

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Appeal No.D-50 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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Before:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Amjad Ali Sahito

Date of hearing: 17.08.2022
Date of judgment: 17.08.2022.

Appellant/accused : Habibullah S/o Rehmatullah Brohi ,
through Mr. Ghulam Mustafa Abbasi,
Advocate.

The State: : Through Mr. Nazar Muhammad Memon,
Additional P.G Sindh.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J- Appellant was arrested on suspicion alongwith co-accused Nasrullah @ Shakirullah from Daryaband near Gauging Office, by police party of P.S Kotri, Jamshoro during patrolling on 31.08.2021 and 1150 grams of chars were recovered from appellant Habibullah and 1080 grams were recovered from co-accused, resulting in registration of present case.

2. During investigation, the entire property was sent for chemical analysis and the report thereof came in positive. In the trial, prosecution examined 04(four) witnesses namely, SIP Ali Khan Rahujo, HC Sharafuddin, WHC Muhammad Yaseen and SIP Mansoor Ali Bhatti, who have submitted all the necessary documents including FIR, relevant entries and report of chemical analyzer etc.

3. The trial Court after appreciating the evidence and the documents brought on record convicted and sentenced the appellant to undergo R.I for 04 years and to pay fine of Rs.20,000/-, in default thereof, to undergo S.I for 05 months more, which he has challenged by means of instant appeal.

4. We have heard the parties and perused the record. Learned Counsel for the appellant at the very outset, stating that

appellant is first offender and has never been involved in the case of like manner and is a sole bread earner of his family, does not press this appeal on merits and requests for taking a lenient view by converting his penalty to a period already undergone by him. Learned Additional Prosecutor General does not oppose this request on the ground as stated above.

5. We have gone through the evidence of the witnesses, who have supported the prosecution case on its salient features; arrest of appellant and recovery of narcotics from him, is further emphasized by the positive report of chemical analyzer. There appears to be no material contradiction. It is obvious that prosecution has been able to prove its case against the appellant beyond a reasonable doubt. However, at the same time, it may be mentioned that there is no material on record that appellant is a habitual offender or a previous convict. He is stated to be the first offender as has been confirmed by the learned Additional Prosecutor General.

6. The jail roll received today indicates that appellant has served his sentence i.e. 02 years, 09 months and 14 days including remission and un-expired portion of his sentence is 01 year, 07 months and 16 days. There is no bar to any minimum punishment provided by law for 1150 grams of chars and it could go upto life imprisonment. Therefore, there is no impediment, legal or otherwise, in acceding to the request of the learned Defence Counsel, not opposed by the learned Additional Prosecutor General, in such circumstances. We, therefore, by dismissing the appeal on merits convert the sentence of the appellant to a period already undergone by him. The order of the trial Court regarding fine of Rs.20,000/- and 05 months S.I in lieu thereof shall remain intact. Appellant Habibullah shall be released forthwith if not required in any other custody case on payment of aforesaid fine amount or after serving S.I for 05 months as stated above.

The appeal stands disposed of in above terms.

JUDGE

JUDGE

Shahid