

IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI.

Case No5/3 of 2022.

Date of institution.....08.03.2022.

Date of decision.....14.02.2023.

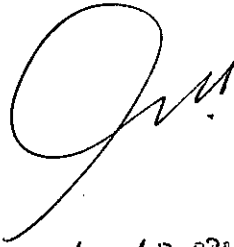
Case FIR No. 45 Dated: 06.12.2021 U/S 15AA, PS Mishti Mela

Order. No. ¹⁸~~28~~
14.02.2023

Accused on bail along with counsel present. Arguments on application U/S 249-A Cr. PC already heard and record gone through.

Brief facts of the case are that on 06.12.2021, ASHO/complainant Akhtar Munir along with other police nafri were on patrol duty when received information that accused Farman Ullah wanted in case FIR No. 44, dated 06.12.2021, U/S 324 PPC, PS Mishti Mela is present in his house situated at Kach Mela. On this information, ASHO/complainant rushed to the spot and raid was conducted. Accused Farman Ullah was present at the spot duly armed with pistol. He was unarmed and one pistol 30 bore without number along with an empty fixed charger was recovered from Badda Shilwar of accused. On the strength of Murasila, the instant case was registered against the accused.


Accused was formally arrested. After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused.


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Muhammad Fayyaz, Madad Moharrir was examined as PW-01. He stated that he received Murasila from ASHO Akhtar Munir through Constable Saleem HC. On the strength of Murasila, he registered FIR No. 45, dated 16.12.2021, U/S 15AA, PS Mishti Mela. Copy of FIR is Ex. PA. The ASHO returned to the PS and handed over case property to him in sealed condition along with accused. He made entry in register-19 accordingly. Copy of the extract of register-19 is Ex. PW-1/1. He kept the case property in the mall khana of PS. Accused was confined in the lock-up. Case property was handed over to ASHO for sending it to FSL. His statement was recorded by the IO U/S 161 Cr. PC.

Akhtar Munir ASHO appeared and deposed as PW-02. He is complainant as well as IO of the case. He along with Constable Murad Gul, Muhammad Saleem and Haji Kamal were on area patrol duty at Kach Mela, Sheikhan, Central Orakzai when received information that accused Farman wanted in case FIR No. 44, dated 06.12.2021, U/S 324 PPC, PS Mishti Mela is present in front of his house. On receiving the information, he rushed to the spot where accused Farman Ullah was present there. He was formally arrested and during his body search, one pistol 30-bore without number along with an empty fixed charger was recovered and taken into possession vide recovery memo Ex. PW-2/1 in presence of marginal witnesses. Accused was arrested in the attempted murder case as well. Murasila was drafted at the spot and sent to PS through Constable

Saleem Khan HC for registration of the case. Murasila is Ex. PW-2/2. Card of arrest is Ex. PW-2/3. The recovered pistol was packed and sealed into a separate parcel by affixing 3/3 seals monogram with the name of AR. Site plan Ex. PB was prepared in presence of eye-witnesses. Accused was



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handed over to IO for interrogation and completion of investigation. He recorded statements of PWs and that of accused U/S 161 Cr. PC. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex. PW-2/4. Mad No. 03 and 19 dated 06.12.2021 were placed on file. The same is Ex. PW-2/5. The recovered pistol was sent to FSL for examination vide application Ex. PW-2/6. Attested copy of receipt No. 77/21mm is placed on file. The same is Ex. PW-2/7.

Constable Ibrahim appeared and deposed as PW-03. He took samples to FSL, Peshawar. He stated that case property along with application for FSL and road certificate was handed over to him by Moharrir on the direction of IO. The case property handed over to incharge FSL and signature of the official concerned regarding receiving was obtained accordingly. His statement was recorded by the IO U/S 161 Cr. PC in the PS.

Constable, Haji Kamal appeared and deposed as PW-04. He is marginal witness to the recovery memo Ex. PW-2/1. He was present with ASHO/complainant Akhtar Munir during patrol duty at Kach Mela, Sheikhan, Central Orakzai. In his presence, ASHO Akhtar Munir recovered and took into possession, one 30 bore pistol without number along with an empty fixed charger vide recovery memo already exhibited as Ex. PW-2/1 from possession of the accused facing trial. It was packed

and sealed into parcel No. 1. His statement was recorded by IO U/S 161


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Cr. PC.

Perusal of record transpires that the alleged occurrence took place on 06.12.2021 at 16:00 hours and it was reported through Murasila at 16:10 hours. Time of chalking the FIR is not mentioned in the FIR. Time of

occurrence of case FIR No. 44, dated 06.12.2021 is 12:40 hours. PW-02, ASHO Akhtar Munir stated in his cross examination that the pistol was giving fresh smell of discharge which is not appealable to a prudent mind as pistol was giving fresh smell of discharge at the time of present occurrence. PW-02 also stated that they reached the spot at 4PM and drafted Murasila in 15 minutes. If drafting of Murasila took 15 minutes, then time of report would be 16:15 hours which contradicts Ex. PW-2/2 (Murasila) and Ex. PA (FIR). He also stated that he recorded statements of PWs in the PS. Statements of PWs were not recorded at the spot despite the fact that complainant PW-02 is also IO of the case. He further stated that case property i.e., 30 bore pistol, is weapon of offence in case FIR No. 44 U/S 324 PPC, however, this fact is nowhere mentioned in the Murasila, recovery memo and application for FSL.

PW-04 stated in his cross examination that they went straight away for arrest of accused from PS to spot. On the other hand, PW-04 stated that they left PS for gasht at about 03:30PM. He also stated that he does not remember name of the driver of the official vehicle and other two police officials present with ASHO during gasht. He deposed that his name is written by ASHO on recovery memo. He further stated that recovery memo was signed by ASHO Akhtar Munir on behalf of all marginal witnesses. He is illiterate. Recovery memo was required to be signed by marginal witnesses but the same was signed by complainant/IO on behalf of marginal witnesses.

There are so many dents and doubts in case of prosecution benefit of which goes to the accused. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of

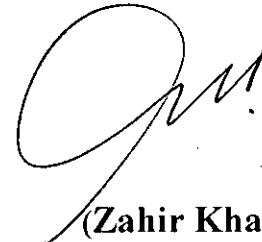
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precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial is acquitted from the charges levelled against him. He is on bail. His sureties stand discharged from their liability.

Case property i.e., one 30 bore pistol without number along with an empty fixed charger be dealt with in accordance with the law.

File be consigned to record room after necessary completion and compilation.

Announced.
14.02.2023



(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai