

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

Cr. Appeal No.D-89 of 2017

**Present:-**

**Mr. Justice Abdul Maalik Gaddi.**

**Mr. Justice Adnan-ul-Karim Memon**

Date of hearing: 23.09.2020

Date of Judgment: 23.09.2020

Appellant: Muhammad Paryal @ Haji through  
Mr. Shoukat Ali Pathan, Advocate.

State: Through Mr. Muhammad Ayoob Qasar,  
Special Prosecutor ANF.

**JUDGMENT**

**ABDUL MAALIK GADDI, J-** Through this Criminal Appeal, appellant Muhammad Paryal @ Haji s/o Muhammad Younis has called in question the judgment dated 28.07.2017 passed by the learned Special Judge Narcotic Substances Act / 1<sup>st</sup> Additional Sessions Judge, Hyderabad, in Special Case No.59 of 2014 (Re: The State v. Muhammad Paryal @ Haji) arising out of Crime No.16 of 2014, registered at Police Station ANF Hyderabad, for an offence under Section 6 - 9(C) of Control of Narcotic Substances Act, 1997, whereby he was convicted and sentenced to suffer R.I for ten (10) years & six (06) months and to pay fine of Rs.50,000/- (Rupees Fifty Thousand), in case of non-payment of fine, he shall suffer S.I for eight (08) months more with benefit of Section 382-B Cr.P.C.

**2.** Concisely, the facts as portrayed in the F.I.R are that on 24.10.2014 at 1000 hours, Complainant SIP Syed Salman arrested the accused from the road of Jamshoro opposite Rajputana Hospital in presence of official witnesses and recovered eight multi colour foil pack packets lying in black shopper weight 8 kilograms from his possession. Thereafter such mashirnama of arrest and recovery was prepared after sealing the property at the spot and then took the accused and case property to PS where lodged the F.I.R against the accused on behalf of State.

**3.** It is noted that learned trial Court after full dressed trial convicted and sentenced the appellant as stated in the introductory paragraph of the judgment.

4. Learned counsel for the appellant, at the very outset, submits that though the appellant has a good case on merit but since he is aged about 64 years and is suffering from multiple diseases which are not curable inside jail so also is a lone bread earner of his family. He further submits that appellant has already served out major portion of his sentence; therefore, under the circumstances he would be satisfied and shall not press this Criminal Appeal if the sentence awarded to the appellant is reduced to one as already undergone.

5. Learned Special Prosecutor ANF, Sindh has opposed this appeal on merit however, submits that as per jail roll the appellant has already served out the major portion of his sentence and he is aged about 64 years therefore, this appeal may be disposed of as per law.

6. We have heard the learned counsel for the appellant, learned Special Prosecutor ANF and have gone through the record.

7. It is noted that appellant was convicted and sentenced to suffer R.I. for ten (10) years & six (06) months with fine of Rs.50,000/-. Perusal of Jail Roll furnished by the Jail Authorities vide letter dated 02.09.2020, reveals that appellant has already served out major portion of his sentence i.e. eight years, four months and two days, which includes remissions earned by him. Nothing has come on record as to whether the appellant has ever remained involved in such type of cases or he was convicted. Moreover, as stated at Bar by learned counsel for the appellant, the appellant is suffering from multiple diseases which are serious in nature and not curable inside jail. However, the factum of illness of the appellant has not been controverted by learned Special Prosecutor ANF. Under the aforementioned circumstances, it appears that the appellant has been sufficiently punished, therefore, he may be given a chance in his life to rehabilitate himself.

8. It appears from the record that the sentence awarded by the trial Court to appellant is in line with the sentencing policy as laid down in the case of ***Ghulam Murtaza and another v. The State*** reported in **PLD 2009 Lahore page 362**; however, while considering the aforementioned circumstances, it would meet the ends of justice if sentence of the appellant is reduced to one as already undergone including the period of imprisonment in lieu of non-payment of fine i.e. Rs.50,000/- imposed upon the appellant. In this context we are

fortified by the case of **Ghulam Murtaza** (Supra), wherein it was held as under:-

*“10. It goes without saying 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”.*

**9.** In view of the above, this Criminal Appeal is hereby dismissed along with pending application[s], and the impugned judgment dated 28.07.2017 is maintained. However, while deviating from the sentencing policy as held in the case of **Ghulam Murtaza** stated supra, the conviction and sentence awarded to the appellant is reduced to one as already undergone i.e. 08 years, 04 months and 02 days including fine. Resultantly, the appellant Muhammad Paryal @ Haji, who is confined in Central Prison, Hyderabad, is directed to be released forthwith, if not required in any other case.

Instant Criminal Appeal is **dismissed** with above modification.

**JUDGE**

**JUDGE**

**\*Hafiz Fahad\***