

JUDGMENT SHEET  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(Judicial Department)

**Cr.A. No.182-P/2015**

Date of hearing: **26.03.2015**

*Date of Announcement:* **22.04.2015**

Appellant (s) : The State through Advocate-General,  
Khyber Pakhtunkhwa by Mian Arshad Jan,  
AAG.

Respondent (s) : Khalil by Waqas Ahmad Khan Chamkani,  
Advocate.

**JUDGMENT**

**ASSADULLAH KHAN CHAMMKANI, J.-** Being

discontented with the sentence awarded to respondent-convict Khalil by the learned ASJ-IV/Judge Special Court, Peshawar, vide judgment dated 21.10.2009, the State through Advocate-General Khyber Pakhtunkhwa, Peshawar, filed a revision petition, seeking enhancement of sentence of the convict to the maximum, as provided under section 9 (c ) Control of Narcotic Substance Act, 1997. Since there is no provision of revision in CNS, Act, 1997, therefore, in the interest of justice,

the revision petition was converted into appeal vide order dated 25.03.2015.

2. Facts in brief forming the background of the instant appeal are that on 28.08.2008, Zahid Iqbal Inspector Excise & Taxation Peshawar, on the direction of his high-ups alongwith Constables, was checking vehicles on Danish Abad road near Police Post Danish Abad. At 1810 hours, a motorcar bearing registration No.1396-LWL coming from Karkhano side was signaled to stop, but the driver accelerated its speed. The motorcar was chased and eventually intercepted which was being driven by Khalil (respondent-convict herein) while his companion sitting in front seat disclosed his name as Zahir Shah. On search of the vehicle, 3 packets herein, each weighing one Kilograms were recovered, out of which 5/5 grams were separated from each packet for the purpose of Chemical analysis by the FSL and sealed in parcels. The remaining quantity was sealed separately. Both the accused were formally arrested. The recovered narcotics alongwith motorcar was taken into possession vide recovery memo Exh.PW.1/1.

3. Co-accused Zahir Shah, later on, succeeded in getting bail from this Court vide order dated 21.11.2008 in Cr.M.BA No.1292 of 2008, but during trial he jumped over his bail, hence, was proceeded under section 512 Cr.P.C. vide order dated 28.01.2009, whereas, respondent-convict Khalil was formally charge sheeted on 18.09.2009, to which he pleaded not guilty and claimed Trial, hence, prosecution was invited to lead its evidence. Some three PWs had been examined, when in the meantime, respondent-convict recorded his statement wherein he pleaded guilty to the charge and left himself at the mercy of the Trial Court requesting for taking lenient view against him. His statement recorded on 21.10.2009, read as under:-

**"Stated that though at the time of framing of formal charge against me, I had refused to admit my guilt, yet I feel repentance that why I should not bring the real facts into the notice of this court. In fact, the local police on 26.08.2008, at 1810 hours, had apprehended me at Danishabad road near Police Post Danishabad, falling within the criminal jurisdiction of Police Station Town and**

**recovered 03 Kg heroin from the rear  
apartment of vehicle No.1396-LWL, which was  
driven by me. I plead guilty and seek clemency  
of the court for taking lenient view while  
awarding me sentence. I also request that my  
case may be decided today on the basis of my  
plea of guilt".**

The learned trial Court, after recording the plea of guilt of the respondent-convict, followed by a notice within the meaning of S.243 Cr.P.C., while taking lenient view, convicted and sentenced him under section 9 (c) CNS, Act, 1997 to undergo imprisonment for ten months and to pay a fine of Rs.5000/- or in default thereof to undergo 02 months S.I. further vide impugned judgment dated 21.10.2009. Benefit of S.382-B Cr.P.C. was extended to him.

4. Learned AAG for the State/appellant contends that punishment awarded to convict-respondent being farcical, cannot be said to be proportionate to the magnitude of the crime as 3 Kilogram heroin has been recovered from the vehicle which was in active control and possession of the convict; that keeping in view the hazardous effect of heroin in

the society, offenders of such like offences playing with the health and lives of innocent people, particularly, youths, who are the future builders of the nation, are required to be awarded exemplary punishment so as to curtail this menace to the society, therefore, extraordinary leniency shown by the learned Trial Court in awarding sentence to the convict, would encourage the people connected with the detestable business of narcotics. He, thus, requested for enhancement of sentence of the convict-respondent to the minimum as provided by the statute.

5. Conversely, learned counsel for the convict/respondent contended that it was not the prosecution to bring home the guilt of the respondent-convict by leading evidence, rather the convict while minimizing the agonies of the prosecution, pleaded guilty and left himself at the mercy of the Court, so in such eventualities, he being friend of the Court, the matter was between him and the learned Trial Court; that the learned Trial Court while exercising its discretion dealt with him with leniency keeping in view the overall facts and circumstances of the case. He while placing

reliance on this Court judgment in case titled, **“The State through Regional Director ANF Vs Ikramullah and others” (PLD 2013 Peshawar 35)** contended that in the case (Supra) 10 Kilograms heroin was recovered and on plea of guilt of the accused, the learned Trial Court convicted and sentenced the accused to undergo eighteen months rigorous imprisonment each with a fine of Rs.30,000/- or in default thereof to suffer 4 months S.I. further vide judgment dated 01.12.2010, against which The State Through Regional Director Anti-Narcotics Force Khyber Pakhtunkhwa filed Criminal revision petition, but the same was dismissed with observation that once the accused pleaded guilty, he becomes friend of the Court and the Court always takes lenient view against him in awarding sentence. He contended that the punishment awarded to the convict in the instant case being in accordance with law, does not warrant enhancement.

5. We have heard the respective submissions of both the sides and perused the record with their able assistance.

6. The critical question for determination before us is whether the learned Trial Court has exercised its discretion judiciously while awarding lesser sentence to the convict keeping in view the gravity and magnitude of the offence as well as its impact on the society at large. To meet the question, we deem it advantageous to reproduce S.9 Control of Narcotic Substances Act, 1997, which provides different punishments for various quantity of the narcotics. It reads as under:-

**"Punishment for contravention of sections 6,**

**7 and 8:-** Whoever contravenes the provisions of section 6, 7 and 8 shall be punishable with :-

- (a) **imprisonment which may extend to two years, or with fine or with both, if the quantity of the narcotic drug, psychotropic substance or controlled substance is one hundred grams or less.**
- (b) **imprisonment which may extend to seven years and shall also be liable to fine, if the quantity of the narcotic drug, psychotropic substance or controlled substance exceeds one hundred grams but does not exceed one Kilogram;**
- (c) **death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees,**

**if the quantity of narcotic drug, psychotropic substance or controlled substance exceeds the limits specified in clause (b).**

**Provided that if the quantity exceeds ten kilograms the punishment shall not be less than imprisonment for life"**

7. In the instant case, 03 Kilograms heroin has been recovered from the motorcar of the convict-respondent and according to sub-section (c ) of Section 9 Control of Narcotics Substances Act, 1997, if the quantity of the narcotic drug, psychotropic substance or controlled substance exceeds one Kilogram then the convict may be awarded sentence of death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees. By use of words **"may"** the aforesaid sentences have been squarely left at the discretion of the Court. We do agree that in light of discretion given in the sub-section (c ) of Section 9 CNS, Act, the Court in case of proof of the guilt of an accused, may award him/her sentence of death, imprisonment for life, or imprisonment from one day to fourteen years, but the main thing is the judicious exercise of discretion in quantum of



sentence. We have perused judgment of this Court referred and relied upon by learned counsel for the convict, in case titled, **"The State through Regional Director ANF Versus Ikramullah and others"** (PLD 2013 Peshawar 35). It has been laid down by their lordships in the judgment supra that "it is a common practice that once a person who is involved in a criminal case wants to plead guilty to the charge leveled against him and placed himself at the mercy of the Court and in that eventuality he becomes a friend of the Court and the Court always takes lenient view in respect of his sentence". With due respect, we do agree with the opinion of their lordships, but with utmost respect will add little more that the extent of such leniency in awarding sentence considering the accused as friend of the Court, should not be such so as to frustrate the ends of justice and affect the society, rather such leniency should be based on judicious scale, keeping in view over all impacts of the crime because any extraordinary leniency towards the accused in offences, particularly, affecting the society at large, may increase the ratio of crimes tremendously.

8. In the instant case huge quantity of 03 Kilograms heroin has been recovered. Albeit, in Control of Narcotic Substances Act heroin has not been separated from other narcotics, keeping in view its severe impact on human body as it causes many short-term and long-term effects on the human body. It may cause damage to various organs, including the heart, lungs, liver and kidneys. It can also cause breathing problems, collapsed veins, infectious diseases and even death. Same punishment has been provided for heroin as provided for other narcotic drug under section 9 Control of Narcotic Substances Act 1997, but during present times unfortunately crimes of terrorism, abduction for ransom, murder and attempt to murder and many other are increasing tremendously and we are also mindful of increase of detestable business of heroin which has ruined the lives of the innocent people particularly the youth who are future builders of the nation. We have observed the addicts of heroin lying in streets and footpath adding more to the agonies of their poor parents, who are already grinding in poverty. Such addicts usually indulge in crimes of theft and

even do not hesitate to steal the jewellery and house hold articles of their own house and houses of their kith and kin. They instead of adding in the economy of their families, become unnecessary burden for their parents and family members, therefore, impact of heroin is more serious as compared to other narcotics, therefore, the offenders dealing in the despicable business of heroin, who are enemies of the entire nation are required to be dealt with an iron hand. We are not satisfied with the sentence awarded to the convict by the learned Trial Court. The learned Trial Court has not exercised its discretion judiciously, keeping in view the perilous effect of heroin over the society and has extended undue leniency to the convict. If exercise of such extraordinary leniency shown by the learned Trial Court is allowed to prevail, it will increase the smuggling of narcotics as each and every accused after arrest would try to become friend of the Court and after getting leniency would again indulge in the shameful business, which would frustrate the ends of justice and shatter the future of the nation.

9. For what has been discussed above, this appeal is allowed sentence awarded to the respondent-convict by the learned Trial Court vide judgment/order dated 21.10.2009 under section 9 (c ) CNS, Act, 1997 is enhanced from ten months S.I. to 20 months R.I. and fine from Rs.5000/- to Rs.10,000/- or in default thereof to undergo 04 months S.I. Benefit of Section 382-B Cr.P.C. is extended to him. Convict-respondent is present in the Court, as has already served out the sentence awarded to him by the learned Trial Court, therefore, he is taken into custody and sent to Judicial Lockup to serve out his enhanced sentence.

10. Additional Registrar (Judicial) of this Court is directed to send copy of this judgment to all learned Judges of the subordinate Judiciary, who are dealing with the cases of narcotics.

**Announced.**  
22.04.2015

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