

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.D-52 of 2015

Present: **Mr. Justice Abdul Maalik Gaddi**
Mr. Justice Arshad Hussain Khan

Appellant: Akber son of Abdul Majeed alias Nokaf Buledi.

Respondent : The State through Syed Meeral Shah A.P.G. for the State alongwith SIP Muhammad Laiq of P.S Sakrand.

Surety: Surety Zulfiqar Ali present in person.

Date of Hearing : **10.01.2018**

Date of Judgment : **10.01.2018**

J U D G M E N T

ABDUL MAALIK GADDI, J – Appellant Akber son of Abdul Majeed alias Nokaf Buledi was tried by learned Special Judge (Narcotics), Shaheed Benazirabad in Special Narcotic Case No.490 of 2013. By judgment dated 18.05.2015, the appellant was convicted under section 9(c) Control of Narcotics Substances Act, 1997 and sentenced to suffer rigorous imprisonment for four years and six months and to pay fine of Rs.20,000/-, in case of default in payment of fine he was ordered to suffer simple imprisonment for five months more. Benefit of section 382-B Cr.P.C was extended to the accused.

2. Learned trial court framed the charge against the accused under section 9(c) Control of Narcotics Substances Act, 1997 at Ex.06. Accused pleaded not guilty and claimed to be tried vide pleat at Ex.7.

3. At the trial, the prosecution in order to substantiate the charge examined P.W-1 complainant SIP / S.H.O Ali Asghar Rind at Ex.8, who produced mashirnama of arrest and recovery at Ex.8/A, F.I.R. at Ex.8/B, photo attested copies of roznamcha entries of departure and arrival at Ex.8/C-1 and 2, mashirnama of wardat place at Ex.8/D, chemical report at Ex.8/E, and P.W-2

mashir Raj Muhammad Ali at Ex.9. Thereafter, prosecution side was closed at Ex.10.

4. Statement of accused was recorded under section 342 Cr.P.C at Ex.11, in which the accused denied the prosecution allegations and claimed that he has been falsely implicated in this case due to enmity with Jakhra community and that he was arrested by S.H.O Imam Din Chandio who was close friend of his enemies. Accused did not lead evidence in defence and also declined to examine himself on oath in disproof of the prosecution allegation.

5. Trial Court after hearing the learned counsel for the parties, by judgment dated 18.05.2015, convicted the appellant under section 9(c) of Control of Narcotics Substances Act, 1997 and sentenced to suffer rigorous imprisonment for four years and six months and to pay fine of Rs.20,000/-, in case of default in payment of fine, Accused was ordered to suffer simple imprisonment for five months more. Benefit of section 382-B Cr.P.C was extended to the accused

6. Appellant filed instant appeal against the impugned judgment, it was admitted to regular hearing vide orders dated 02.06.2015. During pendency of appeal, application for suspension of sentence was preferred on behalf of the appellant and sentence of the appellant was suspended vide order dated 01.07.2015, subject to furnishing a solvent surety in the sum of Rs.100,000/- and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court. It appears that surety was furnished on 25.06.2016 and thereafter appellant was released. After release in the year 2016, the appellant remained absent since 06.09.2017. NBWs were repeatedly issued against the appellant and notice issued to surety. SIP Muhammad Laiq of P.S Sakrand has returned the NBWs unexecuted with the endorsement that the appellant has become absconder and shifted to unknown place and is not residing at the given address and there is no likelihood of his arrest in near future and his whereabouts are not known. Surety Zulfiqar Ali in terms of notice under section 514, Cr.P.C was present on the last date of hearing viz. 07.12.2017 and today also he is present in person and submits that he has no knowledge about the appellant.

7. Learned Additional Prosecutor General Sindh submits that after suspension of sentence, the appellant has absconded away and is deliberately concealing himself at some unknown place.

8. We have heard the learned A.P.G and scanned the record. It is proved that the appellant is concealing himself deliberately after suspension of sentence and he has become fugitive from the law. The law is settled by now that a fugitive from law and Courts loses some of normal rights granted by procedural as well as substantive law. The Honourable Supreme Court in the case of *IKRAMULLAH AND OTHERS V/S. THE STATE (2015 SCMR 1002)* has observed as under:-

“9. A report dated 11.12.2014 has been received from the Superintendent, Central Prison, Bannu informing that Adil Nawab appellant had escaped from the said jail during the night between 14/15.04.2012 and he has become a fugitive from law ever since. The law is settled by now that a fugitive from law loses his right of audience before a Court. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court for seeking resurrection of this appeal.”

9. In view of the report of SIP Muhammad Laiq of P.S Sakrand, it is clear that the appellant has become a fugitive from the law, as since appellant loses some of normal rights granted by procedural as well as substantive law. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal. Since notice under section 514, Cr.P.C was issued against the surety, who is present in person and is seeking some time to file reply, time is granted to him. Separate proceedings against surety shall be continued. Adjourned to a date in office for proceedings against surety.

JUDGE

JUDGE