

**IN THE HIGH COURT OF SINDH AT KARACHI**

**PRESENT:**

***Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Khadim Hussain Tunio***

**Spl. Cr. A.T. Jail Appeal No.137 of 2020**

Appellant : Jamaluddin S/o Lal Bux  
Through Mr. Mamoon A.K Sherwani,  
Advocate

Respondent : The State through Mr. Muhammad  
Iqbal Awan, Additional Prosecutor  
General, Sindh.

Date of Hearing : 25.04.2022

Date of Judgment : 25.04.2022

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

**Mohammad Karim Khan Agha. J-** Appellant Jamaluddin was tried by the Anti-Terrorism Court No.IV, Karachi in Special Case No.624/2019 in respect of FIR No.171/2019, under Section 4/5 Explosive Substance Act read with Section 7 ATA, 1997 and vide judgment dated 31.08.2020 was convicted and sentenced to seven years imprisonment.

2. The brief facts of the case are as under;\_

*“Laconically, concisely, facts of the prosecution are that on 24.09.2019, SI Umer Shareef of PS CTD/TTIG Civil Line, Karachi, received spy information that a person namely Jamaluddin s/o Lal Bux Bugti is present at Quetta Pak Sabir Goods Transport Company, Kharadar, Karachi is trying to send explosive material and chemicals i.e. red phosphorus, silver aluminum powder and potassium chloride to a person namely Abdullah Baloch (member of banned AQ-15) Quetta Balochistan and this chemical will be*

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used to prepare explosive material to commit terrorist activities in Balochistan and other parts of country. Police party reached at the pointed place at 1825 hours and on the pointation of informant apprehended the accused. He disclosed his name as Jmaluddin s/o Lal Bux Bugti. On his personal search police party recovered one receipt of bill of lading (bilty) from the front pocket of his worn shirt. Accused could not give satisfactory reply about the material mentioned in the receipt of bill of lading (bilty). On checking material mentioned in the bill of lading (bilty), police party found one drum weight 50 Kg containing Red Phosphorus, one drum weight 30 Kg containing Silver Aluminum Powder and one white plastic sack weight 25 Kg containing Potassium Chloride and when his booking receipt was checked, it was found that those explosive material was mis-declared by the accused as bleach powder. Accused was arrested and brought at P.S and FIR was lodged. The investigation was assigned to Inspector Muhammad Sarfraz, during interrogation accused disclosed that some more chemical material is available in his warehouse situated at Plot No-ST-13, Sector-31/B, KDA Employees Society, Korangi Township, Korangi. For recovery of such material accused led the police party towards the warehouse on pointation of accused police party led by Inspector Sarfaraz entered in the warehouse, from where (1) red phosphorus chemical (reddish colour) eight (8) tin (drums) weighing approximately 50 KG each and red phosphorus chemical of golden colour two tin (drums) weighing about 50 KG each, (2) Potassium Chloride chemical (white powder) 20 sacks, weighing approximately 25 KG each, (3) Barium Nitrate chemical (white powder) of five plastic sacks, weighing about 25 KG each, were recovered and memo of recovery (Ex-09/A), was prepared."

3. After usual investigation the case was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.



4. In order to prove its case, the prosecution examined nine (9) PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he denied the prosecution's allegations. He also gave evidence on oath and called one DW in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.

6. The facts and evidence of the case have been set out in detail in the impugned judgment and as such there is no need to repeat the same here so as to avoid unnecessary repetition and duplication.

7. At the outset, learned counsel for the appellant submitted, under the instructions of the appellant that he accepted his guilt and did not contest the case on merits and only sought reduction in his sentence based on the following mitigating circumstances;\_

- a) That the appellant was a young man and capable of reformation.
- b) He was a first time offender.
- c) He was the sole breadwinner of a large family and
- d) By accepting his guilt, he has shown genuine remorse.

He relied on a number of authorities on the reduction in sentence in similar cases which included (i) **Rizwan Hassan Versus The State** (2021 MLD 157), (ii) **Fahim Ali Versus The State** (2021 YLR 159) and (iii) **Muhammad Usman Versus The State** (2020 MLD 1319).

8. When confronted with appellant seeking a reduction in sentence based on the above mentioned mitigating circumstances especially keeping in view the fact that the appellant had not been convicted for any offence under the ATA,

learned Addl. P.G, Sindh had no objection for reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and found that the prosecution has proven its case through reliable witnesses that the appellant was arrested on the spot having in his possession chemicals which were used for making explosives and fell within the Explosive Substance Act. The appellant led the police to a warehouse where on his pointation a large quantity of similar chemical ingredients which could be used to create explosive devices, were recovered. The appellant had no license to retain these chemicals used for making explosives and in fact any such license which he had, was proven to be a fake one and that the names of some of the chemicals used for making explosive had been concealed by falsely labeling them as innocuous substances as such we have found that the prosecution has proven its case against the appellant beyond a reasonable doubt and maintain his conviction.

10. With regard to sentencing in addition to the mitigating circumstances mentioned by the learned counsel for the appellant, which would justify a reduction in sentence we have also observed that the appellant has already undergone a substantial portion of his sentence in prison. Taking into account these mitigating circumstances and in particular the no objection given by the learned Addl. P.G, Sindh, the sentence of the appellant is reduced from seven (07) years to the time already spent in jail including any fine and as such he shall be released unless he is wanted in any other custody case.

11. The appeal stands disposed of in the above terms.