

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Criminal Appeal No. D-46 of 2024

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Roshan s/o Gulsher Ahmed, Chohan
Through Mr. Rukhsar Ahmed Junejo,
Advocate

The State : *Through Mr. Mansoor Ahmed Shaikh, DPG*

Date of hearing : 24.12.2025

Date of decision : 24.12.2025

O R D E R

KHALID HUSSAIN SHAHANI, J.— This appeal is directed against the judgment dated 22.03.2024, passed by the learned Additional Sessions Judge-III/MCTC-II/Special Judge for (CNS), Sukkur, in Special Case No. 153 of 2023, arising out of FIR No.106 of 2023 of Police Station Rohri, District Sukkur. The impugned judgment convicts the appellant, Roshan Chohan, for an offence under Section 9(1)(d) of the Control of Narcotic Substances Act, 1997, and sentences him to rigorous imprisonment for fifteen years, along with a fine of Rs. 3,00,000/- (Three Hundred Thousand Rupees), with a default sentence of one year's simple imprisonment in case of non-payment of fine, while extending the benefit of Section 382-B Cr.P.C.

2. The prosecution case, as reflected in the FIR lodged by ASI Sher Ali, is that on 02.05.2023, during patrolling duty, the complainant apprehended the appellant and allegedly recovered ten sacks of hemp/bhang loaded on a Jumbo Rickshaw, weighing 160 Kgs in total, from which 1 Kg of hemp/bhang was separated from each sack for chemical analysis. The recovered hemp/bhang was sealed at the spot, a memo of arrest and recovery was prepared, and thereafter the accused

along with the case property was brought to the police station, where the FIR was registered on inter alia above facts.

3. At the outset, learned counsel for the appellant has urged that, according to the prosecution's own case, the alleged recovery of contraband took place on 02.05.2023, yet the same was dispatched to the Chemical Examiner, Chemical Laboratory Sukkur @ Rohri, only on 18.05.2023, thereby suffering an unexplained delay of sixteen days, for which no justification has been furnished by the prosecution. It is further pointed out that the incharge of the malkhana has neither been examined as a witness nor shown as a witness by the prosecution, with the result that the safe custody of the contraband and its safe transmission to the Chemical Laboratory remain unaccounted for. In these circumstances, it is contended that the chain of safe custody of the case property stands materially compromised, and that, while the appeal is not pressed on the point of conviction, the sentence already undergone by the appellant, amounting to over two and a half years, is more than sufficient and calls for a substantial reduction in sentence by this Court in exercise of its appellate jurisdiction.

4. Learned Deputy Prosecutor General, in all fairness, does not controvert the above-mentioned infirmities relating to the delayed dispatch of the case property for chemical examination and the missing link in the chain of safe custody. In view of the peculiar facts of the case, he candidly concedes that a reduction in sentence is warranted and raises no objection if the same is suitably modulated by this Court.

5. It is borne out from the record that the recovered quantity of contraband was 160 Kgs of hemp/bhang, which, under Section 9(i)(d) of the Control of Narcotic Substances (Amended) Act, 1997, may entail a

stringent punishment extending to life imprisonment, but not less than fourteen years, along with a fine not less than two hundred thousand rupees, where the quantity exceeds the limit specified in clause (b) of Section 9. However, the practical reality in the present case is that the appellant has already undergone incarceration for a period of more than two and a half years. Having regard to (i) the delay in sending the case property for chemical examination, (ii) the non-examination of the bearer of the sealed parcel, thereby casting serious doubt on the safe custody and safe transmission of the contraband, and (iii) the prosecution's express concession to a reduction in sentence, there is no legal impediment in extending leniency on the question of sentence, while maintaining the conviction.

6. In the light of the foregoing considerations, this appeal is partly allowed to the extent of sentence only. The conviction of the appellant under Section 9(i)(d) of the Control of Narcotic Substances Act, 1997, as recorded by the learned trial Court, is maintained. However, the sentence of fifteen years' rigorous imprisonment, along with the default sentence in lieu of fine, is reduced and commuted to the period already undergone by the appellant, which shall be treated as sufficient punishment, inclusive of the default imprisonment. The appellant shall be released forthwith, if not required in any other case.

JUDGE

JUDGE