JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Appeal No.272 of 2023

(Muhammad Adeel Vs. The State)

Date of hearing: 13.03.2025.

Appellant by: Mr. Muhammad Bilal Youasf, Advocate.

Mr. Naveed Akhtar Rajpoot, Advocate for petitioner in connected Crl. Revision No.109/2022

State By: Mr. Adnan Ali, Deputy District Public Prosecutor with Gulzar Ahmed S.I. P.S Bhara Kahu.

JUDGMENT

MUHAMMAD ASIF, J.- Convict, Muhammad Adeel S/o Muhammad Javed (appellant herein), was tried by the learned Sessions Judge, Islamabad-East in case FIR No.110/2020, dated 21.02.2020, registered with the Police Station Bhara Kahu, in respect of an offence under Section 9 (c) and 15 of the Control of Narcotic Substances Act, 1997 (herein referred "C.N.S.A., 1997") and the learned trial court seized with the matter in terms of the judgment dated 08.07.2023, convicted the appellant, under section 9 (c) of "C.N.S.A., 1997" and sentenced him to undergo rigorous imprisonment for nine (09) years with fine of Rs.80,000/-, in default thereof, to further undergo Simple Imprisonment for six months with the benefit of Section 382-B Cr.P.C.

2. Being aggrieved by the afore-mentioned conviction and sentence, the appellant has preferred the instant appeal, which is being disposed of through this judgment.

3. The contrite story as demystified by the complainant, Abu Bakar, ASI (PW.1) in the complaint (Ex.PA), as well as FIR (Ex.PA/1), is that on 21.02.2020 at 6:30 p.m, the complainant accompanied by other police officials was present at Keero Chowk, Simli Dam for search and arrest. During checking, a boy holding a blue-coloured shopper came nearby in suspicious condition and was apprehended by the raiding party. Upon checking and unpacking of the said shopper, *charas* weighing 1130 grams was found in the shape of pieces and small polythene bags from the black-coloured shirt and trouser kept in the said shopper. Out of 1130 grams, 10 grams was obtained after taking a small quantity from all the pieces of the recovered *charas* garda. Two sealed parcels were prepared bearing the seal of "MN", one containing a sample of charas and other containing shirt, trouser and small polythene shoppers (P-1) (*all sealed in one parcel*). PW.3, Mian Muhammad Imran took the said two parcels into possession, vide recovery memo Exh.P.B duly signed by Muhammad Yaqoob 8044/C and Zahid Khan 137/C. On interrogation, the accused Muhammad Adeel disclosed that the *charas* belonged to the accused Naqash son of Ishtiaq and he was selling it at his behest. Mian Muhammad Imran Javed, P.W conducted spot inspection and prepared an un-scaled site plan Exh.P.C of the place of occurrence.

4. After the culmination of the investigation, the report under Section 173 Cr.P.C was prepared and submitted to the concerned Court of competent jurisdiction for trial and the learned court after observing all the pre-trial codal formalities, indicted the appellant, to which he pleaded not guilty and claimed trial.

5. In order to prove the charge against the appellant, the prosecution examined five witnesses and also tendered certain documents. On completion of prosecution

evidence, the appellant's statement was recorded under Section 342 of Cr.P.C, through which he denied all the allegations levelled against him and professed his innocence. Neither the appellant had opted to record his statement under Section 340 (2) Cr.P.C, nor he produced any defence evidence. On the culmination of the trial, the appellant was convicted by way of the impugned judgment as is referred here-in-above.

6. Learned counsel for the appellant, after arguing the appeal on merits by tooth and nail, made an alternate prayer at the end of his arguments that if this Court is not persuaded to acquit the appellant then he would not press the instant appeal on merits and would only pray for reduction of the quantum of sentence upto the period of incarceration already undergone by the appellant. It has been added that the appellant having no criminal antecedents, is the first offender and has been facing the agony of prosecution since registration of the case, coupled with the fact that the quantity of recovered contraband was less than 10-kg, thus, the sentence imposed upon the appellant, by the learned trial court, appears to be harsh one, which may be reduced to the period already undergone by him.

7. Learned Deputy District Public Prosecutor for the State did not seriously oppose the prayer so made by the learned counsel for the appellant.

8. Since, the learned counsel for the appellant has not challenged the conviction and sentence of the appellant and only prays for the reduction of the sentence as has already been undergone by the appellant, so without dilating upon the merits of the case, it has been straightway noticed that as per the report submitted by the Superintendent Central Jail, Rawalpindi dated 17.03.2025, the appellant as on the said date, had remained under-trial prisoner for almost twenty-five days. Till then, the substantive period of sentence of the appellant was one year eight months and

six days, and he earned remission of two months, whereas, the unexpired portion of his sentence was five years two months and nine days. As such, it appears that the appellant has undergone/served the significant period of his sentence (i.e. three years nine months and twenty-one days) coupled with the fact that the appellant is the first offender as no report/record, whatsoever, has been produced to show that he is previously convicted or involved in cases of similar nature, therefore, the case of the appellant calls for a lenient view. Guidance is sought from the case of *"Muhammad Iqbal v. the State"* **(PLD 2018 Lahore 535)**. In the said report, the Hon'ble Lahore High Court reduced sentence of a convict, who had undergone significant portion of his sentence. The Hon'ble Supreme Court of Pakistan in a case titled as *"Abdul Rehman v. The State"* **(2011 SCMR 965)**, also held as under:

> *"After perusal of the record in light of the arguments advanced before us, it appears that there is no previous record of the conviction of the petitioner in any offence. The recovery effected inn Charas as pointed out by the learned counsel is distinct from heroin, therefore, the case calls for a lenient view."*

9. It is a well-established principle of law that in special circumstances, the Court at its discretion can divert from the norms and standards prescribed in terms of sentencing after assigning cogent reasons. In this respect, my view is fortified by the case of "*State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v. Mujahid Naseem Lodhi"* **(PLD 2017 SC 671),** wherein it has been held that:-

> "*The exercise of jurisdiction and discretion in the matter of the respondent's sentence by the trial court and the High Court have not been found by us to be open to any legitimate exception, particularly when the reasons recorded for passing*

> *a reduced sentence against the respondent and for making a departure from the above mentioned sentencing guidelines have been found by us to be proper in the peculiar circumstances of this case*."

10. The Hon'ble Apex Court had also been pleased to reduce sentence in cases of similar nature reported as *Sherzada v. The State* **(1993 SCMR 149)** and *Gul Badshah v. The State* **(2011 SCMR 984).**

11. Thus, in view of the stance taken by the learned counsel for the appellant when there is no challenge to the vires of judgment qua recording of conviction of the appellant, we, being persuaded by the contention of learned counsel for the appellant, which is supported by the record as well as the case law reproduced above, consider it appropriate that the ends of justice will be served by maintaining the conviction of the appellant, but **reducing his sentence to the period already undergone by him**. However, the amount of fine and sentence in default will remain intact. Benefit of Section 382-B, Cr.P.C shall remain intact. With this modification, the instant **appeal is hereby dismissed.**

(SARDAR MUHAMMAD SARFRAZ DOGAR)
ACTING CHIEF JUSTICE

(MUHAMMAD ASIF)
JUDGE

Shoaib