

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No. D-40 of 2022

PRESENT

Mr. Justice Muhammad Saleem Jessar,
Mr. Justice Jawed Akbar Sarwana.

Appellant : Muhammad Hassan @ Badshah s/o Gamano Khoso,
through Mr. Naseer Ahmed Wagan, Advocate.

Respondent : The State, through Mr. Ali Anwar Kandho,
Additional Prosecutor General, Sindh.

Date of hearing : 05.03.2024,
Date of Judgment : 05.03.2024.

JUDGMENT.

Muhammad Saleem Jessar, J.- Through this criminal Jail Appeal, Appellant Muhammad Hassan @ Badshah has challenged the Judgment dated 29.10.2022, passed by learned Sessions/ Special Judge for CNSA, Kambar Shahdadkot, in Spl. Case No.109 of 2021, re-State v.Muhammad Hassan @ Badshah Khoso, whereby the Appellant having been found guilty of the charge was convicted for offence under Section 9(C), Control of Narcotic Substances Act, 1997 and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.50,000/- (Rupees fifty thousand only), in case of default in payment of fine to undergo simple imprisonment for 06 months more, with benefit of Section 382-B, Cr.P.C.

2. Briefly, the facts of the prosecution case are that on 20.09.2021 at about 1840 hours, complainant ASI Shahnawaz Bhutto lodged FIR at PS Nasirabad on behalf of the State, alleging therein that on the fateful day, he along-with his subordinate staff as per entry No.24 at about 1715 hours duly armed with arms and ammunition left Police Station for patrolling in their jurisdiction. After visiting different place, on a tip-off, apprehended the appellant/accused Muhammad Hassan @ Badshah Khoso required in Crime No.55 of 2021 under section 9 CNS of P.S Nasirabad, at 1740 from common street near his house. They arrested him at the spot and recovered from his possession a shopper containing 10 kilograms and cash amount Rs.500 in presence of mashirs PC Imtiaz Ali and PC Jawed Ali. After completing requisite formalities at the spot, the Appellant and recovered contraband were taken to police station, where FIR was registered on behalf of State.

3. The Appellant pleaded 'not guilty' to the charge and claimed to be tried. The prosecution to establish its charge examined PW-1 complainant ASI-Shahnwaz Bhutto, who produced departure entry, memo of arrest and recovery and FIR, PW-2 Mashir PC Imtiaz, who produced memo of visit of Vardhat, PW-3 I.O/SPO Ubedullah Abbasi, who produced copy of RC and Chemical report and WHC Riaz Hussain who produced PS copy of register 19 and PW-4 PC Imran at Ex.8. Thereafter DPP for the State closed the side of prosecution. The trial Court, on the basis of evidence of these witnesses held the Appellant guilty of the charge and sentenced him, as stated above.

4. Learned Counsel for the Appellant submits that the appellant was arrested by the police on 20.09.2021 along with alleged contraband; however, the same was sent to Laboratory on 29.9.2021 after the delay of eight day and no plausible explanation for such delay as well as for safe custody has been furnished. Hence presumption may be drawn that the police after registering the case arranged the same aims to strengthen the rope of their false case and nothing was secured on spot as claimed by the prosecution. He, therefore, submits that prosecution has failed to establish its charge. In support of his contention places reliance on the case of **Qaiser Khan Vs. The State through Advocate-General, Khyber Pakhtunkhwa, Peshawar (2021 SCMR 363)**. He further submits that as per mashirmama of recovery and FIR the appellant allegedly was found in possession of black shopper containing contraband however at the time of evidence before the trial Court said bag was de-sealed and no such black shopper was available. The complainant of this case had admitted in his cross that the black shopper as mentioned in the memo and FIR is not available before the court when he was examined. He further submits that though the appellant has got good case even then under instructions he does not press the appeal on merits if by considering the above discrepancies the period he has already undergone may be considered and he may be directed to be released.

5. Learned Additional Prosecutor General raised no objection to the request made by the learned Counsel for the appellant for reduction of the sentence, contending that the appellant has sufficiently been punished, as he has remained in jail for sufficient period.

6. Per prosecution case, as per mashirmama of recovery and FIR the appellant allegedly was found in possession of black shopper containing contraband; however, at the time of evidence before the trial Court said bag was de-sealed and no such black shopper was available. The complainant of this case had admitted in his cross that the black shopper as mentioned in the

memo as well as FIR is not available before the court when he was examined. Anyhow, since the Counsel for the Appellant has preferred to seek reduction in the sentence of Appellant instead of arguing the appeal on merits, therefore, by taking into consideration the above discrepancy as mitigating circumstance, we would consider the request so made on behalf of the Appellant for reduction of sentence of the Appellant to already undergone. According to the Jail Roll of Appellant dated 15.11.2023 furnished by the Superintendent, Central Prison & Correctional Facility, Larkana, the Appellant is shown to have served out 02 years 2 months and 26 days substantive sentence excluding the remission and has earned remissions for 04 year, 10 months and 10 days, thereby he has served total sentence of 07 years and 01 months as on 15.12.2023 and the unexpired portion of his sentence as shown is 03 years 04 months, and 21 days including sentence of fine. The sentence which the appellant has served till date, appears to be adequate and sufficient. Moreover, the appellant is not shown to be convict of any other case of like nature.

7. In the case of *Niaz-ud-Din v. The State* (2007 SCMR 206), the Hon'ble Supreme Court was pleased to reduce the sentence of imprisonment for ten years awarded for possessing five kilograms of heroin to imprisonment for six years.

8. In our opinion, the appellant has sufficiently been punished and he is not shown to be involved in any other case of like nature. Therefore, in order to give a chance to the appellant in his life to rehabilitate himself so also following the dictum laid down in the cases of *Gul Naseeb v. The State* (2008 SCMR 670) and *Niaz-ud-Din v. The State* (2007 SCMR 206), instant appeal is dismissed as not pressed and the impugned judgment to the extent of conviction of the appellant is maintained; however, the sentence awarded to him by the trial Court vide impugned judgment dated 29.10.2022 is reduced to the imprisonment which he has already undergone. The sentence of fine is also remitted in the circumstances. Appellant Muhammad Hasssan @ Badshah Khoso shall be released forthwith, if he is not required to be detained in any other case.

9. With the above modification in the sentence, this Criminal Jail Appeal is disposed of.


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