

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.D-04 of 2022

Present.

*Mr. Justice Muhammad Iqbal Kalhoro &
Mr. Justice Adnan-ul-Karim Memon.*

Appellant: Abdul Majeed Jamali through Ghazi Salahuddin Panhwar, Advocate.

Respondent: The State through Shahzado Saleem Nahiyon Deputy Prosecutor General Sindh.

Date of hearing: 15.09.2022.

Date of Decision: 15.09.2022.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. Through this Criminal Appeal, the appellant has challenged the judgment dated 20.12.2021, passed by learned Additional Sessions Judge-I / MCTC / Special Judge for CNS, Mirpurkhas in Special Case No.60 of 2021, Crime No.72 of 2021 registered at PS Jhudo for the offence under section 9 (c) CNS Act, 1997, whereby the appellant was convicted and sentenced for the offence u/s 9 (c) CNS Act, 1997 for possessing 200 grams of opium and 2170 grams of charas to undergo Life Imprisonment and pay fine to the tune of Rs.50,000/-; in case of default to undergo S.I. for one month more. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. Learned counsel for the appellant, at the very outset, has stated that the appellant is only bread earner of his family and has remained in Jail for sufficient period and still is being dragged in the instant case; as such, he does not wish to contest this Criminal Appeal and leave the appellant at the mercy of the Court. He states that if this Court while maintaining the

conviction reduces the sentence to one he has already undergone, he would not press the Criminal Appeal.

3. On the other hand, learned D.P.G. Sindh concedes that the appellant has remained behind the bars for sufficient period and learned the lesson, therefore, he has no objection if a lenient view is taken against him by dismissing the instant Criminal Appeal and treating the sentence to one as already undergone.

4. We have heard the learned counsel for the appellant, learned D.P.G. for the State and have gone through the record. The witnesses have supported each other on all salient features of the case and there appears to be no worthwhile contradictions. However, the offence pertains to the year 2021. Appellant is behind the bars. The Jail Roll of the appellant was called from the concerned Jail, which reflects that the appellant has served out eight years and twelve days including remission. The appellant is sole bread earner of his family and has remained in jail and learned the lesson as he has undergone sufficient period of his sentence. In the famous case of **'GHULAM MURTAZA and another v. THE STATE'** [P L D 209 Lahore 362], the punishment provided for possessing opium exceeding 100 grams and upto 300 grams is Rigorous Imprisonment for one year and seven months whereas, only 200 grams of opium is stated to have been recovered from the possession of appellant while for possessing the charas exceeding 2 kilograms and upto 3 kilograms the punishment is provided upto R.I. for four years and six months, therefore, there is no legal impediment in accepting request of learned counsel for the appellant. Only in order to enable the appellant to reform and rehabilitate himself to rejoin the mainstream life to once again become a useful member thereof, by taking leniency, instant Criminal Appeal is dismissed but with the reduction of his sentence to one as already undergone by the appellant including fine amount. In view of the above position, the office is directed to issue a release

writ for the appellant if he is not required in any other custody case.

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

JUDGE

JUDGE

Abdullah Channa/P.S