

Narcotics : Undergone

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IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Arshad Hussain Khan.

CRIMINAL APPEAL NO.67 OF 2022.

Appellant	Azmat Khan s/o. Muhammad Yousuf through Ms. Sanawera Hashmi, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Judgment	15.12.2022.

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellant Azmat Khan s/o. Muhammad Yousuf was tried in the Court of VII Additional District & Sessions Judge (Model Criminal Trial Court-02) Karachi Central in Special Case No.294/2021 arising out of Crime No.168/2021 u/s. 6/9-C of CNS Act, 1997 registered at P.S. Rizvia Society Karachi and vide impugned judgment dated 19.01.2022 convicted under section 265-14(2), Cr.P.C. for committing an offence punishable under section 9(c) of the Control of Narcotics Substances Act, 1997 and was sentenced to undergo R.I. for four (04) years along with fine of Rs.20,000/-. In case of default in payment of fine, he was ordered to suffer S.I. for five (05) months more. However, the benefit of section 882-B Cr.P.C. was also extended to the appellant.

2. Brief facts of the prosecution case are that on 14.02.2021 at about 04:30 hours accused Azmat Khan was arrested from Qabil Bazar, Leroy's Colony, Karachi on spy information by police party led by complainant Mr. Tasadaduq Hussain who recovered 1140 grams Charas (02 piece of charas) and so also recovered one mobile phone NOKIA and cash of Rs.400/- from the possession of accused in presence of police mashirs. Hence, this FIR was lodged accordingly.

3. After usual investigation, the matter was challaned and the appellant was sent up to face the trial where he pleaded not guilty and claimed trial.

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 claimed false implication however, neither he gave evidence on oath nor called any DW in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellant as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction. The facts and evidence elaborately discussed by the trial court in the impugned judgment and there is no need to reproduce the same in order to avoid unnecessary repetition and duplication.

6. At the very outset, learned counsel for the appellant under instructions stated that the appellant did not contest his case on merits and accepted his guilt and only sought reduction in his sentence based on the following mitigating circumstances:-

- a) That the appellant had a large family to support;
- c) That by accepting his guilt he has shown genuine remorse and saved the time of this Court;
- d) That the appellant has served out major portion of his sentence.

7. Based on these mitigating circumstances mentioned by the appellant, learned Additional Prosecutor General had no objection to the reduction in sentence to some reasonable extent.

8. We have gone through the evidence on record and find that on 14.02.2021 at about 0530 hours the appellant was arrested on the spot by the police officials and 1140 gram charas was recovered from his possession and the police officials have no enmity or ill will with the appellant and had no reason to implicate him in a false case and as such we believe their evidence which we find to be reliable, trustworthy and confidence inspiring. Narcotic recovered from the appellant sent for chemical analysis which produced a

positive chemical report and as such we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and uphold the conviction.

9. With regard to sentence keeping in view the mitigating circumstances raised by the appellant and no objection by the learned Additional Prosecutor General Sindh and in particular the fact that the appellant has served a major portion of his sentence, we hereby reduce the sentence of the appellant to the time he has already undergone in Jail and waive off any fine and as such the appellant shall be released unless he is wanted in any other custody case.

10. The appeal stands disposed of in the above terms.