

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Appeal No.D-123 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of MA-9849/2016
2. For hearing of MA-9850/2016

27.04.2017

Mr. Ghulamullah Chang, Advocate for appellant.
Syed Meeral Shah Bukhari, D.P.G

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NAIMATULLAH PHULPOTO, J:- Appellant Farooq Shah was tried by learned Sessions Judge/Special Court (CNS), Jamshoro in Special Case No.33 of 2014 arising out of Crime No.04 of 2014 registered at P.S Excise & Narcotic Circle, Kotri for offence under Section 9(c) Control of Narcotic Substances Act, 1997. By judgment dated 17.11.2016, the appellant was convicted under Section 9(c) Control of Narcotic Substances Act, 1997 and sentenced to 05 years R.I and to pay a fine of Rs.500,000/-, in case of default in payment of fine, the appellant was ordered to suffer R.I for one year more. Benefit of Section 382(B) Cr.P.C was extended to the appellant. Alongwith appeal an application under Section 426 Cr.P.C for suspension of sentence is also moved.

2. Mr. Ghulamullah Chang, learned Advocate for the appellant contended that the appellant was awarded 05 years sentence, which is a short sentence. Learned Advocate for the appellant further contended that the appellant has already served over 03 years' sentence and hearing of the appeal will take some time. Lastly, it is contended that the appellant is the sole provider of a large family. In support of his contentions, the learned Counsel has relied upon

the cases reported as *Nazeer Ali alias Nazeer V/s. The State (2011 YLR 403 Karachi)* and unreported *Cr.Appeal No.D-44 of 2014 (Asghar alias Munawar V/s. The State)*.

3. Syed Meeral Shah Bukhari, learned D.P.G recorded no objection for suspension of the sentence on the ground that the appellant has already served out 02 years 06 months and 16 days and earned remission of more than 05 months.

4. This Court in Criminal Appeal No.D-44 of 2014 dated 06.01.2015, while suspending the sentence during pendency of appeal, has observed as under:-

“In view of the submissions made by the learned Counsel for the appellant, no objection recorded by learned A.P.G and taking into consideration that the appellant has served out sentence of three years and seven months and only two years and five months sentence remains to be served by him, which is short punishment. This appeal may also take some time, therefore, relying on the aforesaid case laws and no objection recorded by learned D.P.G. The application for suspension of sentence is allowed. Let the appellant be released on bail, on his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand) and PR bond in the like amount, to the satisfaction of Additional Registrar of this Court.”

5. We have considered the submissions made by learned Advocate for the appellant and no objection recorded thereon by the learned D.P.G, so also the Jail Roll. It appears that the appellant was convicted under Section 9(c) Control of Narcotic Substances Act, 1997 and sentenced to 05 years R.I. As per Jail Roll dated 10.04.2017 submitted by Senior Superintendent Central Prison, Hyderabad, the appellant has served 02 years 06 months and

16 days upto 10.04.2017 and he has earned remission for 05 months and 16 days, while un-expired portion of sentence of the appellant has been shown as 02 years 11 months and 28 days. Since the appellant has already served out 02 years 06 months and 16 days and has earned more than 05 months as remission upto 10.04.2017 and keeping in view the short sentence of 05 years, while relying upon the above cited case law and observing that this appeal shall take time in view of the existing pendency of cases, the application bearing M.A No.9849 of 2016 for the suspension of appellant's sentence is allowed.

6. During pendency of the appeal, sentence awarded to the appellant by the Trial Court vide judgment dated 17.11.2016 is hereby suspended. Appellant is ordered to be released on bail, subject to furnishing solvent surety in the sum of Rs.200,000/- (Two Hundred Thousand Only) and P.R Bond in the like amount to the satisfaction of the Additional Registrar of this Court.

JUDGE

JUDGE