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State Vs Mohsin Ali
Case FIR No. 112, Dated 14.09.2021 U/S 11-A CNSA, 15AA, PS Kalaya.

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IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE -I
TEHSIL KALAYA, DISTRICT ORAKZAI

Case No.....12/3 of 2022.

Date of Institution.....07.10.2021.

Date of Decision.....15.03.2023.

State through:

SHO Shal Muhammad Khan, PS Kalaya.

.....**Complainant**

VERSES

Mohsin Ali S/O Saji Gul, Qaum Feroz Khel, Tappa Ghairat Khel,
Village Jalaka Mela, Tehsil Lower, District Orakzai.

.....**Accused**


Case FIR No. 112, Dated 14.09.2021 U/S 11-A CNSA, 15AA, PS Kalaya.

JUDGEMENT

15.03.2023

Through this judgement, I am going to dispose of the instant case registered against accused Mohsin Ali vide case FIR No. 112, Dated 14.09.2021 U/S 11-A CNSA, 15AA, PS Kalaya.

1. The prosecution's case is unfolded in the First Information Report (FIR) is that, on 14.09.2021 at 16:00 hours, at Feroz Khel Bazar, Lower Orakzai, SHO/complainant Shal Muhammad Khan, who was accompanied with by Constable Raza Ali HC No. 526 and Zeeshan Haider No. 590 was present at Feroz Khel Bazar. A person was stopped being suspect and during his body search, from his Badda Shalwar, one pistol 30 bore without number along with a fixed charger containing 03 live rounds of the same bore was recovered.


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Similarly, from his side pocket, a white plastic bag was recovered.

On checking the same it was containing 13 grams ICE. It was

weighed through digital scale. One gram was separated for FSL

examination. One gram for FSL examination was packed and sealed

into parcel No. 1 while the remaining 12 grams were packed and

sealed into parcel No. 2. The recovered pistol was packed and sealed

into parcel No. 3. The person disclosed his name Mohsin Ali S/O Saji

Gul, R/O Qaum Feroz Khel, Tappa Ghairat Khel. He was formally

arrested. Murasila was drafted at the spot. Memorandum of recovery

and card of arrest was prepared. Murasila was sent to PS through

constable Raza Ali for registration of the case and on the strength of


Murasila, case in hand was registered against the accused.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.

3. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Formal charge was framed. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.

4. Prosecution produced five (05) witnesses to prove its case against the accused while PW Zeeshan Haider was given up by prosecution and closed its evidence.

5. Constable Shams Ul Ghani deposed as PW-01. He stated that case property along with application for FSL, road certificate and receipt were handed over to him by IO. He took the same to FSL, Peshawar.



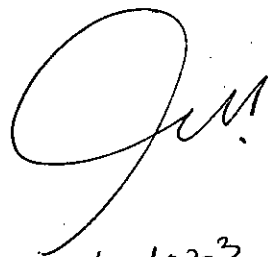
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Case property was handed over to incharge FSL and to this effect his receiving signature was obtained on the receipt. Receipt was handed over to IO on his return to PS. His statement was recorded by IO U/S 161 Cr. PC.

- 6. PW-02**, is the statement of SI Aftab Hassan. He is IO of the case. He stated that copy of FIR and other relevant documents were handed over to him for investigation. Accused was also handed over to him. He proceeded to the spot and prepared site plan on pointation of SHO/complainant. Site plan is Ex. PB. He recorded statements of PWs U/S 161 Cr. PC. On 15.09.2021, vide application Ex. PW-2/1, he applied for physical custody of the accused. 02-days physical custody was granted. He interrogated the accused and recorded his statement U/S 161 Cr. PC. Accused confessed his guilt before him, therefore, vide application Ex. PW-2/2, he produced the accused before the court for recording his confessional statement. Accused refused to confess his guilt before the court and was committed to judicial lock-up. Vide applications Ex. PW-2/3 and Ex. PW-2/4, he sent the recovered pistol along with cartridges and one-gram ICE for FSL examination. FSL reports are Ex. PW-2/5 and Ex. PW-2/6. Copies of receipts No. 176 and 177/21-K are Ex. PW-2/7 & Ex. PW-2/8. Extract of register-19 is Ex. PW-2/9 and DD (Mad No. 12 & 20 dated 14.09.2021) are Ex. PW-2/10. After completion of investigation, he handed over the case file to SHO for submission of complete challan against the accused.

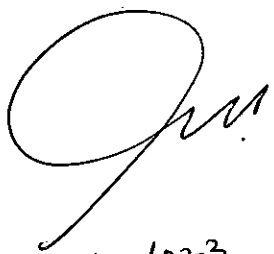


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7. PW-03, is the statement of SHO/Complainant Shal Muhammad Khan. He stated that he along with constable Raza Ali HC No. 526 and Zeeshan Haider No. 590 and other police *nafri* was on area patrol at Feroz Khel Bazar. A person was stopped being suspect and during his body search, from his Badda Shalwar, one pistol 30 bore without number along with a fixed charger containing 03 live rounds of the same bore was recovered. Similarly, from his side pocket, a white plastic bag was recovered. On checking the same, it was containing 13 grams ICE. It was weighed with digital scale. One gram was separated for FSL examination. One gram was packed and sealed into parcel No. 1 while the remaining 12 grams were packed and sealed into parcel No. 2 Ex. P1 by affixing 1/1 seal in the mark of SH. The recovered pistol was packed and sealed into parcel No. 3 Ex. P2. The person disclosed his name as Mohsin Ali S/O Saji Gul, R/O Qaum Feroz Khel, Tappa Ghairat Khel. He was formally arrested. Murasila was drafted at the spot. Murasila is Ex. PW-3/1. Recovery memo is Ex. PW-3/2. Card of arrest is Ex. PW-3/3. Murasila was sent to PS through constable Raza Ali for registration of the case. After registration of the case, he pointed out the spot to the IO who prepared site plan on his pointation. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex. PW-3/4.


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8. Ex-Constable Raza Ali was examined as PW-04. He is one of the marginal witnesses to the recovery memo. He stated that he was

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present with SHO/complainant. He is one of the marginal witnesses to the recovery memo exhibited as Ex. PW-3/2 vide which SHO/complainant recovered and took into possession one pistol 30 bore without number along with a fixed charger containing 03 cartridges of the same bore and from his side pocket, a white plastic bag containing 13 grams ICE was recovered. It was weighed with digital scale. One gram was separated for FSL examination. One gram was packed and sealed into parcel No. 1 while the remaining 12 grams were packed and sealed into parcel No. 2 by affixing 1/1 seal in the mark of SH. The recovered pistol was packed and sealed into parcel No. 3. The person disclosed his name Mohsin Ali S/O Saji Gul, R/O Qaum Feroz Khel, Tappa Ghairat Khel. He took Murasila to PS and handed over it to Moharrir. His statement was recorded by IO U/S 161 Cr. PC.

9. ASI Muhammad Ayub was examined as PW-05. He stated that he was present in the PS on duty when Constable Raza Ali brought Murasila from SHO/Complainant Shal Muhammad. He incorporated the contents of Murasila into FIR Ex. PA. Case property was also brought to PS along with accused and it was handed over to him. Case property was kept in safe custody. Accused was locked up. Case property was handed over to IO for the purpose of sending it to FSL. His statement was recorded U/S 161 Cr.PC.



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10. PW Constable Zeeshan Haider was abandoned by prosecution and closed its evidence.

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11. Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein, he pleaded not his guilt and did not wish to be examined on oath. He opted not to produce defense evidence.

12. Record transpires that the alleged occurrence took place on 14.09.2021 at 16:00 hours at Feroz Khel Bazar, Lower Orakzai. It was reported through Murasila at 16:30 hours and FIR was registered at 17:00 hours. The distance between PS Kalaya and spot is 4/5 km. As per statements of PWs, they were on gasht and were present in Feroz Khel Bazar when the occurrence took place but it is nowhere mentioned in the murasila Ex.PW-3/1, that SHO/complainant and other police nafri was on gasht on the relevant day at the relevant time. There are contradictions in the statements of PWs and contents of murasila Ex.PW-3/1 and recovery memo Ex.PW-3/2. PW-01, in his cross examination stated that entry regarding sending case property to FSL was made by Muharrir Hamayun in DD but neither name of the said Muharrir is mentioned in the calendar of witnesses nor he was produced as witness by prosecution. ASI Muhammad Ayub Khan, who deposed as PW-05, stated that entry in DD was made by him. DD was not produced before the court during prosecution evidence.


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Aftab Hassan, who is the IO of the case, deposed as PW-02 stated in his cross examination that he received copy of FIR at about 17:00 hours and reached the spot at 17:30 hours. He remained at the spot for about 40/45 minutes. He also deposed that Constable Raza Ali,

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who took murasila to PS, returned back to the spot at about 17:00 hours. Preparation of parcels took about 30 minutes. Per Ex.PW-3/1, (Murasila) the occurrence took place at 16:00 hours, it was reported at 16:30 hours and FIR was registered at 17:00 hours. It is not possible that constable Raza Ali (PW-04) returned back to the spot at 17:00 hours when FIR was registered at the same time i.e. 17:00 hours as the distance per Ex.PA (copy of FIR) is about 4/5 km.

14. Raza Ali, ex-police constable, who deposed as PW-04, stated in his cross examination that he left the spot for PS at about 4:30 pm and reached PS at 4:50 pm whereas, per Ex.PA the matter was reported at 4:30 pm (16:30 hours). He returned back to the spot from PS at about 5:10 pm. He reached PS from spot within 20 minutes. If PW-04 left the spot for PS at 4:30 pm and reached PS within 20 minutes, then time of handing over murasila would be 4:50 pm not 4:30 pm. Similarly, ASI Muhammad Ayub Khan, who deposed as PW-05, stated that constable Raza Ali brought murasila at 4:50 pm. There are material contradictions in the statements of PWs which is fatal to the case of prosecution.




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15. As per record, the alleged occurrence took place at Feroz Khel Bazar which is a busy place but provisions of section 103 Cr.PC, have not been complied with. The main object of section 103 Cr.PC is to ensure that the recovery is effected honestly and fairly so as to exclude the possibility of false implication and fabrication. Section 103 Cr.PC provide for search of both place and person. According to

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sub-section (4) of section 103 Cr.PC a person can be searched anywhere and therefore, the applicability of section 103 Cr.PC cannot be restricted to search of a place and not a person. Mandatory provisions of section 103 Cr.PC have been violated while effecting recovery from the accused. Departure from provisions of section 103 Cr.PC, can be made only in exceptional circumstances/cases, as where compliance with provisions was impracticable. Violation of mandatory requirements of section 103 Cr.PC would make recovery evidence unreliable. No effort whatsoever was made to associate independent witnesses during recovery proceedings inspite the fact that the spot is a busy bazar. More so, per statements of PWs, accused saw the police party from a considerable distance but accused did not try to flee. Feroz Khel Bazar is a busy place and accused could easily disappear in rush on seeing the police party. Recovery has not been effected in the mode and manner alleged by prosecution.



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16. There are so many dents and doubts in case of prosecution benefit of which goes to the accused. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.

17. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Mohsin Ali is hereby acquitted from the charges leveled against him. He is on bail. His bail bonds stand cancelled. Sureties are discharged from their liability. Case property be dealt with in accordance with law.

18. Case file be consigned to Record room after its completion and necessary compilation.

Announced
15.03.2023



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CERTIFICATE

It is certified that this judgment consists of **09** pages. Each page has been dictated, read, corrected and signed by me.



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai