

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.D-115 of 2014

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

Appellant: Munawar alias Qadoo alias Ali Hassan.
None present for appellant.

Respondent : The State through M/s Shahzado Salim
Nahyoon and Shahid Ahmed Shaikh
D.P.Gs for the State alongwith ASI Rano
Khan Mashori, P.S Sakrand.

Date of Hearing : **16.01.2018**

Date of Judgment : **16.01.2018**

J U D G M E N T

ABDUL MAALIK GADDI, J – Appellant Munawar alias Qadoo alias Ali Hassan was tried by learned Special Jude (Narcotics), Shaheed Benazirabad in Special Narcotic Case No.276 of 2011. By judgment dated 24.10.2014, the appellant was convicted under section 9(c) Control of Narcotics Substances Act, 1997 and sentenced to suffer rigorous imprisonment for four years and to pay fine of Rs.20,000/-, in case of default in payment of fine he was ordered to suffer simple imprisonment for four months more. Benefit of section 382-B Cr.P.C was extended to the accused.

2. Learned trial court framed the charge against the accused under section 9(c) Control of Narcotics Substances Act, 1997 at Ex.3. Accused pleaded not guilty and claimed to be tried vide plea at Ex.4

3. At the trial, the prosecution in order to substantiate the charge examined P.W-1 Complainant SIP /S.H.O Ali Hassan Shar at Ex.7, who produced mashirnama of arrest and recovery at Ex.7/A, F.I.R. at Ex.7/B, photo attested copy of roznamcha entries of departure and arrival at P.S, at Ex.7/C-i and Ex.7/C-ii, mashirnama of place of wardat at Ex.7/D, Chemical report at Ex.7/E. P.W-2 HC Raj Muhammad Pali, mashir at Ex.8. Thereafter, prosecution side was closed at Ex.9.

4. Statement of accused was recorded under section 342 Cr.P.C at Ex.10, the accused claimed false implication and denied

prosecution allegation. He has not examined himself on oath and did not examine any witness in disproof of prosecution allegations.

5. Trial Court after hearing the learned counsel for the parties, by judgment dated 24.10.2014, convicted and sentenced the appellant under section 9(c) of Control of Narcotics Substances Act, 1997, as stated above.

6. Appellant filed instant appeal against the impugned judgment, it was admitted to regular hearing vide orders dated 25.11.2014. 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 16.12.2014, subject to furnishing a solvent surety in the sum of Rs.1,00,000/- and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court. It appears that surety was furnished on 07.01.2015 and thereafter appellant was released. After release the appellant remained absent and NBWs were repeatedly issued against him and notice issued to surety. ASI Rano Khan Mashori, P.S Sakrand has returned the NBWs unexecuted with the endorsement that the appellant has become absconder and shifted to unknown place and is not residing at the given address and there is no likelihood of his arrest in near future and his whereabouts are not known. Notice issued to the surety under section 514, Cr.P.C has not returned either served or unserved.

7. Learned Deputy Prosecutor Generals Sindh submit that after suspension of sentence, the appellant has absconded away and is deliberately concealing himself at some unknown place.

8. We have heard the learned D.P.Gs 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.”

9. In view of the report of ASI Rano Khan Mashori, P.S Sakrand, 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. Since notice under section 514, Cr.P.C issued against the surety has not returned either served or unserved, let the same be repeated. Separate proceedings against surety shall be continued. Adjourned to a date in office for proceedings against surety.

JUDGE

JUDGE