

**IN THE HIGH COURT OF SINDH AT
KARACHI**

PRESENT:

***Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Arshad Hussain Khan.***

Cr. Appeal No.106 of 2022

Appellant : Wazeer Muhammad S/o Peer
Muhammad through Mr. Muhammad
Umer Panhwar, advocate

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

Date of Hearing : 08.12.2022
Date of Order : 08.12.2022

J U D G M E N T

Mohammad Karim Khan Agha, J:- The Appellant Wazeer Muhammad was tried in the Model Criminal Trial Court / 1st Additional District & Sessions Judge, Malir, Karachi in Sessions Case No.3208 of 2021 in respect of FIR No.348 of 2021 under Sections 6/9-C of CNS Act, 1997 registered at Police Station Sharafi Goth and vide impugned Judgment dated 09.02.2022 he was convicted and sentenced to suffer rigorous imprisonment of Ten (10) years and fine of Rs.200,000/- (Rupees Two Lac). In case of failure to pay the fine appellant was to undergo six months simple imprisonment in addition to his main sentence. Benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the case are that on 13.07.2021 at about 0915 hours, at main Street Muhammad Nagar-89, near main Gate Water Pump Landhi, Karachi, a police party headed by SIP-Umer Hayat of P.S. Sharafi Goth apprehended

the accused namely Wazeer Muhammad son of Meer Muhammad and from the possession of accused police recovered Cannabis (Chars) total weighing 1535 Grams in presence of mashirs, hence the instant FIR was registered.

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 three PWs and exhibited various documents and other items. The appellant in his statement recorded under Section 342 Cr.P.C. denied the allegations leveled against him. Appellant did not give evidence on oath or call any witness in support of his defence.

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

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 09.02.2022 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 of the appellant stated that he did not press this appeal on merit as the appellant accepted his guilt provided that he is given some reasonable reduction in

sentence based on following special features/mitigating circumstances :-

- a) The appellant is a young man and has large family to support.
- b) The appellant is first time offender and capable of reformation.
- c) By accepting his guilt the appellant has shown genuine remorse and saved the time of this court.
- d) The appellant had served out a major portion of his sentence.

8. Based on the above mitigating factors learned Additional Prosecutor General has no objection to some reasonable reduction in sentence of the appellant.

9. We have gone through the record which reveals that the appellant was arrested on the spot and Cannabis (Chars) total weighing 1535 Grams was recovered from his possession and police officials and mashir have no enmity or ill-will against the appellant and no reason to falsely implicate him in this case, as such, we find the prosecution evidence to be trustworthy, reliable and confidence inspiring and we believe the same. The recovered narcotics also lead to a positive chemical report and as such we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and maintain[✓] his conviction.

10. With regard to sentencing we find that the appellant was sentenced to undergo rigorous imprisonment of Ten (10) years and fine of Rs.200,000/- (Rupees Two Lac). According to the sentencing guidelines laid down in the case of Ghulam Murtaza & others vs. the State [PLD 2009 Lahore 362] the appellant ought to have been sentenced to suffer R.I. for 04 years and 06 months with fine of Rs.20,000/- and in case of

default in payment of fine simple imprisonment for five months more.

11. Keeping in view the fact that the appellant's sentence ought to have been only for latter period and mitigating circumstances raised by the appellant and in particular no objection given by the Addl. Prosecutor General Sindh for reduction of the sentence of the appellant as well as the fact that the appellant has served out a major portion of his sentence we hereby reduce the sentence of the appellant to the period already undergone in jail 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.

Naveed PA