

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Sp. Cr. Appeal No. D-99 of 2024

Before:
Mr. Justice Amjad Ali Bohio, J.
Mr. Justice Khalid Hussain Shahani, J.

Appellant : Muhammad Rafique son of Trooh, Gopang
Through Mr. Hamayon Shaikh, Advocate

The State : Through Mr. Aftab Ahmed Shar, Addl. P.G

Date of hearing : 10.12.2025

Date of decision : 10.12.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The Appellant, Muhammad Rafique Gopang, challenges the impugned Judgment dated 19.09.2024, passed by the learned Additional Sessions Judge (MCTC), Mirwah, in Special Case No.76/2023. The Appellant stood convicted under Section 9(3) (c) of the Control of Narcotics Substances (Amended) Act, 2022, and was sentenced to ten (10) years' Rigorous Imprisonment, coupled with a substantial fine of Rs.100,000/- (with a default sentence of six months' Simple Imprisonment). The benefit of Section 382-B Cr.P.C. was duly extended.

2. The prosecution's narrative, as delineated in the FIR (Crime No.79/2022 of P.S. Setharja), posits that on 27.10.2022, the Appellant was apprehended near Bandi Bridge following an attempted escape. A search allegedly yielded a green shopper containing three pieces of *Charas* weighing 1100 grams, along with a sum of Rs.100/- cash.

3. Learned counsel for the Appellant meticulously highlighted several critical discrepancies in the prosecution's case which undermine the sanctity of the conviction. Crucially, it was forcefully submitted that despite the theory of recovery involving three separate pieces of *Charas*, all prosecution witnesses, including the complainant, unequivocally deposed that the alleged pieces were never weighed individually. Furthermore, the

integrity of the evidence was severely compromised when the property was de-sealed in Court, as the complainant's own testimony then contradicted the FIR, asserting the presence of only one piece of *Charas* within the parcel. Such a palpable conflict regarding the core quantum of the alleged contraband fundamentally strikes at the root of the prosecution's veracity.

It was further pointed out that the recovered cash amount of Rs. 100/- was neither produced in evidence nor mentioned in the Appellant's statement under Section 342 Cr.P.C. Moreover, no contraband or incriminating material was placed before the Appellant for confrontation during his Section 342 examination, thereby amounting to a grave prejudice and a denial of due process. In light of these material infirmities, the learned counsel ultimately and persuasively implored this Court to consider the sentence already served by the Appellant as sufficient and proportionate punishment, and to dispose of the appeal on this equitable ground.

4. Significantly, the learned Additional Prosecutor General, recognizing the gravity of these facts and the peculiar circumstances of the case, conceded the material discrepancies and did not oppose the prayer for reduction of sentence.

5. The offence of which the Appellant stands convicted carries a maximum punishment of up to 14 years' R.I. Considering the recovery of 1100 grams of *Charas*, while the conviction for the substantive offence remains technically intact, it is vital to acknowledge the established legal principle of parity and the unassailable fact that the Appellant has already endured an incarceration period exceeding three years. Given the prosecution's lack of objection and the compelling legal flaws brought forth, we find no legal impediment to grant the equitable relief sought.

Consequently, while the appeal on merits is dismissed, and the conviction under Section 9(3) (c) of the Control of Narcotics Substances (Amended) Act, 2022, is maintained, the ten-year sentence is hereby commuted to the period of imprisonment already undergone by the Appellant. This commutation shall also encompass the period of simple imprisonment ordered in default of the fine payment.

The Appellant shall be released forthwith unless required in connection with any other lawful custody.

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