

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Cr. Jail Appeal No.D-133 of 2014

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

Appellant: Deedar Ali son of Nizamuddin
Mr. Ahsan Gul Dahri, Advocate for
appellant.

Respondent : The State through Syed Meeral Shah
A.P.G. for the State alongwith SIP
Sanaullah Jalbani, P.S Hamal, Qambar @
Shahdad Kot.

Date of Hearing : **22.01.2018**

Date of Judgment : **22.01.2018**

J U D G M E N T

ABDUL MAALIK GADDI, J – Appellant Deedar Ali son of Nizamuddin was tried by learned IIIrd Additional Sessions Judge / Special Judge CNS Hyderabad in Special Case No.28 of 2013. By judgment dated 29.11.2014, the appellant was convicted under section 9(c) Control of Narcotics Substances Act, 1997 and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.10,000/-, in case of default in payment of fine he was ordered to suffer simple imprisonment for thirty days more. Benefit of section 382-B Cr.P.C was extended to the accused.

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(c) Control of Narcotics Substances Act, 1997 at Ex.2. Accused pleaded not guilty and claimed to be tried vide plea at Ex.3.

4. At the trial, the prosecution in order to substantiate the charge examined P.Ws viz. complainant Inspector Police DIB Branch Hyderabad, Ghulam Abbas Jafri, at Exh.4, who produced mashirnama of arrest of accused and recovery at Exh.4/A, entries No.217 and 218 at Exh.4/B, F.I.R. at Exh.4/C, and chemical report at Exh.4/D, P.W-2 EC Habibullah Khan at Exh.5. Thereafter, prosecution side was closed at Ex.6.

5. On conclusion of trial of the case, statement of accused under section 342 Cr.P.C has been recorded, whereby he has denied the allegations of prosecution and claimed to be innocent.

6. Trial Court after hearing the learned counsel for the parties, by judgment dated 29.11.2014, convicted and sentenced the appellant under section 9(c) of Control of Narcotics Substances Act, 1997, as stated above.

7. Appellant filed instant appeal against the impugned judgment, it was admitted to regular hearing vide orders dated 19.03.2015. 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 07.07.2015, 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 11.07.2015 and thereafter appellant was released. After release the appellant remained absent.

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

9. It appears from the record that time and again and B.Ws / NBWs were repeatedly issued for the arrest of the appellant and notice to his surety Mst. Soomri but all the time it has been reported that the appellant has shifted to some unknown place and his whereabouts are not known. Today, SIP Sanaullah Jalbani of P.S Hamal District Qambar @ Shahdadkot has submitted a report, which is taken on record, showing that the appellant has shifted to some unknown place and his surety Mst. Soomri has also shifted to some unknown place and their whereabouts are not known.

10. 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.

11. We have heard the learned A.P.G. 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 *IKRAMU pLLAH*

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.”

12. 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 been served, let the same be repeated. Separate proceedings against surety shall be continued. Adjourned to a date in office for proceedings against surety.

JUDGE

JUDGE