

IN THE HIGH COURT OF SINDH, KARACHI

Present;

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

CRIMINAL APPEAL NO.465 OF 2022.

Appellants

Owais Baig Mirza S/o. Afzal Baig,
through M/s. Ghulam Mustafa
Abro and Tasleem Ahmed Rajput,
Advocate.

Respondent

The State through Mr. Ali Haider
Saleem, Additional Prosecutor
General Sindh.

Date of Judgment

12.12.2022.

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Owais Baig Mirza S/o. Afzal Baig Mirza was tried in the Court of 1st Additional District & Sessions Judge (Model Criminal Trial Court) Karachi South in Sessions Case No.76/2022 arising out of Crime No.744/2021 U/s. 6/9(b) of CNS Act, 1997 registered at P.S. Darakhshan, Karachi South and vide impugned judgment dated 05.08.2022 convicted under section 265-II(2), Cr.P.C. for committing offence punishable under section 9(b) read with section 6 of the Controlled Narcotics Substances Act, 1997 and was sentenced to undergo R.I. for Three (03) years along with fine of Rs.1,00,000/-. In case of default in payment of fine, he was ordered to suffer S.I. for Six (06) months more. However, the benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. Brief facts of the prosecution case are that on 28.11.2021 at about 10 hours at Main Khayaban-e-Mujahid near Khayaban-e-Shujat Signal, 181 Phase-V, Karachi he was arrested by the patrolling police party of 152 Station Darakhshan, Karachi South, headed by complainant ASI P. Amrohi when he was found in possession of 06 grams Cocaine, which was taken into police custody vide a memo of arrest and recovery in presence of the official witnesses, hence such FIR was lodged.

3. After usual investigation, the challan was submitted against the appellant who pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 04 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he claimed false implication however, neither he gave evidence on oath nor called any DW in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellant as set out earlier in the judgment; hence, the appellant has filed this appeal against his convictions. The facts and evidence concern^{ing} his case have been well set out in the impugned judgment and there is no need to reproduce the same in order to avoid unnecessary repetition and duplication.

6. At the very outset, learned counsel for the appellant under instructions stated that the appellant did not contest his case on merits and accepted his guilt and only sought reduction in his sentence 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 number of family to support.
- c) That by accepting his guilt he has shown genuine remorse and saved the time of this Court.
- d) That the appellant has served out major portion of his sentence.

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

8. We have gone through the evidence on record and find that the appellant was arrested on the spot by the police officials and 6 gram cocaine was recovered from his possession and the police officials have no enmity or ill will with the appellant and had no reason to implicate him in a false case and as such we believe their evidence which we find to be reliable.

trustworthy and confidence inspiring. Narcotic recovered from the appellant also led to positive chemical report.

9. With regard to sentence keeping in view the mitigating circumstances raised by the appellant and no objection by the learned Additional Prosecutor General Sindh and the fact that the appellant has served a major portion of his sentence, we hereby reduce the sentence of the appellant to the time he has already undergone in Jail and waive off any fine and as such the appellant shall be released unless he is wanted in any other custody case.

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

M. Anif