Advocates.

State: Mr. Shehriyar Shar, Special Prosecutor for
ANF.

Date of hearing: 21.05.2025

Date of decision:21.05.2025

J U D G M E N T

Dr.Syed Fiaz ul Hassan Shah, J. Since, the common question of law and facts are involved in above captioned appeals hence, these appeals are being decided through this common judgment.

2. The appellants were convicted u/s 6m 9(1) 1b, 14 & 15 of CNS Act 1997 (Amended 2022) and sentenced to suffer three years rigorous imprisonment and to pay fine of Rs.80,000/-each in case of failure in payment of fine, to suffer further S.I for three months vide judgment dated 18.11.2024 by the learned Additional Sessions Judge-I/Special Judge (CNS), Kotri, which is impugned by the appellants before this Court by way of instant appeals.

3. The learned counsel for the appellants mainly argued on the point of the defective charge and variation and destruction of case property as in the charge it has been written as Bhang and in the

memorandum of recovery of arrest as Exh.3/A it has been written Bhang and weed. On the other hand, in the chemical analysis report of the Lab Exh.5/G it has been mentioned as weed.

4. Learned Prosecutor for ANF however, by supporting the impugned judgment prayed for dismissal of the instant appeals.

5. We have considered the above arguments and perused the record. We have carefully examined the Exh.10 for which the learned counsel for Appellants draws our attention and laid great stress on the deposition of chemical Examiner Exh.10 and states that even the chemical examiner has admitted during cross examination that Bhang is physically different than weed. When we confronted to the learned counsel to Section 2(s) of the Control of Narcotics Substance Act, 1997, the learned counsel requested that he does not press instant appeals on merits, if the sentence/conviction awarded to the appellants by learned trial Court is reduced to one which is already undergone by the appellants for the reasons.

6. It appears that the Appellants have imprisoned and served more than half of their sentence and remained in jail while facing the trial. The appellants are first offenders who are very poor persons and they are only the source of bread earner for their family. Previously, the Appellants are not involved in any criminal case and no Criminal Record/history against them is placed on record. They, who remained in jail for a considerable period, therefore, in the present scenario of the case, the Appellants have been sufficiently punished by facing the trial from 2024 and remained in jail while they are also attended the Courts severely. Under these circumstances, they need to be given chance in their life to rehabilitate themselves.

7. We have perused the Judgment passed by Supreme Court in the case of ***“State through the Deputy Director (Law), Regional Directorate, Anti-Narcotics Force vs. Mujahid Naseem Lodhi”***, ***(PLD 2017 SC 671)***, in which it is held that in appropriate cases, court may make departure from the sentencing guidelines as provided in the case of **Ghulam Murtaza and another vs. The State (PLD 2009 Lahore 362)**. In the present case, sufficient reasons are given for taking lenient view.

8. Consequently, in view of above, the appellants deserve leniency. While taking lenient view, we dismissed these appeals on merits; however, reduce the sentence to one already undergone by the appellants and fine is hereby remitted. Appellants are in custody they be released forthwith if, both the Appellants are no more required in any other case/crime.

9. The instant appeals are disposed of accordingly.

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Ahmed/Pa,