

**IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.**

Cr. Appeal No.D-122 of 2006

Present: ***Mr. Justice Abdul Maalik Gaddi***  
***Mr. Justice Arshad Hussain Khan***

Appellant: Ali Akbar despite on bail called absent.  
Mr. Tarique Ali Mirjat, Advocate for appellant.

Respondent : The State through Syed Meeral Shah A.P.G. for the  
State alongwith ASI Muhammad Dawood of P.S A-  
Section Dadu.

Date of Hearing : **21.02. 2018**

Date of Judgment : **21.02.2018**

***J U D G M E N T***

**ABDUL MAALIK GADDI, J** – Through this appeal the appellant has assailed the legality and propriety of the judgment dated 22.06.2006, passed by the learned Special Judge (Narcotics), Dadu in Special Case No.122 of 2005 (re-The State versus Ali Akbar son of Lal Bux alias Gul Muhammad Chandio) registered under sections 9(b) Control of Narcotics Substances Act, 1997, in Crime No.88 of 2005 of P.S Dadu, whereby the learned trial court after full dressed trial convicted and sentenced the appellant as stated in point No.2 of the impugned judgment. For the sake of convenience, it would be proper to reproduce point No.2 of the impugned judgment, which reads as under:-

**“Point No.2**

For the foregoing reasons on point No.1, I have come to the conclusion that prosecution has fully established its case against the accused beyond any reasonable shadow of doubt, therefore, I found the accused Ali Akbar Chandio guilty for offence punishable u/s 9(b) Control of Narcotics Substances Act, 1997, convict him u/s. 245(2) Cr.P.C and sentence him to undergo Rigorous Imprisonment for three years and to pay fine of Rs.30,000/- (Thirty Thousand), in default of payment of fine, he shall undergo Rigorous Imprisonment for six months more. The benefit of Section 382(B), Cr.P.C is extended to the accused. The accused is present on bail, he is taken into custody and remanded to jail, to serve out the sentence. His bail bond stands cancelled and surety discharged.”

2. Facts of the case need not be reiterated here as the same have been stated in the impugned judgment as well as memo of appeal.

3. Learned trial court framed the charge against the accused under section 9(b) Control of Narcotics Substances Act, 1997 at Ex.2, to which accused pleaded not guilty and claimed to be tried.

4. At the trial, the prosecution in order to substantiate the charge examined P.W-1 SIP Ali Hassan Rahoojo (complainant) at Ex.4, who has produced memo of arrest and recovery at Ex.4/A, roznamcha entry at Ex.4/B, F.I.R. at Ex.4/C and report of Chemical examiner at Ex.4/D, P.W-2 HC Roshan Ali (mashir) at Ex.5, and side of the prosecution was closed vide statement at Ex.6.

5. The Statement of the accused u/s. 342 Cr.P.C was recorded at Ex.7, in which he has denied the allegations leveled by the prosecution and stated that he was arrested from his house; nothing has been recovered from his possession and he has been falsely implicated by police. He is innocent and pray for justice. He has examined himself on oath a Ex.8, and so also examined Ali Asghar in his defence at Ex.9. Thereafter the advocate for the accused closed his side vide statement at Ex.10.

6. Trial Court after hearing the learned counsel for the parties, by impugned judgment convicted and sentenced the appellant under section 9(b) of Control of Narcotics Substances Act, 1997, as stated in Para-1 (*supra*).

7. Appellant filed instant appeal against the impugned judgment, it was admitted to regular hearing vide order dated 15.08.2006. During pendency of appeal, application for suspension of sentence was preferred on behalf of the appellant and sentence of the appellant was suspended vide order dated 18.10.2006 subject to furnishing a solvent surety in the sum of Rs.50,000/- and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court. It appears from the record that surety was furnished on 04.11.2006 by one Kamaluddin and thereafter appellant was released. After release, the appellant jumped the bail bond and remained absent, as such, time and again notices/NBWs were issued against him. Today, ASI Muhammad Dawood of P.S A-Section Dadu has submitted his report stating therein that after receiving notice to produce the appellant before this Court he went in the search of the appellant but it has been reported that appellant Ali Akbar has shifted to Saudi Arabia since long. In this regard, he has also recorded the statements of two nekmards of the locality and has filed photo copies of such statements alongwith photo copy of passport of appellant Ali Akbar. In the report it is also mentioned that there is no possibility that he would come back to Pakistan in near future.

8. Learned Counsel for the appellant submits that he is not in contact with appellant since long.

9. Learned Additional Prosecutor General Sindh submits that after suspension of sentence, the appellant has absconded away to Saudi Arabia.

10. We have heard the learned A.P.G as well as learned counsel for the appellant and scanned the record. It is proved that the appellant is concealing

himself deliberately after suspension of sentence and he has become fugitive from the law. The law is settled by now that a fugitive from law and Courts loses some of normal rights granted by procedural as well as substantive law. The Honourable Supreme Court in the case of *IKRAMULLAH AND OTHERS V/S. THE STATE (2015 SCMR 1002)* has observed as under:-

“9. A report dated 11.12.2014 has been received from the Superintendent, Central Prison, Bannu informing that Adil Nawab appellant had escaped from the said jail during the night between 14/15.04.2012 and he has become a fugitive from law ever since. The law is settled by now that a fugitive from law loses his right of audience before a Court. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court for seeking resurrection of this appeal.”

11. In view of the report of ASI Muhammad Dawood of P.S A-Section Dadu it is clear that the appellant has become a fugitive from the law, as since appellant loses some of normal rights granted by procedural as well as substantive law. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal. Office is directed to issue notice to the surety of the appellant under section 514, Cr.P.C. Separate proceedings against surety shall be continued. Adjourned to a date in office for proceedings against surety.

Office is directed to immediately send copy of this judgment to the trial court as well as SSP Dadu for information and compliance.

JUDGE

JUDGE