

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Criminal Appeal No. D-38 of 2025

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Mujahid Hussain @ Mujo s/o Miandad, Gopang
Through Mr. Rukhsar Ahmed Junejo, Advocate

The State : Through Mr. Gulzar Ahmed Malano, Assistant
Prosecutor General

Date of hearing : 10.12.2025
Date of decision : 10.12.2025

ORDER

KHALID HUSSAIN SHAHANI, J.– The appellant, Mujahid Hussain @ Mujo s/o Miandad by caste Gopang, has assailed the judgment dated 22.04.2025, passed by the learned Additional Sessions Judge (MCTC), Mirwah, in Special Case No.87 of 2021, arising out of Crime No.56 of 2021 of Police Station Setharja, District Khairpur. Through the impugned judgment, the appellant was convicted under Section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced to suffer rigorous imprisonment for ten years with a fine of Rs.80,000/-, and in case of default, to further undergo simple imprisonment for six months. The benefit of Section 382-B, Cr.P.C. was extended to him.

2. The prosecution case, as set up in the FIR lodged by SIP Abdul Ghafoor, is that on 07.06.2021, during patrolling duty, the complainant apprehended the appellant and allegedly recovered from his possession a shopping bag containing 1245 grams of charas. The recovered narcotic substance was sealed at the spot, memo of arrest and recovery was prepared, and thereafter the accused along with the case property was brought to the police station, where the FIR was registered.

3. At the very outset, learned counsel for the appellant contends that, according to the prosecution's own case, the alleged recovery of contraband took place on 07.06.2021, yet the same was sent to the Chemical Examiner

with an unexplained delay of seven days, i.e., on 14.06.2021, and was received by the Director Laboratories and Chemical Examiner, Government of Sindh, on 15.06.2021. It is further pointed out that the Head Constable Ghulam Abid, who purportedly carried the sealed parcel to the Chemical Examiner, has not been examined as a witness. In these circumstances, the chain of safe custody and safe transmission of the case property stands materially compromised. On this premise, learned counsel urges that, while not pressing the appeal on the point of conviction, the sentence already undergone by the appellant, spanning over 4½ years, is more than sufficient and calls for a substantial reduction by this Court in exercise of its appellate jurisdiction.

4. Learned Assistant Prosecutor General, in all fairness, does not controvert the above infirmities relating to the delayed dispatch and missing link in safe custody. He, in view of the peculiar facts of the case, candidly concedes to a reduction of the sentence and raises no objection if the same is suitably modulated.

5. It is borne out from the record that the recovered quantity of contraband was 1245 grams of charas, which, under Section 9(c) of the Control of Narcotic Substances Act, 1997, may entail a stringent punishment extending up to death, imprisonment for life or imprisonment for a term that may extend to fourteen years, and fine which may go up to one million rupees, where the quantity exceeds the limit specified in clause (b) of Section 9. However, the practical reality in the present case is that the appellant has already undergone incarceration for a period of more than 4½ years. Given (i) the delay in sending the case property for chemical examination, (ii) the non-examination of the bearer of the sealed parcel, thereby casting doubt on safe custody and safe transmission, and (iii) the prosecution's express concession

to a reduction in sentence, there is no legal embargo in extending leniency on the question of sentence, while maintaining the conviction.

6. Resultantly, this appeal is partly allowed to the extent of sentence only. The conviction of the appellant under Section 9(c) of the Control of Narcotic Substances Act, 1997, as recorded by the learned trial Court, is maintained. However, the sentence of ten years' rigorous imprisonment along with the default sentence in lieu of fine is reduced and commuted to the period already undergone by the appellant, which shall be treated as sufficient punishment, inclusive of the default imprisonment. The appellant shall be released forthwith, if not required in any other case.

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