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

Criminal Jail Appeal No.D-29 of 2023

Present:

Mr. Justice Muhammad Saleem Jessar
Mr. Justice Jawad Akbar Sarwana

Appellant: Rashid Ali son of Morio Marfani
Through Mr. Muhammad Afzal Jagirani,
Advocate

Respondent: The State, through Mr. Ali Anwar Kandhro,
Additional Prosecutor General, Sindh.

Date of hearing: 02.04.2024

Date of Judgment: 02.04.2024

JUDGMENT

MUHAMMAD SALEEM JESSAR, J. Through this Criminal Jail Appeal, Appellant Rashid Ali has challenged Judgment dated 04.09.2023, passed by learned I-Additional Sessions Judge/Special Judge for Control of Narcotic Substances Act (MCTC), Shikarpur in Special Case No.338 of 2022 emanating from Crime No. 43/2022, registered at P.S. Lakhi Ghulam Shah, District Shikarpur for the offence under section 9(c) CNSA, 1997, whereby the Appellant was convicted and sentenced to undergo R.I for fourteen years and to pay fine to the tune of Rs.400,000/- (*Rupees Four Hundred Thousands only*); in case of default to undergo S.I for six months more. However, the benefit of Section 382-B Cr.P.C. was extended to the Appellant.

[Signature]

2. Learned counsel for the Appellant submits that the alleged offence had occurred on 07.05.2022 much prior to the promulgation of amendment under the previous law (Control of Narcotic Substances Act, 1997), which was enacted in the month of September, 2022; however, the trial Court has awarded conviction to the Appellant under the new law (Control of Narcotic Substances (Amendment Act) 2022), which is clearly in conflict with the Article 12 of the Constitution of the Islamic Republic of Pakistan, 1973. He further submits that the Appellant is the only bread earner of his family; as such, he does not wish to contest this Criminal Jail Appeal on merits and leave himself at the mercy of the Court. He states that if this Court while maintaining the conviction reduces the sentence to one he has already undergone, he would not press the Criminal Jail Appeal.

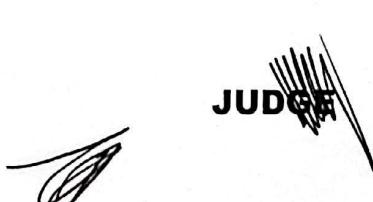
3. On the other hand, learned Additional Prosecutor General, Sindh has admitted that the case was registered under the old law and the conviction has been recorded under the new amended law, which is in contradiction. As far as the submissions of the learned Counsel that the sentence awarded to the Appellant may be reduced to one as already undergone, he submits that the Appellant has remained behind the bars for sufficient period and has learnt the lesson; therefore, he has no objection if a lenient view is taken against him by dismissing instant Criminal Jail Appeal and treating the sentence to one as already undergone.

4. We have heard learned counsel for the Appellant as well as learned Additional Prosecutor General, Sindh and have gone through the material available on record. The witnesses have supported each other on all salient features of the case and there appears to be no worthwhile contradictions. However, from perusal of record it transpires that the alleged offence had occurred on 07.05.2022 much prior to the promulgation of amendment under the previous law, which was enacted in the month of September, 2022; however, the conviction of the Appellant under the new law is seemingly in contradiction with the Article 12 of the Constitution of the Islamic Republic of Pakistan, 1973.

5. The Jail Roll of the Appellant was called from the Superintendent, Central Prison and Correctional Facility, Sukkur, which reflects that the Appellant has served out his sentence upto six years, three months and 19 days including remission. The Appellant is sole bread earner of his family, he has remained in jail and learnt the lesson as he has undergone sufficient period of his sentence, therefore, there is no legal impediment in accepting the request of the Appellant.

6. Only in order to enable the Appellant to reform and rehabilitate himself to rejoin the mainstream life to once again become a useful member thereof, by taking leniency, instant Criminal Jail Appeal is dismissed, but with the reduction of his sentence to one as already undergone by the Appellant including fine amount. The Appellant is directed to be released forthwith if he is not required in any other custody case. Office is directed to issue release writ of the Appellant today.

7. Instant Criminal Jail Appeal is dismissed with the above modification.


JUDGE


JUDGE

Manzoor