THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Special Criminal Appeal No.D- 85 of 2025

Before:
Justice Ms. Tasneem Sultana
Mr. Justice Suresh Kumar

Appellant	:	Allahdino alias Dino S/o Muhammad Umar Machhi through Mr. Rukhsar Ahmed Junejo, Advocate
Respondent	:	The State through Mr. Aftab Ahmed Shar, Additional Prosecutor General.
Dated of Hearing	:	**04.11.2026**
Date of Judgment	:	**04.11.2026**

J U D G M E N T

TASNEEM SULTANA, J: Through this Criminal Appeal, appellant Allahdino alias Dino has assailed the judgment dated 25.10.2025 passed by the learned 1st Additional Sessions Judge/Special Judge for CNS, Naushahro Feroze, in Special Case No.200 of 2024, arising out of Crime No.282 of 2024, registered at Police Station Kandiaro, whereby he was convicted under section 9(1)3(d) of the Control of Narcotic Substances Act, 1997, as amended by the Control of Narcotic Substances (Amendment) Act, 2022, and sentenced to undergo rigorous imprisonment for fourteen years and to pay a fine of Rs.400,000/- and, in default thereof, to undergo simple imprisonment for one year, with the benefit of section 382-B, Cr.P.C.

2. After arguing the appeal at considerable length, learned counsel for the appellant submits that the alleged recovery comprises six pieces of charas collectively weighing 5,010 grams; that a sample weighing 500 grams was separated from only one piece and sent for chemical examination; and that no separate samples were drawn from the remaining pieces. Relying upon *Ameer Zeb v. The State* (PLD 2012 SC 380), he contends that the entire alleged quantity cannot be attributed to the appellant. He further submits that, if the proved quantity is restricted to 500 grams and the conviction and sentence are modified accordingly, he does not press the remaining grounds of appeal.

3. Learned Additional Prosecutor General raises no objection to restricting the proved quantity to 500 grams and modifying the conviction and sentence in accordance with law.

4. Heard. Record perused.

5. It appears from the record that the prosecution alleges recovery of six pieces of charas collectively weighing 5,010 grams. The complainant, SIP Niaz Hussain, admits in cross-examination that the recovered pieces were not numbered and that he separated the sample from one piece only. The mashir of recovery, PC Zameer Ahmed, also confirms that the sample was separated from one piece and expressly states that the recovered pieces were not weighed separately. The report of the Chemical Examiner dated 01.11.2024, produced at Exh.05/E, reflects receipt of one sealed parcel containing a black-brown patti having a net weight of 500 grams, which tested positive for charas. The chemical examination thus relates to the sample drawn from one piece, while the remaining pieces were not separately sampled and examined.

6. In *Ameer Zeb v. The State* (PLD 2012 SC 380), the Honourable Supreme Court held that where the alleged narcotic substance is recovered in separate packets, cakes, slabs or other separate physical forms, a separate sample must be taken from each and subjected to separate chemical analysis. Where this is not done, only the quantity from which a sample was taken and tested with a positive result can be considered against the accused. In that case, although the sample examined weighed 10 grams, the appellant was held responsible for one slab weighing 250 grams, from which the sample was treated as having been drawn. The weight of the piece represented by the sample is, therefore, material to the determination of the quantity proved.

7. Although the complainant states that each recovered piece weighed 1,000 grams and that a piece weighing 10 grams was also recovered, his assertion regarding the individual weight is not supported by the mashir, who expressly states that the pieces were not weighed separately. The weight of the particular piece from which the sample was drawn was, therefore, not reliably established. Consequently, the tested sample cannot safely be treated as representative of a piece weighing 1,000 grams. Applying the principle laid down in *Ameer Zeb* (supra), the quantity proved against the appellant is restricted to the 500 grams confirmed by the Chemical Examiner to be charas.

8. Possession of 500 grams of charas falls within section 9(1)3(b) of the Control of Narcotic Substances Act, 1997, as amended in 2022, which prescribes imprisonment of not less than five years and up to nine years,

together with a fine of not less than Rs.40,000/- and up to Rs.80,000/-. The conviction under section 9(1)3(d), based upon the entire alleged recovery of 5,010 grams, consequently requires alteration. The proved quantity is at the lowest limit of the range prescribed under clause (b). The learned trial Court also considered the appellant's age of about thirty years a ground for leniency and awarded the minimum imprisonment prescribed under clause (d). In these circumstances, we consider the minimum imprisonment and fine prescribed under clause (b) appropriate.

9. Accordingly, the appeal is partly allowed. The conviction of the appellant is altered from section 9(1)3(d) to section 9(1)3(b) of the Control of Narcotic Substances Act, 1997, as amended by the Control of Narcotic Substances (Amendment) Act, 2022, and his sentence is reduced to rigorous imprisonment for five years and a fine of Rs.40,000/- and, in default of payment thereof, simple imprisonment for two months. The benefit of section 382-B, Cr.P.C., already extended to the appellant, shall remain available to him.

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