

IN THE HIGH COURT OF SINDH, KARACHI

Present: **Mr. Justice Muhammad Karim Khan Agha**
Mr. Justice Arshad Hussain Khan.

Spl. Crl. Appeal No. 26 of 2017

The State/Anti-Narcotics Force

V

Muhammad Safdar s/o Atta Muhammad

Date of hearing	14.12.2021
Date of judgment	14.12.2021
State-Appellant	Through M/s. Muhammad Habib & Abida Parveen Channar, Special Prosecutors, A.N.F.
Respondent	In person.

JUDGMENT

MUHAMMAD KARIM KHAN AGHA, J: The State-appellant in the above appeal has assailed the order dated 19.09.2015 passed by learned Special Court-1, (Control of Narcotic Substances), Karachi, whereby, the respondent was convicted in Special Case No. 146/2016 for possession of 430 grams heroin and was sentenced to undergo R.I. for eight months and to pay fine of Rs.9,000/- and in case of default in payment of fine to further undergo S.I. for a period of one month.

2. The respondent has served out his sentence and has been released from the Prison. However, the State has filed this Criminal Appeal for enhancement of sentence on the basis that sentence awarded by the learned trial court was not within the guidelines as set out in case of Ghulam Murtaza and another vs. The State (PLD 2009 Lahore 362) and that the respondent ought to have been sentenced to one year and seven months and therefore contended that the respondent be returned to jail to serve out the balance of his sentence.

3. We have noted that in view of Ghulam Murtaza's case (supra) if mitigating circumstances/special features exist, this Court in its discretion can reduce the sentence.

4. In this case, we find numerous mitigating factors/special features which can justify a reduction in sentence from that provided in the guidelines in Ghulam Murtaza's case (Supra), which are as follows:

- a) That the respondent has been released from the jail about five years ago, therefore, sending him back to jail to serve balance of his sentence, keeping in view that he is running a business and has a family to look after would cause unnecessary hardship especially as the respondent has suffered years of mental agony whilst awaiting the out come of this appeal.

- b) That the respondent is a first time offender.
- c) That the respondent is young man and is capable of reformation by running a business and not being involved in any other narcotics case after his conviction.
- d) Respondent is sole breadwinner of a large family which will be adversely affected if he is returned to jail.

5. Keeping in view the aforesaid special features/mitigating circumstances mentioned above, we find that the respondent's sentence justifies the departure from the guidelines laid down in Ghulam Murtaza's case in respect of the recovery made from him and as such the sentence already served by him and fine paid is sufficient punishment.

6. As such, this criminal appeal for enhancement of sentence of the respondent is hereby dismissed.

IN THE HIGH COURT OF SINDH, KARACHI**CRIMINAL JAIL APPEAL NO.379 OF 2021****Present:****Mr. Justice Mohammad Karim Khan Agha****Mr. Justice Arshad Hussain Khan**

Appellant:	Akhtar S/o. Muhammad Yar through Mr. Hassan Ali Shaikh Advocate
Respondents:	The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.
Date of hearing:	13.12.2021
Date of Announcement:	15.12.2021

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The Appellant Akhtar s/o. Muhammad Yar was convicted by the Model Criminal Trial Court / Additional District & Sessions Judge Malir, Karachi in Sessions Case No.548/2021 in Crime No.547/2020 u/s. 6/9-C, CNS Act 1997 vide Judgment dated 28.05.2021 and was awarded sentence for R.I. for ten (10) years with fine of Rs.100,000/- (Rupees One Lac) and in case of default he shall suffer S.I. for two months more. However, the benefit of Section 382-B Cr.P.C. was extended to the accused.

2. The brief facts of the prosecution case as appearing in FIR are that on 29.12.2020 at about 1000 hours, at New Muzafarabad Colony Graveyard, Landhi Karachi a police party headed by SIP Muhammad Ameen Solangi of P.S. Quaidabad, apprehended the accused namely Akhtar son of Muhammad Yar and from the possession of accused police recovered Cannabis (Chars) of 1980 Grams in presence of mashirs, hence the instant FIR was registered.

3. After completion of investigation formal charge was framed against the accused person to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 03 Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him. After appreciating the evidence on record the trial court convicted

the appellant and awarded sentence as stated above, hence, the appellant has filed this appeal against conviction.

5. After reading out the evidence, learned counsel for the appellant, under instructions stated that he did not press this case on merit and that the appellant would accept his guilt provided that the sentence handed down to the appellant was reduced. In support of his contention he put forward numerous mitigating circumstances. When this proposal was put to learned APG, he had no objection to the reduction of sentence.

6. We have gone through the evidence and we find the evidence of three 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.

7. At the outset we find that the learned trial court handed down an improper sentence of 10 years imprisonment to the appellant based on the amount of recovery being more than 1KG but less than 2KG of Charas per the sentencing guidelines as laid down in the case of **Ghulam Murtaza & others vs. the State** [PLD 2009 Lahore 362]. The correct legal sentence as per **Ghulam Murtaza's case** (Supra) should have been 4 years and 6 months along with fine.

8. In the case of **Ghulam Murtaza** (Supra) it was pointed out that the sentencing guideline could be modified at the discretion of the Court provided that there were some special features which warranted such reduction in sentence.

9. In this case, we find numerous special features/mitigating factors which can justify a reduction in sentence which are as follows:

- i) That the appellant is a first time offender.
- ii) That the appellant is relatively young man and is capable of reformation.
- iii) That he is the sole breadwinner of his family, who relies on his income.
- iv) That the appellant has fully accepted his guilt and as such has shown genuine remorse.
- v) That the appellant has served almost half of the correct sentence which ought to have been handed down to him.

10. As such based on the above mitigating factors/special features we hereby uphold the conviction of the appellant but reduce his sentence to time already under gone in jail including his fine. The appellant shall be released unless wanted in any other custody case.

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