

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Appeal No.267 of 2020**

---

<i>Date</i>	<i>Order with signature of Judge</i>
-------------	--------------------------------------

---

1. *For hearing of Case.*
2. *For hearing of M.A No.3052/2020.*

**24.09.2021**

Haji Akbar, Advocate for the Appellant.  
Mr. Hussain Bux Baloch, Addl. Prosecutor General, Sindh

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

**Muhammad Saleem Jessar, J:-** This appeal is directed against the judgment dated **28.02.2020** passed by learned Ist Additional Sessions Judge/MCTC/Special Court (CNS), Karachi (Central), vide Special Case No.12/2020, arisen out of Crime No.13/2019, registered at P.S Excise District Central, Karachi, for offence under Section 6/9-C of CNS Act, 1997; whereby the appellant was convicted and sentenced to Six years rigorous imprisonment and fine of Rs.25,000/-, and in case of default in payment of fine he has to suffer S.I for a period of five months and 15 days more.

Pursuant to directions contained under earlier order, Senior Superintendent, Central Prison & Correctional Facility, Karachi has submitted jail roll of appellant dated 09.03.2021, which reveals that appellant Faisal has earned remissions upto 17.03.2021 as 00 years, 10 months and 28 days and has served out sentence without remissions 01 years, 03 months and 15 days; however, has served out sentence including remissions 02 years, 02 months and 13 days and unexpired portion of his sentence is 03 years, 09 months and 02 days.

Learned counsel for appellant submits that per prosecution case EC Afzal searched rickshaw and found contraband from it; however, EC Afzal was not examined before the trial Court. Next submits that per evidence of EC Muhammad Tariq as PW-2 (Available at page-55 of the Court file), he admits in his cross that electronics scale was obtained from one shop keeper even the name of shop keeper was not mentioned in the FIR as well

as challan as witness. Next submits that looking to the above discrepancies as well as contradictions, lenient view may be taken and appellant may be released by considering period of his incarceration he has already undergone.

Learned Addl. Prosecutor General, Sindh, when confronted with above factual position of the record, has conceded to the above submission made by learned counsel for appellant and extended no objection, if conviction and sentence of appellant is modified and sentence may be reduced to a period already undergone by the appellant.

I have considered the submissions advanced by learned counsel for the appellant and have gone through evidence made available through the record. Admittedly, the prosecution did not examine the EC Afzal, who allegedly conducted search of the Rickshaw and found alleged contraband. Besides; the Shopkeeper, from whom Electronic Scale was obtained for making weighment of the contraband, was not examined by the police nor was produced in Court as witness. It is admitted that once a male member of the family is put behind the bars, the earning source of mouth bread of the family comes to an end and his entire family members are virtually starving. Hence, it is a fit case where lenient view could be taken.

In the given circumstances I am inclined to take a lenient view in the matter. Accordingly, the sentence awarded to the appellant including the period he was to undergo in lieu of fine, is reduced to the period of his detention in jail he has already undergone. With the above modification in the sentence of appellant, this appeal is dismissed. Impugned judgment dated 28.02.2020 passed by Ist Additional Sessions Judge/MCTC/Special Court (CNS), Karachi (Central) vide Special Case No.12/2020 (re-the State Versus Faisal) being outcome of FIR No.13/2019, of P.S Excise, District Central, Karachi under Section 6/9-C CNS Act, 1997, is hereby maintained; however, the sentence awarded to the appellant is hereby modified in the terms stated above. The appellant Faisal son of Muhammad Nawab shall be released forthwith, if his custody is not required in any other case.

**JUDGE**