

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

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

Criminal Appeal No.166 of 2022

Appellant : Asghar Khan through Mr. Jamroz Khan Afridi, Advocate

Respondent : The State through Mr. Ali Haider Saleem, Additional Prosecutor General, Sindh.

Date of Hearing : 16.12.2022

Date of Order : 16.12.2022

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA J: The Appellant Asghar Khan s/o Zahir Khan was tried in the court of learned VIII-Additional Session Judge, Karachi West/Addl. MCTC in Sessions Case No.1191 of 2021 in respect of Crime No.452 of 2021 under Sections 6/9 (c) of CNS Act, 1997 registered at Police Station Ittehad Town, Karachi and vide Judgment dated 11.03.2022, he was convicted and sentenced to R.I. for 08 years and 06 months and to pay fine of Rs.55,000/- and in default of payment, the appellant was to undergo a further period of 06 months S.I. However, he was given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that on 08.07.2021, the police party headed by SIP Rana Nisar Ahmed of P.S. Ittehad Town during patrolling reached at main road near Bus stop of D-11 Mazda, Muhamad Khan Colony, Ittehad Town, Baldia Karachi at 1500 hours, stopped a suspicious taxi apprehended its driver, who disclosed his name as Asghar Khan s/o Zahir Khan and recovered one plastic bag from paidan of rear seat of taxi. On opening it, complainant recovered charas which became 8650 grams. On his personal search, cash Rs.1100/- and a mobile

phone were recovered from appellant. The case property was sealed at the spot and thereafter complainant took the arrested accused and recovered property to P.S. and lodged FIR.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty to the charge and claimed trial.

4. In order to prove its case, the prosecution examined 02 PWs and exhibited various documents and other items. In his section 342 Cr.P.C. statement, appellant claimed his false implication. However, he neither he gave evidence on oath nor examined 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, 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 have been set out in detail in the impugned judgment passed by the trial court as such there is no need to reproduce the same in order 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 the appeal on merits provided that he was given some reasonable reduction in the sentence based on the following mitigating circumstances:-

- a) That the appellant has not been convicted in any narcotics case.
- b) That the appellant has a large family to support.
- c) By not contesting the case on merits the appellant has admitted his guilt and shown genuine remorse.
- d) That the appellant had served out a major part of his sentence.

8. Based on these mitigating factors mentioned by the appellant, learned Additional Prosecutor General had no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and note that the appellant was arrested whilst being the driver and sole occupant of a vehicle wherefrom on his pointation narcotics weighing 8650 grams were recovered from the back seat, which when sent for chemical report produced a positive result.

10. The Police witnesses who arrested the appellant had no enmity with him and had no reason to falsely implicate the appellant in this case and as such we find their evidence trustworthy and confidence inspiring and believe the same and find that the prosecution has proved its case against the appellant beyond any shadow of doubt and maintain his conviction.

11. With regard to sentence awarded to the appellant, based on the mitigating circumstances raised by the appellant and noted above and the no objection given by the learned Additional Prosecutor General and in particular the fact that the appellant has served out a major portion of his sentence as per Jail Roll, we hereby reduce the sentence of the appellant Asghar Khan to one already undergone in custody and waive his fine. The appellant shall be released unless he is required in any other custody case.

12. This appeal stands disposed of in the above terms.