

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Crl. Jall Appeal No. D- 22 of 2023.

Present:

Mr. Justice Muhammad Saleem Jessar.
Mr. Justice Khadim Hussain Soomro.

Dhani Bux Brohi.

.....Appellant.

Versus

The State.

.....Respondent.

Mr. Shakeel Ahmed G. Ansari, Advocate for appellant.
Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of hearing: 28.11.2023.
Date of Judgment: 28.11.2023.

Judgment

Muhammad Saleem Jessar, J.- Through this appeal, appellant Dhani Bux son of Muhammad Bux Brohi has assailed the judgment dated 05.04.2023, penned down by learned 1st Additional Sessions Judge/ Special Judge for CNS, Shikarpur, in Special case No. 349 of 2022, emanating from F.I.R No. 40 of 2022 of P.S Garhi Yasin, whereby the appellant was convicted and sentenced for offences under Section 9 (c) of Control of Narcotic Substances Act, 1997, to undergo R.I for nine years and to pay fine of Rs.80,000/- and in default to pay fine to suffer S.I for six months more. The appellant was however extended benefit of Section 382-B Cr.P.C.

2. At the very outset learned counsel for the appellant submitted that the appellant has mostly completed quantum of sentence awarded to him. He further submitted that, he is ready not to press the instant appeal on merit, if sentence of appellant is reduced to that of already undergone, as he has sufficiently been punished for remaining in jail and appellant may be given a chance in his life to rehabilitate himself. Per learned counsel for appellant, the appellant is previous non-convict and he is sole breadwinner of his entire family, who are on starvation due to confinement of appellant. Learned counsel further contended that the appellant is a first offender and his conduct at jail has remained satisfactory, as reported in the jail-roll. Moreover, the Senior Superintendent of Central Prison & Correctional Facility Sukkur has submitted jail-roll of the appellant, so also an application of the appellant, whereby the appellant

has prayed for taking leniency and modification in his sentence for the period, he has already undergone.

3. Conversely, the learned D.P.G. submits that the appellant has sufficiently been punished as he has remained in jail for sufficient period; therefore, he recorded no objection, if the sentence of the appellant is reduced to that of already undergone.

4. According to jail-roll of the appellant dated 27.11.2023, the appellant has served out substantive sentence for 01-year, 06-months and 06-days. Besides, he has earned remissions for 03-years, 05-months and 01-day (upto 27.11.2023); totaling to 04-years, 11-months and 07-days, which appears to be an adequate portion of sentence. Moreover, conduct of the appellant in jail is also "satisfactory" as reported by the jail authorities. The appellant also appears to be first offender, as there is no such material on record that the appellant is already convicted in any other case.


5. It is a well-established principle of law that in special circumstances, the Court at its discretion can divert from the norms and standards prescribed in terms of sentencing after assigning cogent reasons. In this respect, reliance is placed on the case of *State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v. Mujahid Naseem Lodhi (PLD 2017 SC 671)* wherein it has been held that:-

"The exercise of jurisdiction and discretion in the matter of the respondent's sentence by the trial court and the High Court have not been found by us to be open to any legitimate exception, particularly when the reasons recorded for passing a reduced sentence against the respondent and for making a departure from the above mentioned sentencing guidelines have been found by us to be proper in the peculiar circumstances of this case."

6. The Hon'ble Apex Court had also been pleased to reduce sentence in cases of similar nature reported as *Sherzada v. The State (1993 SCMR 149)* and *Gul Badshah v. The State (2011 SCMR 984)*.

7. In view of above facts and circumstances of the case, we are of the opinion that the appellant has succeeded to make out a case for reduction of his sentence. Therefore, in order to give a chance to the appellant in his life to rehabilitate himself so also following the dictum laid down case of *State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v. Mujahid Naseem Lodhi; Sherzada v. The State and Gul Badshah v. The State (supra)* and case of *Niaz-ud-Din v. The State (2007 SCMR 206)*, this appeal is partly allowed. Consequently, while maintaining the conviction of the appellant, the sentence inflicted on him is reduced to that of already undergone including sentence of fine amount and the term of imprisonment in default

thereof. The appellant is reported to be in jail, he shall be released forthwith, if his custody is not required in any other case.



Judge



Judge

Ansari