

Narcotics Indusgare

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.526 of 2021.

*Present:**Mr. Justice Mohammad Karim Khan Aglia
Mr. Justice Zulfiqar Ali Sangi*

Appellant

Azeem S/o Naseebullah
through Mr. Sardar Azmat
Hussain, Advocate.

Respondent

The State
through Mr. Muhammad Iqbal
Awan, Additional Prosecutor
General Sindh.

Date of Hearing

18.08.2022

Date of Order

18.08.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHIA, J:- The appellant Azeem S/o Naseebullah was tried before the Court of Sessions Judge, Karachi (South) in Sessions Case No.2504/2020 under FIR No.292/2020 for the offence punishable U/s 6/9-C CNS Act, 1997 at PS Napier, Karachi and vide judgment dated 23.08.2021 he was convicted of the said offence and sentenced to suffer R.I. for five years and six months and to pay fine of Rs.25,000/- and in case of non-payment of fine, he shall undergo SI for five months and fifteen days more. However, the appellant was granted benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per F.I.R. are that on 31.10.2020 at about 1250 hours complainant ASI Muhammad Iqbal Niazi alongwith his subordinate staff while on patrolling apprehended accused Azeem son of Naseebullah when he was riding a rickshaw No.D.18.04172 Sazgar Yellow. However, during his personal search, one OPPO white golden phone containing two SIMs and cash Rs.400 were recovered from his possession, while a blue shopper containing 06 packets of charras weighing about 3000 grams having yellow tape wrapped in white scotch

tape were recovered inside back passenger seat of above rickshaw. Such memo of arrest & recovery was prepared at spot then the arrested accused and recovered property were brought to police station where the complainant registered the instant FIR.

3. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 03 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him and claimed false implication by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

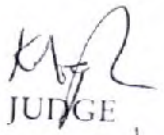
6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 23.08.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

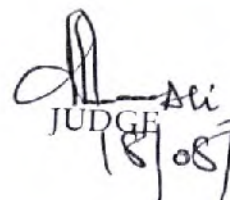
7. At the very outset, learned counsel for the appellant under instructions stated that he did not press the case on merit and the appellant accepted his guilt provided that he was given some reduction in sentence based on following special features/mitigating factors:-

- i) That the appellant was a young man, who had a large family to support.
- ii) That the appellant was a first time offender and was capable of reformation.
- iii) That the appellant had admitted his guilt and shown genuine remorse.

8. Based on the above special features/mitigating factors, the learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellant.

9. We have gone through the evidence and found that the appellant was caught red-handed with narcotic substance by police officials, who had no enmity with the appellant and no reason to implicate him in a false case and we find their evidence to be reliable trustworthy and confidence inspiring. The recovered narcotic produced positive chemical report and as such the prosecution has proved its case beyond any reasonable doubt.
10. Based on the sentencing guidelines as laid down in the case of *Ghulam Murtaza & others vs. The State (PLD 2009 Lahore 362)*, we find that the appellant has been sentenced in accordance with law based on the recovery made from him; however, in the case of *Ghulam Murtaza (Supra)* it was held that sentencing guideline can be modified at the discretion of the Court provided that there were some special features/mitigating factors.
11. Keeping in view the special features/mitigating factors raised by learned counsel for the appellant and the no objection of learned Addl. P.G. to a reduction in sentence based on such factors and the fact that the appellant has completed a substantial part of his sentence, we hereby maintain the conviction of the appellant; however, reduce the appellant's sentence to the period already undergone in custody and waive off any fine payable by him. The appellant shall be released unless he is wanted in any other custody case.
12. The instant appeal stands disposed of in the above terms.


JUDGE
18/08/22


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