

STATE VS MASAIB KHAN
FIR No. 21 | Dated: 01.11.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA, 2019 | Police Station: Kurez Boya

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

SPECIAL CASE NO. : 41/3 OF 2022
DATE OF INSTITUTION : 02.12.2022
DATE OF DECISION : 31.03.2023

STATE THROUGH MUHAMMAD SHAFIQ SHO, POLICE STATION
KUREZ BOYA

.....(COMPLAINANT)

-VERSUS-

MASAIB KHAN S/O SUHBAT KHAN AGED ABOUT 46 YEARS, R/O
CASTE BAR MUHAMMAD KHEL, TAPPA KHAIDAD KHEL, KADA
BAZAR, DISTRICT KHYBER

..... (ACCUSED FACING TRIAL)

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

FIR No. 21 **Dated:** 01.11.2022 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kurez Boya

JUDGEMENT
31.03.2023

The above-named accused faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR
No. 21, Dated 01.11.2022 of Police Station Kurez Boya.

(2). The case of the prosecution as per Murasila based FIR
is; that on 01.11.2022, the complainant, Muhammad Shafiq
SHO along with constables Gul Taj Ali and Junaid Ali
having laid a picket on the spot, at about 1400 hours stopped
a blue colour Flying-Coach bearing Registration No. LES-5
on way from Kalaya towards the picket for the purpose of
checking. A person occupying right seat of third row of
Flying-Coach was deboarded but nothing incriminating was
recovered from his personal possession, while the search of a

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai Baber Mela
31/03/23

blue colour plastic bag holding by the accused in his right hand led the complainant to the recovery of 05 packets of chars, each 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 along with the empty bag were sealed in parcel no. 6 by affixing monograms of 'MS' on all the parcels. The accused disclosed his name as **Masaib Khan** s/o Suhbat 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 Junaid Ali which was converted into FIR by Intikhab Ali AMHC.

(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 the pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 03.11.2022, the IO sent the samples of chars for chemical analysis to FSL vide application Ex. PW 5/2 through constable Khial Hussain and road permit certificate Ex. PW 5/3, 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

Shauq Masnad Khan
District & Sessions Judge
Orakzai at Baber Mela
31/03/23

STATE VS MASAIB KHAN
FIR No. 21 | Dated: 01.11.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA, 2019 | Police Station: Kurez Boya

Shafiq Khan SHO who submitted complete challan against the accused facing trial.

(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. Constable Khial Hussain is PW-1. He has taken the samples of recovered chars in parcels no. 1 to 5 to the FSL for chemical analysis on 03.11.2022 and after submission of the same, he has handed over the receipt of the parcels to the IO.
- II. AMHC Intikhab Ali appeared in the witness box as PW-2. He deposed in respect of the case property duly packed and sealed received by him from the complainant 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 in parcels no. 1 to 5 to the IO for sending the same to FSL on 03.11.2022.

Shafiq Khan
District & Sessions Judge,
Kurez Boya
29/03/23

- III. Muhammad Shafiq Khan SHO is the complainant of the instant case. He as PW-3 reiterated the same story as narrated in the FIR. He has also submitted complete challan Ex. PW 3/2 against the accused facing trial.
- IV. Constable Junaid Ali is PW-4. 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.
- V. Aneer Ali s/o Anzar Hussain, the owner/driver of the Flying-coach, appeared in the witness box as PW-5. He has stated regarding interception of his vehicle by the complainant, debording of the accused from his vehicle and recovery of chars from possession of the accused.
- VI. Lastly, Investigating Officer Hashim Khan SI was examined as PW-6 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 the pointation of the complainant, recorded the statements of witnesses on the spot, produced the accused before the court of Judicial Magistrate vide his

Shaukat Ahmad Khan
 District & Sessions Judge,
 Orakzai at Pader Mela
 31/03/23

applications Ex. PW 6/1 and Ex. PW 6/4, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 6/2 and road permit certificate Ex. PW 6/3 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 6/5 to Ex. PW 6/7, recorded the statement of driver of the Flying-Coach and submitted the case file to SHO for its onward submission.

(5). Prosecution closed its evidence whereafter the statement of 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 has been transmitted to the FSL within the prescribed period and the same have been found positive for chars vide report of FSL Ex. PK. The complainant, the witnesses of the

Shaukat Ahmad Khan
District & Sessions Judge
Orakzai at Baber 102/1a
02/11/2022

recovery, the official transmitted the samples to the FSL and the IO have 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. 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.

(8). In the light of arguments advanced by learned DPP for the State, arguments of learned counsel for the defence and the available record, following are the points for determination of charge against the accused facing trial:


Shaikat Ahmad Khan
District & Sessions Judge,
Opkzai at Baber, Mela
31/03/23

STATE VS MASAIB KHAN

FIR No. 21 | Dated: 01.11.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA, 2019 | Police Station: Kurez Boya

- (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/1, court statements of Muhammad Shafiq SHO as PW-3 and constable Junaid Ali as PW-4 is, that the complainant Muhammad Shafiq SHO/PW-3 along with Constables Gul Taj Ali and Junaid Ali/PW-4 having laid a picket on the spot, at about 1400 hours stopped a blue colour Flying-Coach bearing Registration No. LES-5 on way from Kalaya towards the picket for the purpose of checking. A person occupying right seat of third row of Flying-Coach was deboarded but nothing incriminating was recovered from his personal possession, while the search of a blue colour plastic bag holding by the accused in his right hand led the complainant to the recovery of 05 packets of chars, each weighing 1000 grams, making a total of 5000 grams, wrapped with yellow colour scotch tape. The complainant/PW-3 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 along with the empty bag sealed in parcel no. 6, affixing

Shaukat Ahmad Khan
District & Sessions Judge
Orakzai at Baber Mela

31/03/23

STATE VS MASAIB KHAN

FIR No. 21 | Dated: 01.11.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA, 2019 | Police Station: Kurez Boya

monograms of 'MS' on all the parcels. The accused disclosing his name as **Masaib Khan** s/o Suhbat Khan, has been shown arrested on the spot by issuing his card of arrest Ex. PW 3/1.

As per contents of Murasila Ex. PA/1, the occurrence has taken place in front of Police Station Kurez Boya. The accused facing trial was allegedly found boarding a passenger vehicle bearing Registration No. LES-5; however, the complainant has neither mentioned the name of the driver or cleaner of the passenger vehicle nor the name of any of the passenger boarding the alleged passenger vehicle. He has also not associated the driver or any of the passenger of the vehicle with the process of search and recovery. Though the IO has recorded the statement of one, Aneer Ali as the driver of the passenger vehicle after about 20/22 days but it is not clear that as to how the IO came to know about the name of driver of the passenger vehicle. Similarly, in order to prove even the existence of a vehicle with Registration No. LES-5, neither the complainant nor the IO have brought on record the registration document of the vehicle nor any verification has been made regarding the existence of the vehicle concerned with Motor Registration Authority. The alleged driver of the vehicle when appeared in the court also failed to show any registration document of the vehicle in question.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
31/03/23

Secondly, as per Murasila Ex. PA/1, the complainant/PW-3 after recovery of chars in 05 packets has separated 10 grams from each of the packet, packed and sealed the same in parcels no. 1 to 5 but the colour, texture and shape of each of the packet is not mentioned by him in the Murasila. In this respect, the complainant/PW-3 in his cross examination stated that the texture of the alleged recovered chars was mild hard. The recovered chars were in slab form, that he separated samples from the packets through knife and that the alleged recovered chars was not in powdered form rather it was in mild hard form. The case property produced in the court was opened at the request of counsel for defence in the presence of learned DPP for State where 05 packets were found inside the parcel. One of the packets was opened where the material was found in powdered form. All the packets were shown to the complainant/PW-3 and he admitted that there is no visible cut mark on any packet wherefrom 10 grams of chars would have allegedly been separated from parcel. The aforementioned facts left the court with no option expect to concur with the version of defence that had the complainant/PW-3 conducted the process of weighing and separation of 10 grams from each of the parcel as representative samples, packing and sealing on the spot, he would definitely know the texture of chars, there would be a

Shaukat Ali Khan
District & Sessions Judge
Quetta at Bahar Mela
31/3/23

visible cut mark on each parcel and the complainant/PW-3 would definitely know that a substance in powdered form need not to be cut through a knife.

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 spot, these were brought by the complainant/PW-3 to the Police Station and handed over the same to AMHC Intikhab 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 02.11.2022 who transmitted the same to FSL through FC Khial Hussain/PW-1 vide road permit certificate.

In order to prove its case, the prosecution produced Intikhab Ali AMHC as PW-2, constable Khial Hussain FC as PW-1 and IO as PW-6. 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. PW-2 when confronted with photocopy of register no. 19, he stated that the entry in register no. 19 has been made by him but it has been signed by Ain Ullah MM. The said

Shaukat Masood Khan
District & Sessions Judge
Orakzai District Bazar Mela
31/03/23

Ain Ullah has not been produced before the court as witness which makes the case of prosecution doubtful as to the factum of deposit of case property in Mal Khana. Moreover, as discussed above even the factum of separation of representative samples by the complainant is doubtful, what to talk of their transmission to police station and deposit in Mal Khana and their sending to FSL.

Hence, in view of what is discussed above, though the representative samples, as per report of FSL Ex. PK, have been sent to FSL within 72 hours and have been found as chars but keeping in view the failure of the prosecution to prove the separation of samples from each packet, their safe custody and their transmission to the Police Station, 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 chars from possession of the accused facing trial in the mode and manner as alleged by the prosecution. Similarly, the prosecution has also failed to prove the safe custody of case property and separation of the representative samples from each packet for 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, **Masaib Khan** is acquitted of the charge levelled against him by


Shaukat Ahmad Khan
District & Sessions Judge
Prakazai at Baber Mela
31/03/23

STATE VS MASAIB KHAN
FIR No. 21 | Dated: 01.11.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA, 2019 | Police Station: Kurez Boya

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., chargs be destroyed after the expiry of period provided for appeal/revision in accordance with law. Consign.




Pronounced
31.03.2023


SHAUKAT AHMAD KHAN
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: 31.03.2023


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