

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 693 of 2021

Criminal Jail Appeal No. 694 of 2021

Appellant : Sanaullah – Not represented

Respondent : The State
through Mr. Muntazir Mehdi, D.P.G.

Date of hearing : 7th November, 2022

Date of order : 10th November, 2022

ORDER

Omar Sial, J.: Sanaullah was an accused in F.I.R. No. 198 of 2017 registered under sections 395, 109 and 412 P.P.C. as well as F.I.R. No. 218 of 2017 registered under section 23(1)(a) of the Sindh Arms Act, 2013. Both F.I.R.s were registered at the Boat Basin police station on 20.04.2017 and 28.04.2017 respectively. On 24.07.2021, the learned 10th Additional Sessions Judge, Karachi South found him guilty of both offences and sentenced him to (i) imprisonment for 8 years and a fine of Rs. 100,000 (or another 1 year in prison if he did not pay the fine), and (ii) 7 years imprisonment and a fine of Rs. 20,000 (or another 6 months in prison if he did not pay the fine) in the case arising out of F.I.R. No. 218 of 2017.

2. Sanaullah could not afford to engage a private counsel hence one at State expense was given to him. Regrettably, learned counsel after his appointment showed no interest in the cases entrusted to him. Sanaullah's mother and wife appeared in court and requested that an order for Sanaullah's release may be made as he had completed his sentence. Upon their representation, a jail roll was called. The jail roll had treated the 2 punishments to run consecutively, as the learned trial judge had not ordered that the sentences run concurrently possibly because 2 separate judgments were announced albeit on the same day. The jail authorities were asked to furnish a fresh jail roll to depict the position if the 2 sentences were to run concurrently. Such a jail roll was also provided by the Senior Superintendent Central Prison on 08.11.2022. The jail roll shows that the total sentence Sanaullah faced was 9 years and 6 months. This included the

sentence in lieu of fine running consecutively. Out of this period, the appellant has served 8 years 3 months 28 days. In essence he has served out his sentence except that in lieu of fine.

3. The mother and wife of the appellant are extremely poor people who were unable to engage a counsel to effectively represent their son/husband. They have quite emotionally submitted that apart from Sanaullah, there is only an old father at home, who does no work as he suffers from a serious kidney ailment himself. They say, and I have no reason to disbelieve them, that neither are they in the financial position to pay the fine levied nor will they ever be in such a position keeping their circumstances at home in mind. They requested that they, and Sanaullah himself, did not want to press these appeals on merit but prayed that some mercy be shown to them due to their financial position.

4. The learned DPG does not object if the fine amount, on humanitarian basis, is reduced. I have heard the mother and the wife of the appellant as well as the learned DPG. It is sad to see the impact that Sanaullah's misdeeds have had on his family. In essence, the entire family has been punished for his wrongs. It appears now that Sanaullah, as he does not want to press his appeal on merits, repents what he had done and is remorseful. As mentioned above he has served out a sentence of 8 years 3 months and 28 days. The family should not be punished further solely on account of their poverty. Courts have historically shown great magnanimity in similar situations.

5. In view of the foregoing, both appeals stand dismissed as withdrawn; however, with the following modification in the sentence of the appellant:

- (i) The sentences awarded to the appellant in the cases arising out of F.I.R. No. 198 of 2017 registered under sections 395, 109 and 412 P.P.C. as well as F.I.R. No. 218 of 2017 registered under section 23(1)(a) of the Sindh Arms Act, 2013 shall run concurrently.
- (ii) The fine amount in the case arising out of F.I.R. No. 198 of 2017 registered under sections 395, 109 and 412 P.P.C. is reduced to Rs.30,000 or a further period of six months simple imprisonment if the said amount is not paid.

- (iii) The appellant may be released upon payment of fine in both the cases and if he is not wanted in any other custody case. If he does not pay the fine in both the cases, the sentence in lieu of fine shall run consecutively and he may be released once that sentence is over and if he is not required in any other custody case.

JUDGE