IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Present:-

Mr. Justice Shamsuddin Abbasi
Mr. Justice Ali Haider 'Ada',

Cr. Appeal No. D-31 of 2022

Appellant	Atta Muhammad s/o Abdul Razaque Gujar, Through Mr. Sarfraz Ahmed Junejo, advocate
State	Mr. Aitbar Ali Bullo, D.P.G for the State
Date of hearing	24-09-2025
Date of judgment	24-09-2025

J U D G M E N T

Shamsuddin Abbasi, J. Through instant criminal appeal, appellant Atta Muhammad s/o Abdul Razaque Gujar, has impugned the Judgment dated 16.09.2022, passed by the learned I-Additional Sessions Judge/MCTC, Jacobabad, in C.N.S Case No.26/2021, (re: The State V/S Atta Muhammad), arising out of Crime No. 61/2021 of P.S. Saddar, Jacobabad, for the offence 9(c) of C.N.S Act, 1997, whereby the learned trial court has found the appellant guilty for commission of offence punishable U/S 9(C) Control of Narcotics Substance Act, 1997, therefore, he was convicted u/s 265-H(2) Cr.P.C. and sentenced to suffer R.I. for life with fine of Rs.2,00,000/- (rupees two Lac only) and in case of default, he shall further undergo R.I. for one year. The accused is extended benefit of section 382-B Cr.P.C.

2. Relevant facts of the prosecution case according to FIR lodged by complainant ASI Aashique Ali Lashari on 03.04.2021 at 2030 hours are that on the same date, he along with his subordinates proceeded from PS vide entry No.25 at 1715 hours in police mobile for patrolling and during patrolling they arrested accused Atta Muhammad s/o Abdul Razaque Gujar from Quetta road near Batha curve and recovered one black colour bag containing 20 K.Gs Chars in shape of 40 slabs, each slab became 500 grams of Chars from his possession and after conducting personal search two currency notes of Rs.1000/- each, one mobile of Nokia company of black colour simple in nature along with mobilink Sim and CNIC were recovered from possession of accused by police party headed by ASI Aashique Ali Lashari of PS Saddar Jacobabad. Accused Atta Muhammad Gujar disclosed before police party that absconding accused Zahir Khan Pathan r/o Nawabshah City having cell No.0337-3116346 who told him to bring said Chars at Nawabshah city for him. Thereafter, complainant prepared such memo of arrest and recovery at spot in presence of mashirs PC Baal Khan and PC Israr Ahmed. Thereafter police party brought the arrested

accused and recovered property at PS, where complainant lodged such FIR against accused on behalf of State where, he was booked in the instant case u/s 9(c) of Control of Narcotics Substances Act.

3. After completion of codal formalities, formal charge was framed against the present appellant at Ex.7, to which he denied, pleaded not guilty and claimed trial vide his plea at Ex.7-A.

4. At trial, the prosecution examined PW-1 SIP Aashique Ali Lashari at Ex.8, who produced the memo of arrest and recovery, FIR, attested copies of entries No.31,32,53 and 4 on two pages at Ex.8-A to 8-D respectively, PW-2 PC Babal Khan who is also mashir of this case at Ex.9, who produced the memo of visiting wardhat at Ex.9-A, PW-3 PC Shahzad Hussain Ansari at Ex.10, who produced the RC receipt and attested copies of entries No.35 and 27 on one page at Ex.10-A and 10-B respectively, PW-4, I/O SIP Abdul Rasheed Brohi at Ex.11, who produced attested photocopy of entry No.388 of Register No.19, attested photocopy of permission letter and Chemical report dated. 22.04.202021 at Ex.11-A to 11-C respectively. Thereafter, learned DDPP for State closed the side of prosecution vide statement kept on record at Ex.12.

5. In his statement recorded U/S 342 Cr.P.C. at Ex.13, the above named accused denied the allegations leveled against him by the prosecution and stated that all PWs are police officials and subordinates of complainant and they have deposed falsely against him in order to show their efficiency. He further stated that he is innocent, as he was coming from Usta Muhammad Baluchistan for purchasing articles for his cabin and police arranged and implicated him in this false case by foisting Charas upon him, hence he prayed for justice.

6. On conclusion of trial, the learned trial Court found the appellant guilty of the offence charged with and, thus, convicted and sentenced him as stated in para-1 (supra), which necessitated the filing of the listed appeal.

7. Learned counsel for the appellant submits that he would not press this appeal on merits if the conviction and sentences awarded to the appellant are reduced to the period which he has already undergone contending that he has no previous criminal record in his credit, he is not a dangerous, desperate and hardened criminal as well as not a previous convict and served sufficient punishment and due to his confinement in jail his family members are passing a miserable life and that he undertakes that he will prove himself as a law abiding citizen and will not indulge in any unlawful act in future.

8. On the other hand, the learned D.P.G while supporting the impugned judgment has argued that prosecution has successfully proved its case against the appellant beyond reasonable shadow of doubt, therefore, the appeal merits no consideration and is liable to be dismissed. He, however, has not disputed

the submission of the appellant with regard to the conversion of sentence into the period already undergone and extended his no objection to that extent.

9. We have heard the learned counsel for the appellant, learned D.P.G for the State and have gone through the entire material available before us with their able assistance.

10. A keen look of the record reveals that all the prosecution witnesses while appearing before the learned trial Court have supported the case of the prosecution and involved the appellant in the commission of offence leaving no occasion for his false implication due to any ill-will or animosity. We are, thus, in agreement with the submission of learned D.P.G that the prosecution has successfully proved its case against the appellant beyond any reasonable shadow of doubt and the appeal merits no consideration.

11. Insofar as the submission of the learned counsel for the appellant with regard to reduction of sentence into the period already undergone by the appellant on the ground that he is not a dangerous, desperate and hardened criminal as well as not a previous convict is concerned, suffice to observe that the appellant has served out the sentence of 04 years, 05 months and 21 days and also earned remission of 11 years and 5 days as on 24.09.2025. As per jail roll, total period he remained in jail including remission period is 15 years, 05 months and 26 days and his unexpired portion of sentence is 10 years, 06 months and 04 days. Support is drawn from the case of Zafar Iqbal Vs. The State (2022 SCMR 1375).

12. Per learned counsel for the appellant family of appellant is passing a miserable life due to his confinement in jail. Needless to say that normally, it is very difficult for a family to survive without support of earning member of the family. The position, being so, would be nothing but causing misery to the family of the appellant on account of his act. The peculiar facts and circumstances, so pleaded by the appellant, having gone unchallenged by prosecution may well be taken into consideration for departing from the normal practice. The learned counsel for the appellant undertakes that the appellant will prove himself a law abiding citizen and will not indulge in any unlawful act in future. He is a first offender and has no previous criminal history in his credit and only earning member of his family as well as served a sufficient sentence, therefore, it would be appropriate that appellant may be given an opportunity to improve himself as a law abiding citizen.

13. It is, however, pertinent to note that awarding punishment is only meant to have a balance in the society because all the divine laws speak about hereafter. Thus, conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation so as to bring peace which could only be achieved either by keeping evils away (criminals inside jail) or strengthening the society by reforming the guilty. The law itself has categorized the offences. There are certain offences, the punishment whereof is with phrase “not less than” while there are other sentences which are with phrase “may extend upto”. Such difference itself is

indicative that the Courts have to appreciate certain circumstances before setting quantum of punishment in later case which appear to be dealing with those offences, the guilty whereof may be given an opportunity of "reformation" by awarding less punishment which how low-so-ever, may be, will be legal. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family.

14. The FIR was registered on 03.04.2021 and the appellant was arrested on the same date. After the usual investigation, the challan was submitted by the Investigating Officer, upon which the learned trial court took cognizance of the alleged offence against the appellant. In this case, the charge was framed and thereafter the learned trial court convicted the appellant under the provisions of Section 9(c) of the Control of Narcotic Substances Act, 1997.

15. In view of above, the convictions and sentences are modified in accordance with the original provisions of the Control of Narcotic Substances Act, 1997 (prior to amendment). As per the precedent laid down in ***Ghulam Murtaza v. The State*** **(PLD 2009 Lahore 362)**, the prescribed punishment for possession of up to twenty kilograms of narcotic substance is R.I for life or death and Fine of Rs. 100,000/-. The appellant has already served this duration as per the jail roll.

16. Keeping in view the above facts and circumstances of the case, we are of the considered view that prosecution has discharged its burden of proving the guilt of the appellant beyond reasonable shadow of doubt, thus the appeal, insofar as it impugns conviction, is dismissed on merits. However, while entertaining the plea that the appellant is sole bread earner of his family, who is passing a miserable life, and the appellant is not a previous convict, we find it a fit case for departure from the normal practice of determining quantum of sentence. Therefore, in our view it would serve both the purposes of deterrence and reformation, if the sentence is modified and reduced to one already undergone.

17. Accordingly, in view of above, the sentence awarded to the appellant through impugned judgment dated 16.09.2022 is modified and reduced to one already undergone, which also include the sentence awarded in lieu of fine. The appellant shall be released forthwith if not required to be detained in connection with any other criminal case.

18. The instant Criminal Jail Appeal is disposed of with above modification.

Judge

Judge

Abdul Salam/P.A