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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Jail Appeal No. D- 16 of 2023.

Present:

Mr. Justice Muhammad Saleem Jessar.

Mr. Justice Jawad Akbar Sarwana.

Masood Ahmed Shaikh

.....Appellant.

Versus

The State.

.....Respondent.

Mr. Shahbaz Ali M. Brohi, Advocate for the appellant.

Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of hearing: 17.04.2024.

Date of Judgment: 17.04.2024.

Judgment

Muhammad Saleem Jessar, J.- Through this criminal jail appeal, appellant

Masood Ahmed son of Muhammad Amin Shaikh has assailed the judgment dated 14.06.2023, penned down by learned Sessions Judge/ Special Judge for CNS, Shikarpur, in Special case No. 289 of 2022 re-The State v. Masood Ahmed Shaikh, emanating from F.I.R No. 06 of 2022 of P.S Usman Eisani at Bado, whereby the appellant was convicted for offence under Section 9(c) of the Control of Narcotic Substances (Sindh Amendment) Act No.XX of 2022 and sentenced to undergo R.I for 14 (fourteen) years and to pay fine of Rs.400,000/- (Rupees four hundred thousand only) and in case of default to pay the fine, to suffer S.I for six months more. The appellant was however extended benefit of Section 382-B, Cr.P.C.

2. At the very outset learned counsel for the appellant submitted that the appellant has remained in incarceration for a sufficient period of time. He further submitted that, he is ready not to press the instant appeal on merits, if the sentence of appellant is reduced to that of already undergone, as he has sufficiently been punished for remaining in jail and appellant may be given a chance in his life to rehabilitate

himself. Per learned counsel, the appellant is a previous non-convict and is sole breadwinner of his entire family as well, who are on starvation due to confinement of appellant in jail. Learned counsel further contended that the appellant is a first offender and is not involved in any other case of like nature. In addition, learned Counsel while referring evidence of the PWs, submits that there are major contradictions on the point of leaving police station towards place of incident as well as arrest of the accused, as the complainant and mashir have deposed different from each other. The complainant deposed that they left the police station, while the mashir deposed that they left the police post. Such discrepancy on the part of prosecution shows that either the offence had not taken place in a manner as reported or the police in order to take shield from superiors have maneuvered all this at the police station only to observe their weekly progress; hence, submits that in view of above, though the appellant got a good case for acquittal as doubt created in the prosecution case itself is sufficient to set aside the impugned judgment, even then under instructions he does not wish to press instant criminal jail appeal on merits and prays for lenient view.

3. The learned D.P.G. concedes to the above request and submits that the appellant has sufficiently been punished as he has remained in jail right from his arrest i.e. 16.2.2022; therefore, he has recorded no objection, if the sentence of the appellant is reduced to that of already undergone.

4. The appellant also appears to be first offender and a young man of 36/37 years of age. Moreover, there is no such material on record to show that the appellant is already convicted in any other case of like nature. The alleged offence is shown to have occurred on 16.02.2022, whereas the amendment in the Control of Narcotics Substances Act, 1997 (Sindh Amendment) Act No.XX of 2022 was made on 5th September, 2022. The trial Court appears to have wrongly convicted and sentenced the appellant under the said amendment in CNS Act, 1997, which practice on the part of learned trial Court, on the face of it, is illegal. Moreover, the appellant was admittedly arrested in this case on 16.02.2022 and right from his arrest he is confined in jail continuously, whereby he has sufficiently been punished.

5. It is a well-established principle of law that in special circumstances, the Court at its discretion can divert from the norms and standards prescribed in terms of sentencing after assigning cogent reasons. In this respect, reliance is placed on the case of *State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v. Mujahid Naseem Lodhi* (PLD 2017 SC 671) wherein it has been held that:-

"The exercise of jurisdiction and discretion in the matter of the respondent's sentence by the trial court and the High Court have not been found by us to be open to any legitimate exception, particularly when the reasons recorded for passing a reduced sentence against the respondent and for making a departure from the above mentioned sentencing guidelines have been found by us to be proper in the peculiar circumstances of this case."

6. The Hon'ble Apex Court had also been pleased to reduce sentence in cases of similar nature reported as *Sherzada v. The State* (1993 SCMR 149) and *Gul Badshah v. The State* (2011 SCMR 984).

7. In view of above facts and circumstances of the case, we are of the opinion that the appellant has got good a case for reduction of his sentence. Therefore, in order to give a chance to the appellant in his life to rehabilitate himself so also following the dictum laid down cases of *State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v. Mujahid Naseem Lodhi*; *Sherzada v. The State* and *Gul Badshah v. The State* (*supra*) and case of *Niaz-ud-Din v. The State* (2007 SCMR 206), this criminal jail appeal is dismissed. Consequently, while maintaining the conviction of the appellant, the sentence inflicted on him is reduced to that of already undergone including sentence of fine amount and the term of imprisonment in default thereof. The appellant is reported to be in jail, he shall be released forthwith, if his custody is not required in any other case.


Judge


Judge