

**IN THE HIGH COURT OF SINDH, KARACHI**

*Present:*

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Zulfiqar Ali Sangi*

**SPECIAL CRIMINAL A.T. APPEAL NO.531 OF 2021.**

<b>Appellant</b>	Aslam Khan s/o Akram Khan through Mrs. Zahida Majeed, Advocate.
<b>Respondent</b>	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
<b>Date of Hearing</b>	26.08.2022
<b>Date of Order</b>	26.08.2022.

**JUDGMENT**

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant Aslam Khan son of Akram Khan was tried in the Court of VIII Additional Sessions Judge / Model Criminal Trial Court, Karachi West in Sessions Case No.502/2021 under FIR No.112/2021 u/s 6/9(C) of CNS Act 1997, registered at PS SITE-A, Karachi and vide judgment dated 08.09.2021 he was convicted of the said offence and sentenced to suffer R.I. for four years and six months with fine of Rs.20,000/- and in case of default in payment of fine he shall suffer further S.I. for five months. However, the appellant was granted benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per F.I.R. are that the complainant SIP Muhammad Ashraf Mughal of PS SITE-A left PS along with HC Waqar Danish, PC Yaseen, PC Ata-ur-Rehman and PC Tauqeer for patrolling on private motor cycles. During patrolling when they reached at main road, Bawani chali, near Exide Battery Company, SITE, Karachi at 0030 hours, they saw that one Suzuki Hi-Roof of white color was coming from Valika Hospital, in suspicious condition. They tactfully stopped the Suzuki Hi-Roof and they saw that one driver was available in the Suzuki. On inquiry the driver disclosed his name as Alsam Khan son of Akram Khan. The number of Suzuki Hi-Roof was CT-4419. On

personal search of driver SIP recovered one blue color plastic shopper from his lap and on checking the same SIP recovered 2 pieces of charas like chittar from the shopper. On further search of Suzuki Hi Roof SIP also recovered 02 cartons containing 24 pints of wine total 48 pints. On further search of Suzuki Hi Roof SIP also recovered 3 cartons containing 24 pints of Vat-1 total 72 pints. On further personal search of accused SIP recovered Rs.1200/- from side pocket of his shirt, color copy of CNIC in the name of accused and one mobile phone from his possession. Then he sealed the case property and prepared the memo of arrest and recovery on the spot and brought the accused at PS and lodged the FIR against him.

3. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 03 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him and claimed false implication by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 08.09.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions stated that he did not press the appeal on merit and the appellant accepted his guilt provided that he was given some reduction in sentence based on following mitigating factors:-

- i) That the appellant was a young man, who had a large family to support.
- ii) That the appellant has not been convicted in any other narcotic case and ~~was~~ is capable for reformation.



- iii) That the appellant had admitted his guilt and shown genuine remorse.
- iv) That the appellant had served out a substantial portion of his sentence.

8. Based on the above mitigating factors, the learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellant.

9. We have gone through the evidence and found that the appellant was arrested on the spot and recovered from his possession 2 pieces of charas and wine in substantial quantity. The arresting officers had no enmity with the appellant to falsely implicate him in this case and as such we believe their evidence which we find to be reliable trustworthy and confidence inspiring, the recovered charas was sent to chemical analysis which report received as positive, as such we find that the prosecution has proved its case against the appellant beyond any reasonable doubt and maintain his conviction.

10. With regard to the sentence we note that the same handed down to the appellant is in accordance with sentencing guidelines as laid down in the case of **Ghulam Murtaza v The State** (2009 PLD Lahore 362). However, in Ghulam Murtaza case (supra) it is mentioned that if there were any special features/mitigating circumstances which justify a variation from the aforesaid sentencing guideline to the sentence handed down to the appellant the court in its discretion may make such variation.

11. Based on the mitigating factors raised by learned counsel for the appellant and the no objection of learned Addl. P.G. to a reduction in sentence based on such factors and the fact that the appellant has completed a substantial part of his sentence, we hereby reduce the appellant's sentence to the period already undergone in custody and waive off any fine payable by him. The appellant shall be released unless he is wanted in any other custody case.

12. The instant appeal stands disposed of in the above terms.