

THE HIGH COURT OF SINDH, KARACHI

Present:

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

CRIMINAL JAIL APPEAL NO.37 OF 2022

Appellant

Khurram son of Moeenuddin
through Mr. Zulfiqar Ali Langah,
Advocate.

Respondent

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

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Khurram son of Moeenuddin was tried in the Court of 1st Additional Sessions Judge/Model Criminal Trial Court (MCTC-I)/Special Court (CNS), Karachi Central, in Special Case No.596 of 2021 in respect of FIR No.410 of 2021, under Section 6, 9(c) of Control of Narcotics Substance Act, 1997, registered at police station Nazimabad, Karachi and vide impugned judgment dated 11.12.2021, appellant was convicted and sentenced to suffer R.I. for four (04) years, six (06) months and to pay fine of Rs.20,000/- [Rupees Twenty Thousand only], and in default thereof, he shall suffer S.I. for five (05) months' more. However, the benefit of Section 382-B, Cr.P.C. was also extended to the appellant.

2. Succinctly facts of the prosecution are that complainant SIP Muhammad Saqalain of police station Nazimabad, Karachi, had arrested accused Khurram and recovered two pieces of Chars weighing 1015 grams and cash amount of Rs.260/- only, from service road near Diamond CNG Pump, Nazimabad, Karachi, on 28.05.2021 at 0130 hours, under memo and lodged the FIR under Section 6, 9(c) of Control of Narcotics Substance Act, 1997.

3. After usual investigation, the challan was submitted and the case was sent up for trial whereby the appellant pleaded not guilty to the charge and claimed trial.

4. The prosecution in order to prove its cases examined 03 Prosecution Witnesses and exhibited various documents and other items. The statement

of accused was recorded under Section 342 Cr.P.C in which he denied the allegations leveled against him. However, the appellant did not give evidence on oath nor produce any DW in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 11.12.2021 passed by the trial court, 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 the appellant did not press this case on merits and accepted his guilt provided that he is given a reduction in sentence to some reasonable extent based on the following mitigating circumstances:-

- a) That the appellant is first time offender and is capable of reformation;
- b) That the appellant had a large family to support;
- c) That by not contesting the case on merits the appellant has admitted his guilt and shown genuine remorse and saved the time of this Court;
- d) That the appellant has served out a substantial portion of his sentence.

8. Based on these mitigating circumstances mentioned by the appellant, learned Additional Prosecutor General, Sindh, had no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and find that the appellant was arrested on the spot by the police officers who recovered two pieces of Chars weighing 1015 grams from his possession.

10. The Police witnesses who arrested and recovered two pieces of Chars weighing 1015 grams from the appellant had no enmity or ill will towards him and had no reason to falsely implicate the appellant in this case and their evidence is on the same lines and as such we find their evidence trustworthy and confidence inspiring and believe the same. The chemical report in respect of recovered two pieces of Chars weighing 1015 grams, as above, is positive and as such we find that the prosecution has proved its case against

the appellant beyond a reasonable doubt and maintain conviction of the appellant.

11. With regard to sentencing based on the mitigating circumstances and the no objection given by the learned Additional Prosecutor General, Sindh, we hereby reduce the sentence of the appellant to that already undergone in jail and also waive his fine. The appellant shall be released unless he is wanted in any other custody case.

12. This Criminal Jail Appeal stands disposed of in the above terms.

Faizan/PA/