

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Jail Appeal No.695 of 2021.

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

Appellant

Muhammad Aqib Baloch @ Mulla
S/o Abdullah Baloch
through Mr. Feroz Qadir Attari,
Advocate.

Respondent

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

Date of Hearing

26.08.2022

Date of Order

26.08.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Muhammad Aqib Baloch @ Mulla S/o Abdullah Baloch was tried in the Court of Additional Sessions Judge-VII/MCTC-02, Karachi Central in Special Case No.497/2021 under FIR No.347/2021 U/s 6/9-C CNS Act, 1997 at PS Super Market and vide judgment dated 04.12.2021 he was convicted of the said offence and sentenced to suffer R.I. for four years and six months and fine of Rs.20,000/- and in case of default, he shall serve five months 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 15.05.2021 at about 2100 hours accused Aqib Baloch was arrested from Warsi Gate, inside Graveyard, C-1 Area, Liaquatabad, Karachi by police party led by complainant SIP Imran Baig and recovered 1180 grams charas, 120 grams ice, 170 grams Kandaniya (Tanzaniya) with selling amount of Rs.3490/- and so also recovered one keypad Nokia mobile phone of black colour from his possession in presence of police mashirs. Hence, the instant FIR was registered.

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 04 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 04.12.2021 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 has not been convicted in any other narcotic case and was capable of reformation.
- iii) That the appellant had admitted his guilt and shown genuine remorse.
- iv) That the appellant had served out a large portion of his sentence.

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 arrested on the spot and recovered 1180 grams charas, 120 grams ice,

170 grams Kandaniya (Tanzaniya) from his possession by the police, who had no enmity with the appellant for falsely implicating him in this case, as such, we find their evidence to be reliable trustworthy and confidence inspiring. The aforesaid narcotics were sent to chemical examination which report received as positive, as such, we find that the prosecution has proved its case against the appellant beyond any reasonable doubt.

10. Based on 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 large portion 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.

11. The instant appeal stands disposed of in the above terms.

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JUDGE 26/08/22

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26/08/2022.

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Case No.

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