

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

Criminal Appeal No. 229 of 2020

Appellant	:	Fazal Ameen son of Fazal Ahmed Through Mr. M. Ilyas Khan Tanoli, Advocate.
Respondent	:	The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.
Date of Hearing	:	09.05.2022
Date of Order	:	09.05.2022

J U D G M E N T

The Appellant Fazal Ameen currently on bail was tried in the Court of Ist A.D.J./Model Criminal Trial Court (MCTC)\ Special Court (CNS), Karachi Central in Special Case No. 69 of 2020 arising out of FIR No. 228/2019 for the offences punishable under sections 6, 9 of CNS Act, 1997 registered at P.S. North Nazimabad, Karachi and vide judgment dated 27.02.2020 he was convicted of the aforesaid offences and sentenced to RI for four years and six months and to pay fine of Rs.20,000/= and in default thereof, he shall suffer S.I. for four months more. However, he was also given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that on 30.12.2019 at about 0120 hours, the Complainant ASI Liaquat Ali of PS North Nazimabad alongwith his subordinates arrested accused Fazal Ameen and recovered from his possession chars weighing 1530 grams and cash amount of Rs.400/= on service road, near Nafsiyati Hospital, North Naziabad, Karachi and lodged such FIR under CNS Act.

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3. After usual investigation the matter 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 four PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent and falsely implicated in this case. He did not give evidence on oath or call any witness 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 of the case and evidence produced before the trial Court have been set out in the impugned judgment and as such there is no need to reproduce the same so as to avoid any unnecessary repetition and duplication.
7. After arguing the case at length, learned counsel for the appellant, under instructions of the appellant, who is present in Court on bail, stated that he would not press this appeal on merit and would be satisfied if he is given a reduction in sentence to some reasonable extent based on various special features/ mitigating circumstances. In respect of some special features/ mitigating circumstances, learned counsel stated;
 - a) That the appellant is a young man and is capable of reformation.
 - b) That the appellant has a large family to support, who is relying on his income and are suffering due to his continuous confinement.
 - c) That the appellant is a first time offender.

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- d) That since the appellant had accepted his guilt he has shown genuine remorse.

As such, he is entitled to a reasonable reduction in his sentence.

8. When confronted with the above mentioned special features/mitigating circumstances, learned Addl. P.G. had no objection to the sentence of the appellant being reduced to some reasonable extent.

9. We have gone through the evidence on record and found that the appellant was arrested on the spot and caught red-handed by police officials who recovered 1530 grams charas from his possession. The arresting police official and mashir had no enmity or ill-will against the appellant in order to implicate the appellant in a false case and as such, we find their evidence to be reliable, trustworthy and confidence inspiring and believe the same. We also find that the prosecution has proved safe custody of the narcotic from the time it was recovered from the appellant until the time it was sent to chemical laboratory for chemical test which produced a positive chemical report. As such we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and maintain the conviction of the appellant.

10. We note that the sentence handed down to the appellant is fully in conformity with the guidelines laid down in the case of **Ghulam Murtaza & others vs. the State** [PLD 2009 Lahore 362]; however, we also note that but for the extra for 530 grams charas recovered from the appellant, appropriate sentence as per guideline laid down in the **Ghulam Murtaza** (Supra) would have been one year and nine months alongwith fine of Rs.13,000/- and in default thereof, further SI for four months and 15 days. Keeping in view this fact and the special features/mitigating circumstances put forward by learned counsel for the appellant and no objection certificate by learned Addl. P.G., we hereby maintain the conviction of the appellant but reduce his sentence

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to one year and nine months alongwith fine of Rs.13,000/- and in default thereof, to suffer SI for four months and 15 days more. The appellant present on bail shall be taken into custody and returned to Central Prison, Karachi to serve out remainder of his sentence as modified by this judgment. However, he shall have benefit of Section 382-B Cr.P.C. and any other period which he has spent in any jail in the Province of Sindh in respect of Crime No. 228/2019 and any other remissions applicable to him under the law.

11. The appeal is disposed of in the above terms. The bail bond stands cancelled and surety also stands discharged.

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