

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

JAIL APPEAL. NO. 366 OF 2019

Muhammad Shehzad
Vs.
The State, etc

Appellant by : Mr. Imran Shaukat Rao, Advocate.

Respondents by : Hazrat Younas, State Counsel.

Date of hearing : 20.05..2020.

LUBNA SALEEM PERVEZ, J. This Criminal Jail Appeal has been filed by the appellant Muhammad Shehzad through Superintendent, Central Jail, Rawalpindi, against the judgment dated 30.04.2019, passed by the learned Sessions Judge/Judge Special Court, West-Islamabad, whereby appellant was convicted u/s 9-C of Control of Narcotic Substances Act, 1997 (CNSA) and sentenced to undergo six (06) years R.I with a fine of Rs. 30,000/- (thirty thousands) and in default whereof to further undergo six (06) months S.I in case FIR No.350, dated 28.09.2017, registered at P.S.Tarnol, Islamabad. Benefit of section 382(B) Cr.PC was also extended to the Appellant.

2. Facts of the case are that during the routine patrolling in the area of Dore Khan Chowk at about 01:00 pm apprehended the appellant on suspicion as he tried to escape when saw the police party. Upon personal search of the appellant 1120 grams of heroin wrapped in a white shopping bag and kept in a blue shopping bag was recovered. Chemical examination of one gram sample separated from the recovered heroin resulted positive. Subsequently after submission of challan the charge was framed on 08.12.2017, and after trial the appellant on the basis of evidence was found involved in the offence u/s 9-C CNSA, 1997, and convicted in terms mentioned at para-1 above.

3. Learned counsel for the appellant argued that there is an admitted five days delay in sending the sample for chemical examination, however, the learned trial

Court, vide impugned judgment has observed that five days delay can be said to be a delay but not an inordinate delay and thus has not considered the law settled by superior Courts in this regard; that there are major discrepancies and inconsistency in the evidence of prosecution; that the appellant has no previous criminal history and is first offender; that the appellant has been convicted on the higher side of the sentence for possession of 1120 grams of heroin; that out of six years of imprisonment the appellant has already completed 3/4th of his sentence; he prayed for acceptance of the Appeal or alternatively prayed to undergo the remaining sentence keeping in view the facts and circumstances of the case.

4. Conversely, learned State Counsel supported the impugned judgment dated 30.04.2019, and submitted that the appellant was caught red handed with the huge quantity of heroin; that the prosecution during the trial has proved the commission of offence beyond any doubt; that the learned trial Court has awarded sentence of six years R.I. and Rs. 30,000/- fine by following the judgment of Hon'ble Lahore High Court in case of *Ghulam Murtaza and another versus The State (PLD 2009 Lahore 362)*. Learned State Counsel prayed for dismissal of the jail appeal.

5. We have heard the learned counsel for appellant as well as learned State Counsel and have also perused the record with their able assistance.

6. Perusal of the judgment as well as record revealed that the appellant has been convicted for the offence u/s 9-C CNSA, 1997, for possessing 1120 grams of heroin. As per record the sample of the recovered heroin was sent to the laboratory on 03.10.2017, whereas, it was recovered on 28.09.2017, thus the argument that there is a delay of five days in sending the sample for examination has been confirmed. The observation of the learned trial judge for rejecting the contention of appellant that '*the delay in sending the sample is not an inordinate delay*' is against the settled principle of law for sending sample within 72 hours of the recovery. The reliance is placed on cases *Imtiaz Ali Vs. The State (2018 YLR 1067)* and *Shan Vs. The State (2018 MLD 702)*, whereby, the delay of five and

seven days has not been condoned by the Hon'ble High Courts and it has been observed that the benefit of doubt is to be resolved in favour of the accused/convict.

7. The appellant has been awarded sentence of six years imprisonment and Rs. 30,000/- fine for possession of 1120 grams of heroin, hence, the offence falls under the ambit of section 9-C of the CNSA, 1997. The Hon'ble Lahore High Court, vide judgment reported as *Ghulam Murtaza and another versus The State (PLD 2009 Lahore 362)*, while interpreting the provisions of section 9 of the CNSA, 1997, has prescribed quantity wise sentence for different categories of contraband/narcotics and in accordance with the same the sentence for possessing heroin upto 1000 grams is one year and ten months R.I. and Rs.15,000/- fine as falling under section 9-B of the CNSA, 1997, and when the quantity of narcotics substance exceeds from 1000 grams, the prescribed sentence is six years R.I. and Rs. 30,000/- fine as it falls under section 9-C of CNSA, 1997. Relevant portion of the above referred judgment is provided as under:-

Cases under Section 9(b)
of the Control of Narcotic Substances Act, 1997

Recovered Substance	Quantity	Normal Sentence
Heroin	Exceeding 600 grams and upto 1000 grams	Imprisonment: RI for 1 year and 10 months and Fine: Rs. 15,000 or in default SI for 5 months

Cases under Section 9(c)
of the Control of Narcotic Substances Act, 1997

Recovered Substance	Quantity	Normal Sentence
Heroin	Exceeding 1 kilogram and upto 2 kilograms	Imprisonment: RI for .6 years and Fine: Rs. 30,000 or in default SI for 6 months

It has been observed that the present case is near to the border line of offence u/s 9-B & 9-C of CNSA, 1997 and, therefore, maximum sentence of six years R.I. and fine of Rs. 30,000/- awarded by the trial Court to the appellant appears to be

on higher side and disproportionate when compared with the threshold of 1000 grams of heroin for which prescribed maximum punishment is one year and ten months rigorous imprisonment. As such the sentence awarded to the appellant is harsh and severe as has been adopted mechanically while not considering the quantum of recovery which is 120 grams in excess of 1000 grams i.e. 1120 grams of heroin liable for punishment for one year and ten months. Though the quantity wise statement for sentence has been prescribed, however, the proportionate sentence between the maximum and minimum slab can be considered looking into nature and quantity of narcotics.

8. In view of the above discussion, the conviction for possessing contraband i.e. heroine is **maintained**, the criminal jail appeal is **dismissed**, however, the maximum punishment of six years R.I. along with fine of Rs. 30,000/- for the offence being on higher side is reduced to the punishment already served by the appellant. The appellant in jail, be released forthwith, if not required in any other case.

(MOHSIN AKHTAR KAYANI)
JUDGE

(LUBNA SALEEM PERVEZ)
JUDGE