

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**Criminal Appeal No. 148/2020**

Atta ur Rehman

Versus

The State

Appellant by: Ch. Muhammad Fahad Shabbir and  
Syeda Maria Nasir, Advocate,  
Respondent: Mr. Ishtiaq Ahmad, State counsel  
Mr. Muhammad Amin Feroz Khan and  
Ch. Talib Hussain, Advocate.  
Date of Hearing: 19.01.2021.

**FIAZ AHMAD ANJUM JANDRAN, J.-** Instant criminal appeal under Sections 412 read with Section 420 of the Code of Criminal Procedure ("**Cr.P.C**"), is directed against the order dated 12.02.2020 passed by the learned Judge Special Court (CNS), Islamabad, whereby appellant was convicted under Section 2(S), 156(1) 8(ii)(C), 157 and 178 of the Customs Act, 1969 ("**Act of 1969**"), and sentenced to undergo four years R.I. with fine of Rs. 20,000/-, in default to pay the amount of fine, to further undergo SI for four months, in F.I.R No. 06, dated 21.02.2018, under Sections Section 2(S), 156(1) 8(ii)(C), 157 and 178 of the Act of 1969, Police Station I&P, MCC, Islamabad. The benefit of Section 382-B of Cr.P.C was also extended to the appellant.

2. Briefly, the allegation against the appellant is that on 21.02.2018 on the basis of spy information that heroin would be smuggled through flight No.EY-232 from Islamabad to Abu Dubai, appellant was intercepted by the Customs Officials in the departure lounge of the Airport and on search of his suitcase, crystal white heroin weighing 1550 grams was recovered. After completing necessary

codal formalities at the crime scene, the recovered substance and the sample were taken into possession through recovery memos. The sample parcel was sent to the National Institute of Health Drugs Control and Traditional Medicine Division Islamabad and the certificate issued by the said Institute dated 26.03.2018 confirms the recovered substance as "Amphetamine", a narcotics drugs define in section 2 of the Control of Narcotics Substances Act, 1997. After due investigation, challan was filed in the Court of learned Judge Special Court (C.N.S.), Islamabad, where the appellant was formally charge sheeted on 14.05.2018. Subsequently on 23.10.2018, appellant submitted an application for pleading guilty whereupon notice in term of Section 243 Cr.P.C was served upon him, which was replied on 18.12.2018 followed by recording of his confessional statement with prayer of taking lenient view. The learned trial court vide order dated 12.02.2020 convicted and sentenced the appellant in terms noted in para-1 above. Hence, instant appeal.

3. Learned counsel for the appellant, at the very outset, opted not to press the appeal on merit keeping in view the frank admission of the appellant and is surrendered before the Court and the fact of his having no criminal record. Learned counsel relied upon case laws reported as 2019 MLD 2053 (Peshawar), 2017 MLD 1508 (Balochistan) and 1992 MLD 193 (Lahore).

4. Conversely, learned State Counsel argues that if the conviction is maintained, he will not contest on the quantum of sentence as the discretion lies with the Court.

5. We have considered the above submissions of both sides and have perused the record.

6. Instant appeal is filed under section 412 read with section 420 of Cr. P.C. For ease of reference, section 412 Cr.P.C, is reproduced hereunder:-

**"412. No appeal in certain cases when accused pleads guilty:** Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a High Court, a Court of Session or Magistrate of the First Class on such plea, there shall be no appeal except as to the extent or legality of the sentence."

7. Although appeal against conviction on the basis of plead guilty is barred by the statute but appeal could be filed within the parameters of exception as provided in the said provision of the Cr.P.C. When appellant has expressly moved to the higher forum i.e. this Court, against the order impugned, it means he has questioned the legality of the sentence.

8. It is manifest from the grounds agitated and argued before the Court that appellant is not disputing the conviction awarded to him but is only questioning the legality and quantum of sentence awarded to him being first offender and sole bread earner for his ailing and aged mother by putting himself at the mercy of the Court. All these factors could be considered for questioning the quantum of sentence by taking advantage of precedents submitted by learned counsel for the appellant i.e. **2019 MLD 2053 (Peshawar), 2017 MLD 1508 (Balochistan) and 1992 MLD 193 (Lahore).**

9. When someone has put himself/herself upon the discretion/mercy of the Court, in that eventuality the parameters for consideration for the court would become different. Although Court has to exercise its all powers

within framework of law but maximum benefit can be extended to the appellant who, put himself at the mercy of the Court.

10. There is nothing on record to show that the appellant retains criminal record. He is a first offender and appears to be a carrier. According to the learned counsel for the appellant and as confirmed by the learned Prosecutor, appellant has already undergone 90% of the sentence awarded by the trial Court, therefore, deserves remission in sentence.

11. Every sentence has a purpose though the way in which it is to be accomplished might vary or differ. The case of a repeater or habitual offender where the probability of reformation is little and the case of a first time novice offender, where he/she regrets his wrongdoing, the two cases cannot be measured on same yardsticks and the latter case deserves a lenient view.

The High Court of Sindh in case law reported as **PLD 2017 Sindh 592** held that "***a jail term should normally be enough to wipe out the stain of guilt, but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attaches to convicts often render the remedy verse than the disease and the very purpose of punishment stands in the danger of being frustrated.***"

12. The appellant is a first time offender and the chances of his rehabilitation outside the prison seems to be better than to the probability of sending him behind the bars and being exposed to undesirable elements in jail.

13. For deciding the instant appeal, beneficial guidance is taken from the judgment reported as "**Niaz-ud-Din v. The State**" (2007 SCMR 206), wherein 5 KG of heroin was recovered from the possession of accused and was sentenced to 10 years R.I. alongwith Rs.50,000/- fine and in default, to undergo further R.I. for six months. The conviction of 10 years was converted to six (6) years, which had already been undergone by the accused by observing in paragraph 6 as under:-

*"However, coming to the question of sentence we note that it has been conceded by learned A.A.G. that petitioner is a previous non-convict and there is no other instance of petitioner's involvement in drug trafficking. It has also been brought in evidence that at the time of this arrest he met custodial violence and on that account he received injuries. Perhaps those who arrested him wanted to extract confession for his alleged involvement with some other narcotic dealer. In these circumstances petitioner need to be given a chance in his life to rehabilitate himself."*

14. The Hon'ble Supreme Court of Pakistan in the case supra has reduced the sentence to same, which had already undergone on the basis of being first offender and future prospects of the convict. This view was followed by the Hon'ble Sindh High Court in judgment reported in **2012 YLR 1630 (Sindh)**, wherein 1100 grams heroin was recovered, sentence of accused was reduced from 7 years to one already undergone by him (four years, nine months and two days). The practice was also followed in **2010 YLR 3240 (Karachi)**, wherein on the recovery of 5 KG heroin, sentence of 7 years and three months, was reduced to 4 years, 11 months and 3 days, the period already undergone by the convict. The practice can also be witnessed in case reported as **2010 YLR 2170 Karachi**, wherein the

accused was first offender and his sentence was reduced from 10 years to one already undergone.

15. In view of above, conviction of the appellant under Section 2(S), 156(1) 8(ii) (C), 157 and 178 of the Act, 1969, is maintained while his sentence is reduced to one already undergone. The appellant shall be released forthwith if not required in any other case.

16. With above modification, instant appeal stands **dismissed.**

(MOHSIN AKHTAR KAYANI) (FIAZ AHMAD ANJUM JANDRAN)  
JUDGE JUDGE

A.R. ANSARI

Announced in open Court on 27th Jan 2021.

JUDGE JUDGE