

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

Cr. Jail Appeal No.D-115 of 2021

PRESENT

*Mr. Justice Naimatullah Phulpoto
Mr. Justice Shamsuddin Abbasi.*

*Date of Hearing: 17.02.2022
Date of Judgment: 22.02.2022*

*Appellant/accused: Mir Khan S/o Darya Khan Rind.
Through Mr. Toseef Ahmed
Chandio, Advocate.*

*The State: Mr. Shahzado Saleem Nahiyoon,
Additional P.G.*

JUDGMENT

NAIMATULLAH PHULPOTO, J:- Appellant namely Mir Khan has been booked in a case FIR No.69 of 2020 registered at P.S Kunri in respect of an offence under Section 9(b) Control of Narcotic Substances Act, 1997 with an allegation that he was apprehended while in possession of 200 grams of chars. After regular trial, appellant was convicted under Section 9(b) Control of Narcotic Substances Act, 1997 and sentenced to suffer R.I for 03 years and to pay fine of Rs.20,000/-. In case of default in payment of fine, he was ordered to suffer S.I for 06 months more. Appellant was extended benefit of Section 382-B Cr.P.C.

2. After usual investigation, challan was submitted against the appellant under the above referred section.

3. Trial Court framed charge against the accused under Section 9(b) Control of Narcotic Substances Act, 1997 at Ex-5. Accused pleaded not guilty and claimed to be tried.

4. In order to prove its' case, prosecution examined PW SIPs Panjo Mal, Lalu Mal and PC Aamir Farooque. Thereafter, prosecution side was closed.

5. Trial Court recorded statement of accused under Section 342 Cr.P.C at Ex-10, in which the accused denied the allegations of the prosecution and claimed his false implication in this case. Accused did not lead evidence in defence and declined to be examined himself on oath in disproof of the prosecution allegations.

6. Trial Court after hearing the learned Counsel for the parties and examining the evidence, vide judgment dated 12.08.2021, convicted the appellant under Section 9(b) Control of Narcotic Substances Act, 1997 and sentenced as stated here-in-above. Being aggrieved and dissatisfied with the judgment recorded by the trial Court appellant has filed this jail appeal.

7. Learned Counsel for appellant did not press the appeal on merits and submitted that appellant is a poor person and is sole supporter of his old mother, his father has expired. It is further submitted that appellant is unmarried young boy and has admitted his guilt before this Court, besides expressed remorse and repentance with an assurance not to deal with narcotics in future. He lastly submitted that his sentence may be reduced to already undergone. In support of his submissions, reliance is placed upon the case of STATE through the Deputy Director (Law), Regional Directorate, Anti-

Narcotics Force v. MUJAHID NASEEM LODHI (PLD 2017 Supreme Court 671).

8. Learned Additional Prosecutor General submitted that appeal is not pressed on merits, appellant is first offender, lenient view may be taken in the sentence.

9. Heard learned Advocate for appellant, Additional Prosecutor General and perused the evidence minutely. Appellant is also produced in Court by jail authorities, he has also been heard.

10. The facts of this case as well as evidence produced before trial Court find an elaborate mention in judgment passed by trial Court and therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

11. Reappraisal of entire evidence led by the prosecution reflects that prosecution was successful in proving its' case beyond any reasonable doubt. The defence theory of the appellant was also discussed and considered by the trial Court and it was found afterthought. Evidence of the police officials was corroborated by the positive chemical report, so we are of the considered view that evidence of the police officials was trustworthy and confidence inspiring. Trial Court has rightly appreciated the evidence according to the settled principles of law and requires no interference by this Court.

12. As regards to the sentence recorded against appellant by the trial Court is concerned. Appellant is a young man, aged about 24 years; first offender. He has admitted before this Court that he was found in possession of 200 grams of chars. Appellant expressed

remorse and repentance with an assurance not to deal with narcotics in future. Appellant further submits that he is a poor person and supporter of his old mother as his father has expired.

13. It may be observed that in the case of GHULAM MURTAZA and another v. The STATE (PLD 2009 Lahore 362) some guidelines had been laid down vis-à-vis sentencing in the case of narcotic substances. Said judgment of the Lahore High Court had been approved by the Honourable Supreme Court in the case of AMEER ZEB v. STATE (PLD 2012 Supreme Court 380). We have noticed that in Para-10 of the judgment handed down by the Lahore High Court, Lahore, in above mentioned case, it has been observed as under:-

“10...that in a particular case carrying some special features relevant to the matter of sentence a court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure”.

14. **We depart from the above mentioned sentencing guidelines for the reasons that appellant is young, aged about 24 years, un-married and supporter of his old mother. Appellant has admitted the guilt, expressed repentance and assures that he will not commit offence of such nature in future. As per jail roll, appellant has already served the sentence of 01 year 09 months and 07 days and has earned remission of 01 year upto 16.02.2022. The un-expired period of his sentence is 08 months and 23 days. In the above stated` special features, the sentence already served by the appellant would meet the ends of justice. Reliance is placed upon the case of STATE through the Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v. MUJAHID**

NASEEM LODHI (PLD 2017 Supreme Court 671). Relevant portion

is reproduced as under:-

"5.....We note that in paragraph No. 10 of the judgment handed down by the Lahore High Court, Lahore in the above mentioned case it had been observed that "in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure." In the case in hand the trial court had recorded reasons for passing a sentence against the respondent which made a departure from the above mentioned sentencing guidelines. The trial court had observed that the respondent had made a confession before the trial court besides expressing remorse and repentance with an assurance not to deal with narcotics in future....."

15. Learned Advocate for appellant did not press appeal on merits, we therefore maintain the conviction recorded by trial Court vide judgment dated 12.08.2021, however, for above stated reasons, reduce the sentence to already undergone. So far the fine of Rs.20,000/- is concerned, it is remitted in view of the above peculiar circumstances of the case. Appellant is produced in custody. He is remanded back with direction to the Superintendent Central Prison, Mirpurkhas, to release the appellant forthwith if he is not required in some other custody case.

In the view of above, appeal is disposed of in above terms.

JUDGE

JUDGE