

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana.

CRIMINAL APPEAL NO.704 OF 2022

| | |
|-----------------|--------------------------------------------------------------------------------|
| Appellant | Muhammad Zaib Khan, s/o Aurang Zaib Khan Through Mr. Inamullah Khan, Advocate |
| Respondent | The State through Mr. Ali Haider Saleem, Additional Prosecutor General, Sindh. |
| Date of Hearing | : 26.05.2023 |
| Date of Order | : 26.05.2023 |

JUDGMENT

Mohammad Karim Khan Agha, J. Appellant Muhammad Zaib Khan son of Aurang Zaib Khan was tried in the Court of Special Judge Narcotics/Additional Session Judge-VII (Central) Karachi in Special Case No.214 of 2021 arising out of FIR No.92 of 2021 under Sections 6/9 (c) of CNS Act, 1997 registered at Police Station Liaquatabad vide Judgment dated 31.10.2022 and was convicted and sentenced under section 9(c) CNS (Amendment) Act 2022 to suffer R.I. for 09 years with fine of Rs.1,00,000/- (Rupees One Lac). In case of default in payment of fine he shall suffer SI for (01) one year more. However, he was also given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are on 03.02.2021 at about 1600 hours accused Muhammad Zaib Khan s/o Aurangzaib Khan was arrested from inside Muhammad ground, Azam Nagar, Liaquatabad Karachi by police party led by complainant SIP Syed Abid Ali Shah and recovered 1015 grams chars and so also recovered one black wallet containing selling amount of Rs.2840/- CNIC copy of accused, one keypad Q-Mobile phone one Huawei mobile phone touch broken from the possession of accused in presence of police mashirs. Hence, this FIR was logged.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.
4. In order to prove its case, the prosecution examined four (04) PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. wherein he claimed that he is innocent. He did not give evidence on oath or call any witness in support of his defence.
5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.
6. After reading out the evidence, learned counsel for the appellant, under instructions, does not press this appeal on merit provided that the he was given a reasonable reduction in sentence handed down to him on the following mitigating circumstances:
 - i) The amount of recovered charas is 1015 kg which is only marginally above the sentencing range.
 - ii) That the appellant has not been convicted in any other narcotics case and is capable for reformation.
 - iii) That by accepting his guilt he has shown genuine remorse;
 - iv) That he is the sole breadwinner of his family, who relies on his income.
 - v) That the sentence imposed upon the appellant is not in accordance with law.
7. Based on the above mitigating circumstances learned APG had no objection to the reduction in sentence to some reasonable extend.
8. We have gone through the record and find that the appellant was arrested on 03.02.2021 at 1600 hours by police party and 1015 grams charas was recovered from him. The arresting officer and Mashir who made memo of arrest and recovery had no enmity or ill will with the appellant and had no reason to implicate him in a false case. We find the evidence of four PWs to be reliable, trustworthy and confidence inspiring who arrested the appellant on spot red-handed with narcotics which led to a positive chemical report after being kept in safe custody, as such, we find that the prosecution has proved its case against the appellant beyond a reasonable doubt.

9. With regard to sentence, we find that the sentence handed down to the appellant is not in accordance with the law which ought to have been 04 years and 06 months along with fine. However, we note in this case that if he would have had 15 grams less of charas then appropriate sentence would have been 01 year and 09 months along with fine.

10. Based on the mitigating circumstances raised by the learned counsel for the appellant and no objection of learned APG and the fact that the amount of recovery of charas only exceeded 15 grams which lead to the sentences being in the higher range, we hereby reduce the appellant's sentence to the time already undergone in custody and waive off any fine. The appellant shall be released unless he is wanted in any other custody case.

11. The instant Criminal Appeal is disposed of in the above terms.

MAK/PS