

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Criminal Appeal No.D-93 of 2022

**PRESENT.**

Mr. Justice Arshad Hussain Khan.

Mr. Justice Muhammad Saleem Jessar.

Date of hearing: 03.01.2023.

Date of Judgment 03.01.2023.

Appellant : Ali Bux alias Ali Muhammad S/o Muhammad Achar, Through Mr. Muhammad Jameel Ahmed Advocate.

The State : Through Mr. Shahzado Saleem Nahiyoon Addl. P.G.

**JUDGMENT**

**Arshad Hussain Khan, J.-** Through instant criminal appeal, above named appellant has assailed the judgment dated 04.08.2022 passed by learned Additional Sessions Judge / Special Judge Narcotic, Dadu, in Special Case No.188 of 2022 (Re: the State v. Ali Bux alias Ali Muhammad), arising out of Crime No.08 of 2022, registered with P.S Rukkan for offences under Section 9 (c) CNS Act 1997 (Sindh Amendment) 2021, to suffer R.I. for five (05) years and 06 months and to pay fine of Rs.25000/- In case of default he shall suffer S.I. for five (05) months and fifteen (15) days more. Benefit of Section 382-B Cr.P.C. was also extended to the appellant / accused. Hence this appeal.

2. Learned counsel for the appellant at the very outset states that appellant is first offender and will not repeat the same offence and he

is sole bread earner of his family; besides he has been facing hardships of the trial since inception of the case. He further submits that the appellant has remained as under trial prisoner in District Jail Dadu and said period has not been accounted for by the Senior Superintendent Central Prison, Hyderabad while issuing jail roll dated 28.11.2022. He next submits that per impugned judgment the appellant has been awarded five (05) years rigorous imprisonment and according to the Jail Roll the appellant has served out major portion of said punishment and, therefore, the appellant has sufficiently been punished, however, he submits that he would be satisfied and would not press disposal of instant appeal on merits if a lenient view is taken by this Court and quantum of sentence is reduced to that of already undergone by the appellant.

3. Learned Additional P.G Sindh has very candidly extended his no objection.

4. Heard learned counsel for the appellant, learned A.P.G. for the State and perused the record.

5. Perusal of record reflects that appellant after full dressed trial was convicted and sentenced to suffer R.I. for five (05) years and 06 months and to pay fine of Rs.25000/- In case of default he shall suffer S.I. for five (05) months and fifteen (15) days more. Benefit of Section 382-B Cr.P.C. was also extended to the appellant / accused. Record reflects that the appellant has served out major portion of his sentence and being first offender and only bread earner of his poor family and the sentence served by the appellant is sufficient to learn lesson, therefore, we, while taking lenient view against the appellant

hold that appellant has made out his case where he deserves leniency being proposed by learned Counsel.

6. Keeping in view the special features/mitigating circumstances mentioned above, learned A.P.G's no objection and the fact that the appellant has undergone a substantial portion of his sentence, we find it a fit case for departure from normal practice of determining quantum of sentence and while dismissing this appeal maintain conviction and sentence awarded to the appellant by learned trial Court vide impugned judgment dated 04.08.2022, reduce the sentence awarded to appellant to one already undergone by him including fine. The appellant shall be released forthwith if not required in any other case.

Appeal is disposed of accordingly.

JUDGE

JUDGE

Arif.