

## THE HIGH COURT OF SINDH AT KARACHI

**PRESENT:**  
**Mr. Justice Omar Sial**  
**Mr. Justice Shamsuddin Abbasi**

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### **Criminal Appeal No.14 of 2024**

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|------------------|----------------------------------------------------------------------------------|
| Appellant        | The State / Anti-Narcotic Force through Mr. Habib Ahmed, Special Prosecutor ANF. |
| Respondent No.1  | Sher Dil son of Dost Muhammad through Ms. Roopmala Sindh, Advocate.              |
| Date of Hearing  | <b><u>20.08.2026</u></b>                                                         |
| Date of Judgment | <b><u>14.09.2026</u></b>                                                         |

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### **JUDGMENT**

**SHAMSUDDIN ABBASI, J.-** Impugned in this appeal is the order dated 30.10.2023, penned down by the learned Special Court-I (Control of Narcotic Substances), Karachi, in Special Case No.352 of 2015, (FIR No.16 of 2015) registered at Police Station ANF-I, Karachi, for offences under Sections 6/9(c), 14 and 15 of the Control of Narcotic Substances Act, 1997 ("**Act, 1997**").

2. The prosecution case, in brief, is that 267 kilograms of charas were recovered from House No.FC-2678, Mohallah Faqir Colony, Sector-10, Orangi Town, Karachi, where two persons, namely Sher Dil and Zahid, were allegedly found present. The ANF police party arrested both accused and secured and sealed the recovered narcotic substance at the spot. Accordingly, FIR No.16 of 2015 was registered. Upon completion of investigation, the challan was submitted before the Court of competent jurisdiction, whereby the respondent No.1 was sent up to face trial.

3. Upon framing of charge on 18.01.2017, the appellant pleaded not guilty and claimed trial. Thereafter, the prosecution has examined PW.1 HC Abdul Shakoor on 08.04.2021. Subsequently, on 15.08.2023, the appellant filed an application at Ex.7 pleading guilty to the charged offence and seeking a lenient view on humanitarian grounds. A show cause notice was issued to him, in response to which he submitted his reply explaining the circumstances in which he had pleaded guilty and requested that a lesser

sentence may be awarded to him. Notice of the application was also given to the prosecution, which opposed the prayer on the ground that the offence was of a grave nature involving the recovery of huge quantity of 267 kilograms of charas and constituted a serious offence against society at large.

4. The learned trial Court, after hearing the parties, passed the impugned order dated 30.10.2023 whereby while taking a lenient view and relying upon the judgment of the Hon'ble Supreme Court in the case of *State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v. Mujahid Naseem Lodhi* (PLD 2017 SC 671) convicted the respondent No.1 under Section 265-E, Cr.P.C. and sentenced him to rigorous imprisonment for 20 years along with a fine of Rs.100,000/- and in default of payment thereof to suffer simple imprisonment for one year more. Hence, the present appeal has been preferred by the prosecution seeking enhancement of the sentence as provided in law.

5. The learned Special Prosecutor, ANF has assailed the impugned order primarily on the ground that the sentence awarded to the respondent No.1 is manifestly inadequate and wholly disproportionate to the huge quantity of narcotic substance recovered from him. It is next submitted that while extending the benefit of a lenient view to the respondent No.1, the learned trial Court has failed to properly appreciate the settled principles governing sentencing in cases involving substantial quantities of narcotic substances and did not give due consideration to the guidelines laid down in *Ghulam Murtaza and another v. The State* (PLD 2009 Lahore 362), which were subsequently endorsed by the Hon'ble Supreme Court in *Ameer Zeb v. The State* (PLD 2012 SC 380). According to the learned Special Prosecutor, recovery of 267 kilograms of charas places the offence in the highest category of narcotic offences and warrants the sentence prescribed by law. He, therefore, submitted that the impugned order suffers from material illegality and patent inadequacy of sentence and calls for interference by this Court by enhancing the sentence in accordance with law.

6. On the other hand, the learned counsel appearing for respondent No.1 has supported the impugned order and contended that the learned trial Court has exercised its discretion judiciously keeping in view the

humanitarian circumstances and particularly the voluntary plea of guilt entered by the respondent No.1. He has placed reliance on the judgment of Hon'ble Supreme Court in the case of *State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v. Mujahid Naseem Lodhi* (PLD 2017 SC 671). It is next submitted that the learned trial Court is competent to take a lenient view while determining the appropriate sentence in like circumstances. He, therefore, maintained that the learned trial Court has neither exceeded its jurisdiction nor acted contrary to law in awarding a lesser sentence to the respondent No.1.

7. We have heard the learned Special Prosecutor, ANF as well as the learned counsel for respondent No.1 and have carefully examined the entire record and the impugned order with their able assistance.

8. The prosecution case relates to recovery of substantial quantity of charas weighing 267 kilograms from the respondent No.1. The principal question requiring determination is whether notwithstanding his voluntary plea of guilt the learned trial Court was justified in awarding him 20 years' rigorous imprisonment along with a fine of Rs.100,000/- particularly in the light of the statutory sentencing policy applicable to the offence and the principles governing the imposition of sentence in cases involving huge quantities of narcotic substances.

9. At the relevant time Section 9(c) of the Act, 1997 provided that where the quantity of charas recovered exceeded 10 kilograms, the offender could be sentenced to imprisonment for life, but not less than 20 years along with fine of not less than Rs.800,000/-. Subsequently, the Control of Narcotic Substances (Amendment) Act, 2022 brought about a material change in the sentencing policy by providing that in cases involving recovery of charas exceeding 10 kilograms, imprisonment which may extend to 20 years but shall not be less than 14 years along with a fine which may extend to Rs.800,000/- but shall not be less than Rs.400,000/-. In the present case, however, the offence was committed in 2015 when the un-amended provision viz Control of Narcotic Substances Act, 1997 was in force. The subsequent amendment cannot be applied retrospectively so as to prejudice the accused nor can the amended provision be invoked to impose a punishment other than that permissible under the law prevailing at the time

of commission of offence. The sentence 20 twenty years' rigorous imprisonment awarded by the learned trial Court, therefore, falls within the statutory framework applicable to the respondent No.1 at the relevant time. The question before us is consequently not whether the sentence is legally permissible but whether in the peculiar circumstances of the case the learned trial Court was justified in awarding the lesser sentence prescribed by the then prevailing law despite recovery of large quantity of narcotic substance.

10. It is true that in the case of *Ghulam Murtaza and another v The State* (PLD 2009 Lahore 362) certain guidelines were laid down for determining appropriate sentences in narcotics cases particularly with reference to the quantity of narcotic substance involved. These guidelines were subsequently approved and endorsed by the Hon'ble Supreme Court in the case of *Ameer Zeb v The State* (PLD 2012 SC 380), however, the guidelines so enunciated were not intended to operate as inflexible statutory commands precluding the Court from taking into consideration the peculiar facts and circumstances of an individual case. Significantly, the Hon'ble Supreme Court in its subsequent judgment delivered in the case of *State through the Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v Mujahid Naseem Lodhi* (PLD 2017 SC 671) considered the very question of departure from the sentencing guidelines laid down in *Ghulam Murtaza* case and approved in *Ameer Zeb* case. In that case, the Hon'ble Supreme Court specifically observed that where a case carries special features relevant to the question of sentence, the Court may depart from the prescribed sentencing norms provided that reasons for such departure are duly recorded. The Hon'ble Supreme Court further upheld the reduced sentence awarded by the trial Court on the basis of the accused's confession, remorse and repentance, observing that the exercise of jurisdiction and discretion by the trial Court and the High Court could not be said to be open to any legitimate exception when proper reasons had been recorded for making such departure. The aforesaid pronouncement in *Mujahid Naseem Lodhi's* case assumes particular significance in the present case as it is a later judgment of the Hon'ble Supreme Court rendered after *Ghulam Murtaza's* and *Ameer Zeb's* case. Thus, the sentencing guidelines laid down in those cases are relevant but they are not rigid rules that take away the trial Court's discretion to consider the circumstances of each case. What is required is that any departure from

such norms must be founded upon relevant circumstances and supported by cogent reasons.

11. In the case in hand, the respondent No.1 voluntarily pleaded guilty to the charged offence at the earliest stage of the trial and subsequently reiterated his admission of guilt through his application. The learned trial Court, after issuing a show cause notice and providing an opportunity to the prosecution to oppose the prayer consciously exercised its discretion and awarded the respondent No.1 20 years' rigorous imprisonment which at the relevant time was itself the minimum sentence prescribed for recovery of charas exceeding 10 kilograms. The sentence cannot, therefore, be characterized as either contrary to the statute or wholly without lawful basis rather the learned trial Court took into consideration the respondent No.1's voluntary plea of guilt and other circumstances considered relevant for the purpose of sentence and awarded the lesser term prescribed by the then prevailing law.

12. We are conscious of the fact that the recovery of 267 kilograms of charas is undeniably substantial and that offences involving such a quantity of narcotic substance are grave in nature and have serious consequences for society. Ordinarily, the magnitude of the recovery would call for a severe sentence. Nevertheless, the gravity of the offence by itself does not render the judicial discretion vested in the Court incapable of exercise in favour of an accused where relevant mitigating circumstances exist. The later pronouncement in the case of *Mujahid Naseem Lodhi* makes it clear that a Court may in an appropriate case depart from the sentencing norms upon recording reasons based on the peculiar circumstances of that case. Relevant extract is reproduced below:-

*"As regards the prayer made through the present petition regarding enhancement of the respondent's sentence the learned Special Prosecutor, Anti-Narcotics Force has mainly relied upon the judgment handed down by a Full Bench of the Lahore High Court, Lahore in the case of Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362) wherein some guidelines had been laid down vis-a-vis sentencing in cases of narcotic substances and has maintained that the sentence passed by the trial court against the respondent was not in accord with the said guidelines. The said judgment of the Lahore High Court, Lahore had approvingly been referred to by this Court in the case of Ameer Zeb v. The State (PLD 2012 SC 380). We*

*note that in paragraph No. 10 of the judgment handed down by the Lahore High Court, Lahore in the above mentioned case it had been observed that "in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure." In the case in hand the trial court had recorded reasons for passing a sentence against the respondent which made a departure from the above mentioned sentencing guidelines. The trial court had observed that the respondent had made a confession before the trial court besides expressing remorse and repentance with an assurance not to deal with narcotics in future. It was also noticed by the trial court that the respondent's co-accused namely Muhammad Suneel had also made a confession before the trial court and on the basis of such confession he was also awarded a sentence which departed from the above mentioned sentencing guidelines but the State had not sought enhancement of his sentence. The High Court had refused to enhance the respondent's sentence and had dismissed an appeal filed by the State in that regard by holding that the above mentioned considerations weighing with the trial court for passing a reduced sentence against the respondent were appropriate in the circumstances of the present case. 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. This petition is, therefore, dismissed and leave to appeal is refused".*

13. In the case in hand, the learned trial Court has exercised its discretion consciously and for reasons which cannot be termed irrelevant, arbitrary or perverse. The sentence of 20 years' rigorous imprisonment is not below the minimum prescribed under the law applicable on the date of commission of the offence, however, the fine of Rs.100,000/- imposed by the learned trial Court having regard to the recovery of 267 kilograms of charas and the gravity of the offence is inadequate. No material has been brought on record to demonstrate that the learned trial Court has exercised its discretion on extraneous considerations in awarding the sentence of imprisonment. It is also settled that an appellate Court does not ordinarily interfere with the discretion exercised by the trial Court in the matter of sentence merely because another view as to the quantum of sentence may be possible. Nevertheless where the sentence is manifestly inadequate, the appellate Court is competent to enhance it in accordance with law. In the case in hand, the inadequacy of the fine warrants interference by this Court.

14. For the foregoing reasons and particularly in view of the subsequent pronouncement of the Hon'ble Supreme Court in the case of *Mujahid Naseem Lodhi* (PLD 2017 SC 671), which permits a departure from the sentencing guidelines laid down in *Ghulam Murtaza's* case and approved in *Ameer Zeb's* case where the peculiar circumstances of the case justify such course and reasons are duly recorded, we find no legal or jurisdictional infirmity in the exercise of discretion taken by the learned trial Court in awarding the sentence of 20 years' rigorous imprisonment, however, the fine imposed by the learned trial Court is manifestly inadequate. Accordingly, while maintaining the conviction and sentence of 20 years' rigorous imprisonment awarded to the respondent No.1 vide impugned order dated 30.10.2023, the fine is enhanced from Rs.100,000/- to Rs.800,000/-, in default whereof the respondent No.1 shall undergo simple imprisonment for a period of 12 months more. The appellant shall be entitled to the benefit in terms of Section 382-B, Cr.P.C.

15. This Criminal Appeal No.14 of 2024, filed by the prosecution for enhancement of sentence, is partly allowed to the extent of enhancement of fine while the other conviction and sentence of imprisonment are maintained.

JUDGE

JUDGE