

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Jail Appeal No. D-69 of 2024

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Hareef @ Papan s/o Shoukat @ Dhamali, Gopang
Through Mr. Rukhsar Ahmed Junejo, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 17.12.2025

Date of decision : 17.12.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— The appellant, Hareef @ Papan s/o Shoukat @ Dhamali, by caste Gopang, has preferred the present appeal against the judgment dated 22.05.2024, passed by the learned Additional Sessions Judge (MCTC), Mirwah in Special Case No. 211 of 2023, arising out of Crime No. 15 of 2023 of Police Station Bozdar Wada, Khairpur. Through the said judgment, the appellant was convicted under Section 9(1)(c) of the Control of Narcotic Substances (Amended) Act, 2022 and sentenced to suffer rigorous imprisonment for eight years with a fine of Rs.100,000/-, and in case of default, to further undergo simple imprisonment for six months. The benefit of Section 382-B, Cr.P.C. was extended to him.

2. The prosecution case, as set up in the FIR lodged by ASI Datar Dino Shar, is that on 14.05.2023, during patrolling duty, the complainant apprehended the appellant and allegedly recovered from his possession a plastic bag containing 11,000 grams of hemp, out of which 1,000 grams were separated for chemical analysis. The recovered narcotic substance was sealed at the spot; the memo of arrest and recovery was prepared; and thereafter the accused along with the case property was taken to the police station, where the FIR was registered.

3. At the very outset, learned counsel for the appellant submits that, as per the prosecution's own case, the alleged recovery was effected on 14.05.2023, and the sealed parcel was dispatched to the Chemical Examiner on 15.05.2023 through PC Muhammad Ramzan and was received on the same date by the

Director Laboratories and Chemical Examiner, Government of Sindh. It is, however, an admitted position on record that the said PC Muhammad Ramzan, who allegedly carried the sealed parcel from the police station to the office of the Chemical Examiner, has not been examined as a witness. In this backdrop, it is argued that the link evidence in respect of safe custody and safe transmission of the case property stands materially deficient, thereby creating a serious dent in the prosecution's claim of an unbroken chain of custody. On this premise, learned counsel, without pressing the appeal on the point of conviction, contends that the sentence already undergone by the appellant, extending over a period of more than 2½ years, is sufficient in the circumstances of the case and warrants substantial reduction by this Court in exercise of its appellate jurisdiction.

4. Learned Deputy Prosecutor General, in all fairness, does not dispute the omission regarding examination of the police constable who transported the sealed parcel, nor does he controvert the resultant infirmity in the chain of safe custody. Keeping in view the peculiar facts and circumstances of the case, he candidly concedes to a reduction in the quantum of sentence and raises no objection if the same is suitably scaled down by this Court.

5. The record reflects that the total recovered quantity of contraband is 11,000 grams of hemp, which squarely attracts Section 9(c) of the Control of Narcotic Substances Act, 1997, where the punishment may extend to fourteen years but shall not be less than seven years, along with fine which may extend to two hundred thousand rupees but shall not be less than one hundred thousand rupees, where the quantity exceeds the limit specified in clause (b) of Section 9. At the same time, the practical and legal reality in the present matter is that: (i) the non-examination of the crucial link witness, namely the police constable who carried the sealed parcel to the Chemical Examiner, has left an evident gap in proving safe custody and safe transmission of the case property; and (ii) the learned APG for the State has expressly and fairly conceded to a reduction in sentence in view of this missing link. When such infirmity in the chain of

custody coexists with the State's concession, there is no legal impediment to extending leniency on the question of sentence, particularly when the conviction is not being assailed on merits and the appellant has already undergone incarceration for more than 2½ years.

6. In the above circumstances, while the conviction of the appellant under Section 9(1) (c) of the Control of Narcotic Substances (Amended) Act, 2022, as recorded by the learned trial Court, is maintained, the appeal is partly allowed to the extent of sentence. The sentence of eight years' rigorous imprisonment along with the default sentence awarded 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.

J U D G E

J U D G E