

## THE HIGH COURT OF SINDH, KARACHI

*Present:*

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

CRIMINAL APPEAL NO.121 OF 2022

Appellant	Saeed @ Charya s/o Zali Muhammad through Mr. Khuda Dino Sangi, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Hearing	20.12.2022
Date of Announcement	20.12.2022

### JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Saeed @ Charya was tried in the Court of Ist Additional Sessions Judge/Model Criminal Trial Court (MCTC-I)/Special Court (CNS-I), Karachi Central, in Special Case No.1144 of 2021 in respect of FIR No.446 of 2021, under Section 6, 9(c) of Control of Narcotics Substance Act, 1997, registered at police station North Nazimabad, Karachi and vide judgment dated 07.02.2022, he 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 whereof, he was to 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 on 29.10.2021 at about 0100 ours, complainant SIP Ghulam Mustafa of P.S. North Nazimabad, had arrested accused Saeed @ Charya s/o Zali Muhammad and recovered two pieces of Chars weighing 1170 grams from main road Pahar-Ganj Chowrangi to KDA near main gate of Asghar Ali Shah, Stadium, Block-C, North Nazimabad, Karachi under memo and lodged such FIR u/s 6,9 (c) of Control of Narcotics Substance Act, 1997.

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

4. The prosecution in order to prove its case examined 03 Prosecution Witnesses and exhibited various documents and other items. Appellant in his Section 342 Cr.P.C statement denied the allegations leveled against him. However, the appellant did not give evidence on oath nor produced 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, therefore, in order to avoid duplication and unnecessary repetition, there is no need to reproduce the same.

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 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 has a large family to support,
- c) That by accepting his guilt the appellant has 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, has no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and find that on 29.10.2021 at 0100 hours SIP Ghulam Mustafa of P.S. North Nazimabad arrested the appellant and recovered two pieces of Chars weighing 1170 grams from his possession in presence of mashirs. The appellant was caught red handed by the police and he has not suggested any enmity or ill will against police officials, who are in the same line in their evidence as such we find their evidence trustworthy, confidence inspiring and believe the same. The recovered narcotics was sent to the chemical Examiner which has returned with positive report 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.

10. 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.

11. This Criminal Jail Appeal stands disposed of in the above terms alongwith pending applications.

A.K.