

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Jail Appeal No. D-70 of 2024

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Muhammad Aslam s/o Allah Wadhayo, Channa
Through Mr. Achar Khan Gabol, 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.— The appellant, Muhammad Aslam son of Allah Wadhayo Channa, has called in question the judgment dated 06.05.2024 rendered by the learned Additional Sessions Judge-I/Special Judge (CNS), Khairpur, in Special Case No.171 of 2023 arising out of FIR No.03 of 2023 registered at Police Station Phuloo, District Khairpur. Vide the impugned judgment, the appellant was convicted under Section 9(d) of the Control of Narcotic Substances Act, 1997 (as amended by Act-2022) and was sentenced to undergo rigorous imprisonment for a term of fourteen years along with a fine of Rs.200,000/-, and in default thereof, to further suffer six months' simple imprisonment, with benefit of Section 382-B Cr.P.C.

2. The prosecution case, as unfolded in the FIR lodged by ASI Ghulam Sarwar Khuhro, is that on 28.04.2023, during the course of routine patrolling, the complainant allegedly apprehended the appellant and effected recovery of 30 kilograms of hemp/*bhang* contained in two bags (*bachkas*). A nominal amount of Rs.200/- was also allegedly recovered. It is asserted that the recovered contraband was sealed at the spot, *mashirnama* 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.

3. Learned counsel for the appellant, at the outset, has confined his arguments to the question of sentence. He has contended that according to the prosecution's own version, the alleged recovery was effected on 28.04.2023, whereas the case property was dispatched to the Chemical Examiner, Chemical Laboratory Sukkur @ Rohri, only on 02.05.2023, after an unexplained delay of four days. No justification, explanation, or cogent reason has been furnished by the prosecution to account for this delay. It is further argued that there exists a material contradiction regarding the safe custody of the case property. The complainant ASI Ghulam Sarwar Khuhro and *mashir* Muhammad Urs deposed that upon arrival at the police station, the case property was handed over to the Investigating Officer and kept in the malkhana through WHC/ASI Mumtaz Ali, with three seals affixed on each bag. However, PW ASI Mumtaz Ali stated that he received the case property directly from ASI Ghulam Sarwar Khuhro at 1500 hours, with four seals on each parcel. Moreover, Register No.XIX, produced as Exh.6/A, does not reflect the date and time of deposit of the case property in the malkhana. These omissions and inconsistencies, according to learned counsel, have seriously compromised the chain of custody, thereby eroding the evidentiary value of the chemical examiner's report. On this premise, it is urged that although the conviction is not being pressed, the sentence already undergone by the appellant, amounting to more than two and a half years, adequately meets the ends of justice and warrants substantial reduction.

4. Learned Deputy Prosecutor General, in a commendably fair manner, has not disputed the infirmities highlighted by learned counsel for the appellant. He candidly concedes that the delay in dispatch of the case property and the gaps in establishing safe custody are apparent on the record and, considering the peculiar facts and circumstances of the case, has raised no objection to an appropriate reduction in sentence.

5. It is evident from the record that the alleged recovery comprises 30 kilograms of hemp/bhang, which falls within the purview of Section 9(d) of the Control of Narcotic Substances Act, 1997 (amended Act-2022), prescribing a severe punishment extending up to life imprisonment, but not less than fourteen years, along with a mandatory fine. Nonetheless, it is equally significant that the appellant has already remained behind bars for a period exceeding two and a half years. The unexplained delay in sending the case property for chemical examination, the inconsistent testimonies regarding *malkhana* custody, the absence of material particulars in Register No.XIX, and the resultant doubt concerning safe custody and safe transmission of the contraband, coupled with the prosecution's express concession, collectively constitute mitigating circumstances justifying judicial leniency on the quantum of sentence, without disturbing the conviction.

6. In view of the foregoing discussion, the appeal is partly allowed to the extent of sentence. The conviction of the appellant under Section 9(d) of the Control of Narcotic Substances Act, 1997 (amended Act 2022), as recorded by the learned trial Court, is maintained. However, the sentence of fourteen years' rigorous imprisonment, including the default sentence, is reduced and commuted to the period already undergone by the appellant, which shall be deemed sufficient punishment in the circumstances of the case. The appellant shall be released forthwith, if not required to be detained in any other case.

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