

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

PRESENT:

***Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Arshad Hussain Khan.***

Cr. Jail Appeal No.87 of 2022

Appellant : Mst. Hina W/o Sher Ali through
Mr. Aamir Haroon, advocate

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

Date of Hearing : 07.12.2022
Date of Order : 07.12.2022

J U D G M E N T

Mohammad Karim Khan Agha, J:- The Appellant Hina W/o Sher Ali was tried in the Model Criminal Trial Court / 1st Additional District & Sessions Judge, Malir, Karachi in Sessions Case No.2283 of 2021 in Crime No.221 of 2021 under Sections 6/9-C of CNS Act, 1997 registered at Police Station Ibrahim Hyderi and vide impugned Judgment dated 24.01.2022 she was convicted to suffer rigorous imprisonment of Ten (10) years and fine of Rs.10,00,000/- (One Million). In case of failure to pay the fine appellant was to undergo six months simple imprisonment in addition to her main sentence. Benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the case are that on 09.06.2021 at about 07:00 a.m. at Rehri Road under construction college Ali Akber Shah Goth Ibrahim Hyderi Malir, Karachi a police party headed by SI / SHO Syed Muhammad Ali Shah of P.S. Ibrahim Hyderi apprehended the present accused along with

other accused persons and from her possession, police recovered one packet of Chars wrapped in yellow tape and one packet of opium in presence of mashirs, hence the instant FIR was registered.

3. After usual investigation, the matter was challaned and the appellant was sent up to face trial. She pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined four PWs and exhibited various documents and other items. The appellant in her statement recorded under Section 342 Cr.P.C. denied allegations leveled against her. Appellant gave evidence on oath and also produced two DWs in support of her 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 in this judgment and hence, the appellant has filed this appeal against her conviction and sentence.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 24.01.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions of the appellant stated that he did not press this appeal on merit as the appellant accepted her guilt provided that she is given some reasonable reduction in

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sentence based on following special features/mitigating circumstances :-

- a) The appellant is a lady and has large family to support as well as young child to look-after.
- b) The appellant is first time offender and capable of reformation.
- c) By accepting her guilt the appellant has shown genuine remorse and saved the time of this court.
- d) The appellant had served out a substantial portion of her sentence.

8. Based on the above mitigating factors learned Additional Prosecutor General has no objection to some reasonable reduction in sentence of the appellant.

9. We have gone through the record which reveals that the appellant was arrested on the spot with one packet of charas and one packet of opium each weighing one (01) K.G. She has not suggested any enmity against any of the police officials who made her arrest and recovered the narcotics from her and as such the police officials had no reason to falsely implicate her in this case, as such, we find that the prosecution evidence to be trustworthy, reliable and confidence inspiring and we believe the same. The recovered narcotics also lead to a positive chemical report. As such we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and uphold her conviction.

10. With regard to sentencing we find that the appellant was sentenced to undergo rigorous imprisonment of Ten (10) years and fine of Rs.10,00,000/- (One Million). According to the sentencing guidelines laid down in the case of Ghulam Murtaza & others vs. the State [PLD 2009 Lahore 362] the

appellant ought to have been sentenced to suffer R.I. for 01 year and 09 months with fine of Rs.13,000/- in respect of recovered charas as well as R.I. for 01 year and 08 months with fine of Rs.7,000/- in respect of recovered opium as such according to guidelines the appellant ought to have been sentenced to 03 years and 05 months with fine of Rs.20,000/- instead of rigorous imprisonment of Ten (10) years and fine of Rs.10,00,000/- (One Million).

11. Based on the above mitigating factors and the fact that the appellant ought to have been sentenced to 03 years and 05 months with fine of Rs.20,000/- and in particular no objection given by the Addl. Prosecutor General Sindh for reduction of the sentence of the appellant as well as the fact that the appellant has served out a major portion of her sentence we hereby reduce the sentence of the appellant to the period already undergone in jail and waive off any fine payable by her. The appellant shall be released unless she is wanted in any other custody case.

12. The instant appeal stands disposed of in the above terms.

Naveed PA