

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Spl. Criminal Appeal No.D-59 of 2024

Date	Order with signature of Judge
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1. For hearing of main case.

11.12.2024

Mr. Irshad Hussain Dharejo, Advocate for the Appellant
Syed Sardar Ali Shah, Addl. PG

Zulfiqar Ahmed Khan, J: At the outset, the learned counsel for the appellant submits that the Charge framed by the trial court, which forms the foundation of appellant's conviction and sentence, was so framed under wrong provision of law and the law as amended by the Control of Narcotic Substances (Amendment) Act, 2022 effective as of 05.09.2022 was not applied. He contends that the said error has led to improper assessment of the evidence and has directly influenced the scope of the trial. He emphasize that wrongly framed charge deprived the appellant of a fair opportunity to present an effective defense, as well it failed to clearly specifies the allegations against him. At the last, he prays that instant appeal may be allowed by setting aside the impugned judgment.

The learned Additional Prosecutor General concedes to this view and suggests that in all fairness, this is a case of mistrial and requests that de-novo trial under correct provisions of the Control of Narcotic Substance Act, 1997 as amended by the Act of 2022 is the most suitable option. To substantiate his argument, he refers to a precedent reported as *2022 MLD 1405 (Bashir Bughio vs. State)* where in similar circumstances, the court exercised its discretion by remanding the matter for a retrial with specific directions to the trial court to address the deficiencies by making appropriate amendments to the charge. The trial court was further directed to record evidence afresh, including the statement of the accused, and to conduct the retrial in a fair and expeditious manner. The court also emphasized the importance of concluding the retrial within three months to avoid unnecessary delay and to ensure justice was delivered effectively.

In the given circumstances, we are disposing of this appeal, by setting aside the impugned judgment, remand the case to the trial Court for de-novo trial of the accused after making appropriate amendment in the charge in accordance with correct law, by recording the evidence and statement of accused afresh and to decide the case expeditiously, preferably within three months from the date of receipt of this order. Moreover, in the event where it becomes apparent that a mistrial has occurred, the applicant shall retain the right to approach the concerned court by filing an appropriate application separately seeking the grant of bail, which shall be considered and decided by the learned trial court on its own merits. The trial court is expected to ensure that the decision on the bail application is rendered expeditiously, preferably within the shortest possible time, looking into the hardship with which the appellant has already gone, to prevent undue delay and to uphold the applicant's right to a fair and timely judicial process.

With these observations, instant appeal is disposed of accordingly.

JUDGE

JUDGE

Faisal Mumtaz/PS