

**IN THE COURT OF SHAUKAT AHMAD KHAN**  
**SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI**  
**(AT BABER MELA)**

SPECIAL CASE NO. : 38/3 OF 2022  
DATE OF INSTITUTION : 10.11.2022  
DATE OF DECISION : 28.02.2023

STATE THROUGH HASSAN JAAN SHO, POLICE STATION KUREZ BOYA

.....(COMPLAINANT)

-VERSUS-

MUHAMMAD KARIM S/O MUNIR KHAN, AGED ABOUT 31 YEARS,  
R/O AKA KHEL, SHER KHEL, GODI, PO BARA, MAIDAN GALI,  
DISTRICT KHYBER

..... (ACCUSED FACING TRIAL)

**Present:** Umar Niaz, District Public Prosecutor for State.  
: Sana Ullah Khan Advocate for accused facing trial.

**FIR No. 20**                      **Dated:** 07.10.2022      **U/S:** 9 (d) of the Khyber  
Pakhtunkhwa Control of Narcotic Substances Act, 2019  
**Police Station:** Kurez Boya

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**JUDGEMENT**  
**28.02.2023**


The above-named accused faced trial for the offence u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR no. 20, dated 07.10.2022 of Police Station Kurez Boya.

- (2).                      The case of the prosecution as per contents of Murasila based FIR is; that on 07.10.2022, the complainant, Hassan Jaan SHO along with Constables Baqir Ali, Naseem Ali, Ashkar Ali and other police officials having laid a picket at Ghozdara joint check-post, where at about 0910 hours a passenger vehicle on way from Kalaya was stopped for the purpose of checking. A person holding a yellow colour flour bag in his right hand was boarded, the search of the bag led the complainant to the recovery of 05 packets of chars, each

  
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weighing 1000 grams, making a total of 5000 grams, wrapped with yellow colour scotch tape. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 5 whereas the remaining quantity of chars weighing 4950 grams were sealed in parcel no. 6 with empty bag in parcel no. 7 by affixing monograms of 'AH' on all the parcels. The accused disclosed his name as **Muhammad Karim** s/o Munir Khan who was accordingly arrested by issuing his card of arrest. The complainant took into possession the recovered chars vide recovery memo. Murasila was drafted and sent to Police Station through constable Ashkar Ali which was converted into FIR by Nausher Ali SI.

- (3). After registration of FIR, it was handed over to Hashim Khan SI for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan Ex. PB on pointation of complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 10.10.2022, the IO sent the samples of chars for chemical analysis to FSL vide application Ex. PW 8/3 through constable Khial Hussain and road permit certificate Ex. PW 8/4, the result whereof Ex. PK was received and placed on file by him. After completion of investigation, he handed over the case file to Muhammad Shafiq Khan SHO who submitted complete challan against the accused facing trial.

  
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(4). Upon receipt of case file for the purpose of trial, the accused was summoned, copies of the record were provided to him in line with section 265-C CrPC and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

- I. Nausher Ali SI is PW-1. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA by dictating the same to Moharrir Intikhab Ali.
- II. AMHC Intikhab Ali appeared in the witness box as PW-2. He deposed in respect of the case property received by him from the complainant duly packed and sealed which he had kept in mal khana in safe custody. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 2/1 and handed over the samples of the case property to the IO for sending the same to FSL on 10.10.2022.
- III. Constable Khial Hussain is PW-3. He has taken the samples of recovered chars in parcels no. 1 to 5 to the FSL for chemical analysis on 10.10.2022 and after submission of the same, he has handed over the receipt of the parcels to the IO.

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- IV. Muhammad Shafiq Khan SHO as PW-4 stated that he has submitted complete challan Ex. PW 4/1 against the accused facing trial.
- V. Hassan Jaan SI is the complainant of the case. He appeared in the witness box as PW-5. In his statement he repeated the story narrated in the FIR.
- VI. Constable Baqir Ali is PW-6. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.
- VII. Constable Ashkar Ali, who has transmitted the Murasila and other documents to police station, is PW-7. He besides being transmitting the Murasila and other documents to police station is the eyewitness of occurrence.
- VIII. Lastly, Investigating Officer Hashim Khan SI was examined as PW-8 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared the site plan Ex. PB on pointation of the complainant, recorded the statements of witnesses on the spot, produced the accused before the court of Judicial

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Magistrate vide his applications Ex. PW 8/1 and Ex. PW 8/2, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 8/3 and road permit certificate Ex. PW 8/4 and result of the same Ex. PK was placed on file by him, placed on file copy of Register No. 19 Ex. PW 2/1 and copies of daily diaries Ex. PW 8/5 and Ex. PW 8/6 and submitted the case file to SHO for its onward submission.

(5). Prosecution closed its evidence whereafter statement of the accused was recorded u/s 342 Cr.P.C but the accused neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of learned DPP for the State and counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the State submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis, though have not been transmitted to the FSL within the prescribed period but the same have been found positive for chars vide report of FSL Ex. PK. The complainant, the witnesses of the recovery, the official transmitted the samples to the FSL and the IO have

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been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

- (7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the alleged chars have been shown recovered from his possession and the report of FSL support the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the IO on the spot, as detailed by the prosecution on the case file. That no witness from the public has been associated with the process of search or recovery even the driver or any of the passenger has not been associated as witness with the occurrence. That the representative samples have been sent to FSL with a delay of about 04 days. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

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- (8). In the light of arguments advanced by learned DPP for the State, arguments of learned counsel for the defence and the

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available record, following are the points for determination of charge against the accused facing trial:

- (i). Whether the occurrence has taken place and the investigation have been conducted in the mode and manner as detailed in the file?
- (ii). Whether the recovered substance is proved through report of FSL as chars?

(9). The case of prosecution, as per contents of Murasila Ex. PA, court statements of Hassan Jaan SI as PW-5, Baqir Ali No. 592 as PW-6 and Ashkar Ali as PW-7, is, that the complainant, Hassan Jaan SI/PW-5 along with Constables Baqir Ali/PW-6, Ashkar Ali/PW-7, Naseem Ali and other police officials having laid a picket at Ghozdera joint check-post, where at about 0910 hours a passenger vehicle on way from Kalaya was stopped for the purpose of checking. A person holding a yellow colour flour bag in his right hand was


deboarded, the search of the bag led the complainant to the recovery of 05 packet of chars, each weighing 1000 grams, making a total of 5000 grams, wrapped with yellow colour scotch tape. The complainant/PW-5 on the spot has shown himself separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 5 whereas the remaining quantity of chars weighing 4950 grams sealed in parcel no. 6 with empty bag have been shown sealed in parcel no. 7, affixing monograms of 'AH' on

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[Signature]

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all the parcels. The accused disclosing his name as **Muhammad Karim** s/o Munir Khan, has been shown arrested on the spot by issuing his card of arrest Ex. PW 5/1.

As per site plan Ex. PB, the occurrence has taken place on a main road Ghozdara to Bara District Khyber in front of police/FC check-point where a police check-post has separately been shown. The complainant as PW-5 as well as the marginal witness Baqir Ali as PW-6, both in their statements have specifically stated that after recovery of the alleged contrabands from possession of the accused, the chars was weighed, sampled and sealed on the spot. Similarly, both the witnesses have also stated that the recovery memo, card of arrest and Murasila have also been drafted on the spot. However, both the witnesses in cross examinations deviated from their stance and stated that after recovery of the chars, the accused was taken to the check-post where he was locked in a room and the process of weighing, sampling and sealing of the chars was carried out in the check-post. They also stated that the recovery memo, card of arrest and Murasila were also drafted in the check-post. The complainant in his cross examination as PW-5 has further stated that the constables Naseem Ali, Baqir Ali and Ashkar Ali also accompanied him to the check-post. Similarly, PW-6/Baqir Ali has also stated that he along with Ashkar Ali and Naseem Ali accompanied the SHO to the check-post. With respect to sending of

  
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Murasila through constable Ashkar Ali/PW-7, the said PW in his cross examination stated that after arresting the accused he was taken by the SHO to the check-post while he was left on the spot for further checking. The weighing, packing and sealing were carried out inside the check-post by the SHO and after 20 minutes he was called to the check-post. The further story has been narrated by PW-6 in his cross examination as, that after completion of proceedings of weighing, packing, sealing and preparation of documents, the SHO, Ashkar Ali and Naseem Ali kept waiting for arrival of the IO. In these circumstances, if Ashkar Ali was waiting for arrival of the IO, then as to when he has taken the documents to the police station. Further, as mentioned above, the occurrence has taken place in front of the police/FC check point where as per cross examination of complainant as PW-5, Ashraf Ali ASI was incharge with 06 police officials deputed over there. The said Ashraf Ali ASI along with 06 police officials were present on duty. In these circumstances, Ashraf Ali ASI or any other police official deputed over the check-post being natural witness of the occurrence, have not been associated as witness of the occurrence. Furthermore, the accused facing trial has been deboarded from a passenger vehicle wherein other passengers were also present but neither the registration number of the passenger vehicle is mentioned nor any of the

  
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passenger, even the driver of the vehicle has not been associated as witness with the occurrence.

With respect to investigation carried out by the PW-8/Hashim Khan SI, as per his court statement, he had visited the spot where the accused and the case property were shown to him and he has prepared the site plan on the pointation of complainant but as discussed above, as per cross examinations of complainant as PW-5 and eyewitness Baqir Ali as PW-6, the IO had arrived to the police check-post where he was shown the case property and the accused.

Besides above, there are various other contradictions between the statements of witnesses regarding the mode and manner of occurrence and that of investigation conducted on the spot.

Hence, in view of what is discussed above, it is held that the occurrence has not taken place in the mode and manner as detailed in the Murasila Ex. PA/1. Similarly, the investigation has also not been conducted in the mode and manner as alleged by the prosecution.

With respect to transmission of the case property from the spot to the Police Station and sending of the representative samples to the FSL, the case of prosecution is, that after sampling and sealing of case property in parcels on the check-post, these were brought by the complainant/PW-5 to the Police Station and handed over the same to AMHC Intikhab

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Ali/PW-2, who deposited the same in Mal khana. The representative samples were handed over by Moharrir of the Police Station to the IO on 10.10.2022 who transmitted the same to FSL through constable Khial Hussain/PW-3 vide road permit certificate.

In order to prove its case, the prosecution produced Intikhab Ali AMHC as PW-2, constable Khial Hussain as PW-3 and IO as PW-8. PW-2, though in his examination in chief stated that he had received case property from the complainant, made entry of the same in register no. 19, handed over parcels no. 1 to 5 to the IO and a photocopy of the same as Ex. PW 2/1 has been placed on file but the original register no. 19 has not been produced before the court. Similarly, the occurrence has taken place on 07.10.2022 while as per report of the FSL Ex. PK the representative samples have been transmitted to FSL on 10.10.2022 with a delay of 04 days.

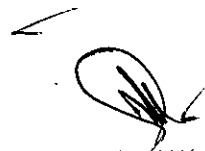
Hence, in view of what is discussed above, though the representative samples, as per report of FSL Ex. PK, have been found as chars but keeping in view the failure of the prosecution to prove the safe custody of the case property, its transmission to the Police Station and transmission of the representative samples to the FSL, it is held that the report of FSL cannot be relied for recording conviction.

(10). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the alleged recovery of

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chars from possession of the accused facing trial. Similarly, the prosecution has also failed to prove the safe custody of case property and transmission of the representative samples to FSL. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Muhammad Karim** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is on bail. His bail bonds stand cancelled and his sureties are released of the liabilities of bail bonds. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision in accordance with law. Consign.

**Pronounced**  
28.02.2023



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Sessions Judge/Judge Special Court,  
Orakzai at Baber Mela

**CERTIFICATE**

Certified that this judgement consists of twelve (12) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 28.02.2023



**SHAUKAT AHMAD KHAN**  
Sessions Judge/Judge Special Court,  
Orakzai at Baber Mela

