

ORDER SHEET

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No.546 of 2024

[Shahbaz Ahmed son of Bashir Ahmed v The State]

Criminal Appeal No.241 of 2024

[State /ANF Narcotic Force, Karachi v The State]

Date	Order with signature of Judge
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1. For order on MA No.10438/2024.
2. For order on MA No.10439/2024.
3. For hearing of main case.
4. For hearing of MA No.10440/2024.

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05.05.2026.

Mr. Bakht Azam, Advocate, Advocate for the Appellant
in Criminal Appeal No.546 of 2024.

Mr. Habib Ahmed Special Prosecutor ANF
in Criminal Appeal No.241 of 2024.

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JUDGMENT

Shamsuddin Abbasi, J.- Through Criminal Appeal No.546 of 2024, the appellant, Shahbaz Ahmed, has called into question the validity of the judgment dated 30.11.2023, penned down by the learned Special Court-I (Control of Narcotic Substances), Karachi, in Special Case No.62 of 2023 (FIR No.26 of 2023) registered at Police Station ANF-II, Karachi, for offences under Sections 6/9(1) Sr. No.6(D), 14 and 15 of the Control of Narcotic Substances Act, 1997 (as amended by the Act of 2022) through which he was convicted on his plea of guilt under the aforesaid provisions and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.150,000/- and to suffer simple imprisonment for six months more in lieu of fine, however, the benefit in terms of Section 382-B, Cr.P.C. was extended to him. On the other hand, the State/ANF has filed Criminal Appeal No.241 of 2024 seeking enhancement of sentence awarded to the appellant and since both appeals arise out of a common judgment, the same are being decided together through this common judgment.

2. The facts as set-out in the FIR, in brief, are that on 31.03.2023, SIP Muhammad Aslam was present at Police Station ANF-II, Karachi, when he received spy information to the effect that an international smuggler, namely Shabbir Ahmed, is engaged in supplying narcotics abroad. Acting upon such

information, he along with his subordinate staff proceeded to Jinnah International Airport, Karachi, reached the departure gate and apprehended a suspect on the pointation of spy, who disclosed his name as Shahbaz Ahmed son of Bashir Ahmed and during search of his bag, 2.071 grams of heroin powder was recovered. The recovered narcotics were sealed at the spot while a sample weighing 5 grams was separately prepared and sealed for the purpose of chemical analysis. Thereafter, upon return to the police station, the formal FIR was lodged.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction under the above referred Sections, whereby the appellant was sent up to face the trial.

4. A charge in respect of the offences under Sections 6/9(1) Sr. No.6(D), 14 and 15 of the Control of Narcotic Substances Act, 1997 (as amended by the Act of 2022) was framed against the appellant, to which he pleaded guilty, hence he was convicted and sentenced as detailed in para-1 (supra) on the basis of his admission of guilt.

5. It is contended on behalf of the appellant that the learned trial Court has convicted the appellant without affording him an opportunity of a fair trial solely on the basis of his plea of guilt, which is contrary to the settled law laid down by the Hon'ble apex Court. It is next submitted that no independent witness has been associated to witness the arrest and recovery proceedings in violation of Section 103, Cr.P.C. thereby rendering the alleged recovery doubtful. It is also submitted that only 5 grams, out of the entire recovered narcotics, was separated and sent to the chemical examiner thus at the most the case relate to recovery of 5 grams only and the appellant could have been convicted to that limited extent. It is argued that the conviction and sentence awarded to the appellant through impugned order is unjust and liable to be set aside and that the appeal filed by the State/ANF seeking enhancement of sentence is devoid of merit and liable to be dismissed.

6. On the other hand, the learned Special Prosecutor, ANF has supported the impugned order to the extent of conviction and has

contended that the appellant voluntarily pleaded guilty to the charge relating to recovery of 2.071 grams of heroin powder. It is argued that such plea was recorded strictly in accordance with law, and therefore, the learned trial Court has convicted the appellant on the basis of his own admission. It is further submitted that mere non-association of private witnesses is not fatal to the prosecution case particularly where official witnesses are found to be independent, trustworthy and have no motive to falsely implicate the appellant. It is also contended that the entire recovered narcotics was duly secured in accordance with the prescribed procedure and a representative sample duly drawn therefrom was sent for chemical analysis, which has been confirmed positive, hence the entire recovered quantity is to be considered as contraband and not merely the sampled portion. The learned Prosecutor has further pointed out that the present appeal is barred by time by approximately nine months as the impugned order was passed on 30.11.2023 whereas the appeal was filed on 07.08.2024. It is also contended that Section 410, Cr.P.C. is not attracted in the present case as the conviction is based on the appellant's voluntary plea of guilt and at best he may seek redress under Section 412, Cr.P.C. only to the extent of quantum of sentence. Lastly, it is argued that the sentence awarded to the appellant is already on the lower side considering the nature and gravity of the offence, therefore, the appeal filed by the State/ANF for enhancement of sentence deserves to be allowed and the appellant be dealt with strictly in accordance with law.

7. We have heard the learned counsel for the parties at length, given our anxious consideration to their submissions and have also scanned the record carefully with their able assistance.

8. The case pertains to the recovery of 2.071 grams of heroin powder allegedly recovered from the bag of the appellant at the time of his arrest from the departure gate of Jinnah International Airport, Karachi. After completion of usual investigation, challan was submitted and the appellant was formally indicted under Sections 6/9(1) Sr. No. 6(D), 14 and 15 of the Control of Narcotic Substances Act, 1997 (as amended by the Act of 2022), to which he voluntarily pleaded guilty at the time of framing of charge. A careful perusal of the record reveals that the charge was duly explained to the appellant in clear and unequivocal terms and there is nothing on record

to suggest that his plea was the result of coercion, inducement, misunderstanding or misrepresentation. It is by now a well settled principle of criminal jurisprudence that a voluntary, conscious and unequivocal plea of guilt, if recorded after due satisfaction of the Court regarding its voluntariness and truthfulness is sufficient to sustain a conviction. In the present case, the learned trial Court has evidently exercised due caution, circumspection and judicial prudence before accepting the plea of guilt. Consequently, the contention that the appellant was deprived of his right of fair trial is wholly misconceived, devoid of substance and liable to be rejected. The conviction, therefore, calls for no interference.

9. As regards the contention relating to non-association of private witnesses, suffice to observe that the recovery was effected at Jinnah International Airport, Karachi, which is a highly sensitive, regulated and security-restricted area, where the presence and participation of private persons in such proceedings is neither practicable nor legally or operationally feasible. It is well settled that official witnesses are competent witnesses in law and their testimony cannot be discarded merely on the ground of their official status. No material has been brought on record to suggest any mala fide, ill-will or ulterior motive on the part of the prosecution witnesses to falsely implicate the appellant. Mere non-association of independent witnesses does not, in any manner, cast doubt upon or weaken the prosecution case.

10. The contention that only 5 grams of the recovered substance was sent for chemical analysis and therefore the case should be restricted to the said quantity is wholly misconceived, legally untenable and contrary to the settled principles of law. It is by now a firmly entrenched principle of criminal jurisprudence that where the entire recovered contraband is duly secured and a representative sample is drawn therefrom, properly sealed and found positive by the Chemical Examiner, the report extends to and governs the entire recovered quantity. This principle holds good with greater force in the absence of any allegation, much less any cogent or credible evidence, of tampering with the sample or break in the chain of safe custody and transmission of the case property. In such circumstances, no adverse inference whatsoever can be drawn against the prosecution and the defence argument is wholly devoid of merit and liable to be rejected outright. We,

therefore, hold that the entire recovered quantity is to be taken into consideration for all legal purposes.

11. The learned trial Court, while awarding sentence, has extended leniency to the appellant on account of his personal circumstances, however, such considerations do not in any manner dilute the legality or correctness of the conviction, which stands firmly established on the basis of the appellant's voluntary and unequivocal admission of guilt. Sub-section (c) of Section 6 of the Sindh Control of Narcotic Substances Act, 2024 provides that where the quantity of narcotic substance ranges from 500 grams to 1999 grams, the case falls within Section 6(c) whereas where the quantity exceeds 2000 grams and extends up to 3999 grams, it falls within Section 6(d). In the present case, the quantity involved falls within the higher statutory bracket and is proximate to the upper limit thereof, thereby aggravating the seriousness of the offence. The matter, therefore, cannot be treated as a borderline case warranting any leniency. Rather, the statutory classification read with the quantity involved clearly reflects the gravity of the offence and attracts a stricter penal consequence. The evidence on record forms a coherent, confidence inspiring and unbroken chain pointing irresistibly towards the guilt of the appellant, hence the conviction is unassailable. However, keeping in view the statutory scheme, the quantity involved and the gravity of the offence, the learned Special Prosecutor has rightly contended that the sentence awarded to the appellant is manifestly on the lower side and warrants enhancement. The inadequacy of sentence in the context of the facts and law justifies enhancement in order to meet the ends of justice and to serve as a deterrent against such offences. It is noteworthy that the appellant was arrested from Jinnah international Airport while attempting to transport narcotics abroad, which clearly demonstrates the transnational nature of the offence. The menace of narcotics poses a grave threat to society at large and demands a strict, deterrent and uncompromising response from the Courts. The learned trial Court appears to have taken an unduly lenient view despite the gravity of the offence and the statutory framework governing the matter. In these circumstances, we are persuaded to hold that the sentence awarded to the appellant is manifestly inadequate and grossly disproportionate to the nature and gravity of the offence. Accordingly, while maintaining the conviction of the appellant, the appeal filed by the State/ANF for enhancement of sentence is allowed

and the sentence is enhanced from seven (07) years to ten (10) years' rigorous imprisonment. The quantum of fine, the sentence in default thereof, and the benefit under Section 382-B, Cr.P.C. shall, however, remain unaltered. We further find force in the contention of the learned Special Prosecutor ANF that the appeal filed by the appellant is barred by time by about nine (09) months. Moreover, an appeal against conviction based on an admitted plea of guilt under Section 412, Cr.P.C. is maintainable only to the extent of sentence and not on merits under Section 410, Cr.P.C. The appeal, therefore, being incompetent in law as well as barred by limitation is hereby dismissed both on the ground of limitation as well as on merits.

12. The captioned appeals stand disposed of in the foregoing terms alongwith all pending application.

JUDGE

JUDGE

Naeem /PA