

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Criminal Jail Appeal No. S-30 of 2021

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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For hearing of Main Case.

03.08.2026

M/s. Asif Ali Abdul Razak Soomro & Syed Lal Shah, Advocates for the Appellant.
Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.
Mr. Ashfaq Hussain Abro, Advocate along with Complainant.

J U D G M E N T

RIAZAT ALI SAHAR, J:- It has been pointed out by the learned counsel for the complainant that, in the earlier round of litigation, the instant case was remanded to the learned trial Court for a de novo trial on the ground that the charge dated 12.12.2012 was defective. He submits that the charge subsequently framed still suffers from the same infirmity and substantially contains the same version of the Presiding Officer. According to him, in the earlier charge, the names of co-accused/appellants Aijaz and Mureed were not mentioned, although they were shown therein as associates of the other co-accused. Likewise, the subsequent charge dated 19.12.2020 suffers from the same infirmity, particularly with regard to non-mentioning of the name of co-appellant Muhammad Mureed. He, therefore, submits that, in view of the earlier order of remand, the matter may once again be remanded to the learned trial Court for a de novo trial, as the defect in the charge goes to the very root of the prosecution case.

2. In view of the foregoing, this Court finds no other appropriate course but to remand the matter to the learned trial Court with a direction to commence the trial de novo from the stage of framing of charge. The learned counsel for the appellants has fairly conceded to the said course. He, however, submits that appellants Aijaz and Bashir have remained in

judicial custody for more than thirteen (13) years and, after taking into account the remission earned by them, only one year and eight months of the sentence, in terms of physical detention out of the substantive sentence awarded by the learned trial Court, remains to be served in view of **Nazar Hussain case, reported in PLD 2010 SC 1021**. However, appellants Noat and Muhammad Mureed have already served a substantial portion of their sentence, having undergone approximately 18 years of imprisonment, including remission. He further submits that the appellants ought not to be made to suffer for an irregularity or defect attributable either to the prosecution or to the learned trial Court, particularly when they have already undergone a substantial portion of the sentence. He, therefore, prays that the appellants may be admitted to bail.

3. The record reveals that not only the original charge dated 12.12.2012 but also the subsequent charge dated 19.12.2020 suffers from material defects, notwithstanding the earlier order of remand. It is also an admitted position from the record that the appellants have already undergone a major portion of the sentence awarded by the learned trial Court. As per the jail rolls, the sentence served by the appellants is as under;-

Convits Aijaz son of Muhammad Ashraf Bughio & Bashir son of Muhammad Uris Bughio		
Sentence served excluding remission upto 30-06-2026	Remission earned	Un-expired portion of sentence
13 years, 09 months & 10 days	10 years	01 year, 08 month & 20 days

Convicts Noat son of Khalique Dino Bughio & Muhammad Mureed son of Sultan Ahmed Bughio		
Sentence served excluding remission upto 30-06-2026	Remission earned	Un-expired portion of sentence
08 years, 04 months & 13 days	10 years	07 years, 01 month & 17 days

4. In these peculiar circumstances, and particularly keeping in view the fact that the matter is being remanded for a de novo trial on account of defects in the charge, this Court is of the view that the appellants have made out a case for grant of bail. Accordingly, the appellants are admitted to bail subject to furnishing solvent surety in the sum of Rs.300,000/-

(Rupees Three Hundred Thousand only) each and PR Bonds in the like amount to the satisfaction of the learned trial Court.

5. Consequently, the impugned judgment dated 24.04.2021, passed by the learned trial Court, is hereby set aside. The case is remanded to the learned trial Court with directions to conduct a de novo trial from the stage of framing of charge, after strictly complying with all mandatory provisions of law. The learned trial Court shall afford full and fair opportunity to the prosecution as well as the accused to lead their respective evidence, hear the parties, and thereafter decide the case afresh strictly in accordance with law and on its own merits. Needless to observe that the learned trial Court shall not be influenced, in any manner, by any observation made herein, as the same is confined solely to the disposal of the present appeal and the question of bail.

6. The parties are directed to appear before the learned trial Court on 18.08.2026, or on such other date as may be fixed by the learned trial Court. Since the matter pertains to a criminal case and the appellants have already undergone a substantial period of incarceration, the learned trial Court is directed to proceed with the matter expeditiously and conclude the de novo trial, preferably within a period of four (04) months from the date of receipt of this order, without granting unnecessary adjournments to either side.

The instant criminal appeal stands disposed of in the above terms.

JUDGE

Zulfiqar