

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

**Criminal Jail Appeal No. D-44 of 2021**

**Present:**

Mr. Justice Amjad Ali Sahito-J

Mr. Justice Jan Ali Junejo-J

**Appellant** : Muhammad Sarmad Ibrahim through Mr. Farhat Ali Bughti, Advocate.

**Respondent** : The State through Mr. Ali Anwar Kandhro, Addl. P.G. a/w I.O.

**Date of hearing** : **22.4.2025.**

**Date of Judgment** : 22.4.2025.

**J U D G M E N T**

**AMJAD ALI SAHITO-J.**:- This criminal jail appeal is directed against the judgment dated 23.11.2021 passed by the learned Special Judge (Control of Narcotic Substances), Kamber, in Special Case No.73 /2021, **arising out of FIR No.189/2021** registered at P.S. Kamber City under Section 9(c) of the Control of Narcotic Substances Act, 1997, whereby the appellant was convicted and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.500,000/-, and in default whereof, to suffer simple imprisonment for five months.

2. Briefly, the facts of the prosecution case are that on 02.08.2021, the complainant SIP Sikander Ali Channo, SHO P.S. Kamber City, along with subordinate staff was on patrol when he received spy information regarding transportation of narcotics in a white Toyota Car bearing No.BMF-818 Sindh. Acting on such information, the police intercepted the said vehicle near Shah Hassan Curve at Kamber-Larkana Road and apprehended the appellant, who disclosed his name as Muhammad Sarmad Ibrahim. Upon search, Rs.10,000/- and a Nokia mobile phone were recovered from his possession. A further search of the vehicle resulted in recovery of two sacks containing 120 packets of Charas, each weighing 1 kg, totaling 120 kgs. From the recovered

contraband, only 2 kgs were separated and sealed as samples under signatures of above mashirs for chemical analysis, and the remaining was sealed in two parcels.

3. After usual formalities, FIR was lodged and investigation was completed, culminating in a challan and accused/appellant was sent up to stand trial.

4. The charge was framed by learned trial Court to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined in all four witnesses and then learned DDPP for the State closed its side vide his statement at Exh:08. The statement of accused was recorded under Section 342 B Cr.P.C in which he denied the prosecution evidence but did not opt to state on oath in terms of section 340 (2) Cr.P.C or to produce defense evidence.

6. On concluding of trial, and after hearing both parties, learned trial Court convicted and sentenced the appellant under impugned judgment dated 23.11.2021, as stated above which is challenged by appellant in this appeal.

7. Learned counsel for the appellant has mainly contended that although 120 kgs of Charas is shown to have been recovered, but only 2 kgs were sent for chemical examination. It is argued that the prosecution has failed to establish its case beyond shadow of reasonable doubt that the entire alleged quantity was indeed narcotic substance within the meaning of the CNS Act, 1997. Thus, it is submitted that at best, the appellant may be held liable for possession of 2 kgs of Charas only and sentence awarded to him by learned trial Court may be reduced accordingly. He has relied upon case laws reported as Ameer Zeb v. The State (PLD 2012 Supreme Court 380), The State through Regional Director ANF v. Imam Bakhsh and others ( 2018 SCMR 2039) and Hasrat Khan v. The State (PLD 2024 Supreme Court 911).

8. Learned Deputy Prosecutor General, in view of the above position, though supported the impugned judgment, has fairly conceded to the reduction of sentence as only the sample sent for chemical examination can be relied upon for conviction as per settled principles of law.

9. We have heard the learned counsel for the parties and perused the record with their assistance.

10. It is a well-settled proposition of law that where a large quantity of narcotic substance is allegedly recovered, it is imperative for the prosecution to establish through proper sampling and chemical analysis that the entire quantity consisted of narcotic substance. In the present case, only 2 kgs were chemically examined and found to be Charas. No effort was made by the prosecution to examine the remaining quantity. Thus, the benefit of doubt must go to the accused.

11. In our considered view the accused could be hauled up to the extent of 2 k.gs charas sent for chemical examination only as there is no evidence on record that the remaining substance allegedly recovered was also charas as no sample was drawn from the other packets alleged to be charas. We are fortified in our view by a judgment given Honourable Supreme Court of Pakistan in the case of *Gulshan Ara v. The State* (2010 SCMR 1162) wherein it has been held as under:

“7. Having come to the afore-referred conclusion, the Court converted the conviction of the appellant in the said case from section 9(c). of Control of narcotic Substances Act, 1997 to section 9(b) of the said Act and reduced the sentence to the period that the appellant had already undergone. In the instant case’ as well admittedly no sample was taken from any other packet except one and the said packet according to the prosecution weighed only one kilogram. That being so the case of the appellant would fall in section 9(b) of Control of Narcotic Substances Act, 1997 consequently, this appeal is partly allowed and by converting appellant's conviction from section 9(c) of Control of Narcotic Substance Act, 1997 to section 9(b) of the said Act her sentence is reduced including that of fine to the one that she has already undergone. She shall be released forthwith unless detained in any other case.”

Reliance is also placed in the case of **Ameer Zeb v. The State (PLD 2012 Supreme Court 380)**.

12. For what has been discussed above, this Criminal Jail Appeal is partly allowed. The conviction under impugned judgment dated 23.11.2021 is maintained, however, in view of case of **Ghulam Murtaza and another vs. The State (PLD 2009 Lahore 362)**. the sentence awarded to the appellant is modified and reduced from rigorous imprisonment for life to R.I for four (04) years and six months and he shall pay fine of Rs.50,000/-, and in case of default in payment of fine, he shall undergo simple imprisonment for six months. The appellant is entitled to the benefit of Section 382-B, Cr.P.C.

With above modification in the sentence awarded to the appellant by the trial Court, instant criminal jail appeal stands disposed of.

**JUDGE**

**JUDGE**

Shabir/P.S

