

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

Case No..... 10/3 of 2021.

Date of institution.....07.09.2021.

Date of decision.....29.04.2023.


FIR No. 60, dated 09.05.2021, U/S 11-A CNSA, PS Kalaya

Mr. Abid Ali Advocate counsel for accused.
APP for the state

Order. No. 27
29.04.2023

APP for the state present. Accused absent. Counsel for accused submitted application for exemption of accused from appearance for the reasons mentioned in the application. Application allowed. Complainant/PW SI Malak Janani present. His statement recorded as PW-03. Counsel for accused filed application U/S 249-A Cr. PC. Arguments on application heard and record gone through.

Brief facts of the prosecution case as unfolded in the First Information Report (FIR) Ex.PA are that on 09.05.2021 at about 17:30 hours at Feroz Khel Bazar, SI/complainant Malak Janan along with other police nafri were on patrol duty when one person in suspicious condition was stopped. His body search was conducted being suspect and during his body search, a white color plastic bag containing 13 grams ICE was recovered from the side pocket of the said person who disclosed his name as Israr Khan S/O Jan Akbar. The recovered ICE was taken into possession in presence of marginal witnesses vide recovery memo Ex.PW-2/1. One gram was separated for FSL examination and it was


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packed and sealed into parcel No. 1 while remaining ICE along with plastic bag was packed and sealed into parcel No. 2 Ex.P-1. Murasila Ex.PW-3/2 was drafted at the spot and sent to the PS through Constable Zulfaid for registration of the case and on the strength of Murasila, the instant case was registered against the accused vide FIR Ex.PA.

After completion of investigation, complete challan was put in court against the 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.

PW-01, Wali Ullah Muharrir, PS Kalaya stated that on receipt of murasila from SHO Abdul Janan through constable Zulfaid Ali, he correctly incorporated the same into FIR Ex. PA. Copy of FIR was handed over to IO for investigation. Accused and case property in sealed condition were handed over to him by SHO. Case property was kept in safe custody while accused was locked-up. On 20.05.2021, parcel No. 01 was handed over to IO for the purpose of sending it to FSL. Entry was made in register 19 accordingly. Extract of register 19 is Ex.PW-1/1. His statement was recorded by the IO u/s 161 Cr.PC.

PW-02, Gulshid Ali stated that he is one of the marginal witness to the recovery memo vide which SHO/complainant recovered and took into possession 13 grams ice from the side pocket of accused facing trial vide recovery memo Ex.PW-2/1 in his presence. The ICE was in a small white color plastic envelope. One gram was separated for FSL and it was


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packed and sealed into parcel No. 1 while the rest were packed and sealed into parcel No. 2.

PW-03, complainant SI Malak Janan stated that during the days of occurrence, he was posted as SHO PS Kalaya. On the day of occurrence, he along with constable Zulfaid and Gulshid were on patrol at Feroz Khel Bazar. During gasht, at Feroz Khel Bazar, body search of a suspect was conducted during which a plastic envelope containing 13 grams ICE was recovered from his side pocket which was weighed through digital scale. One gram was separated for FSL examination while the rest was packed and sealed into parcel No. 2 Ex.P-1. One gram was packed and sealed into parcel No. 1 by affixing 1/1 seal with the mark of MJ. The person disclosed his name as Israr Khan S/O Jan Akbar R/O Qaum Feroz Khel. He was formally arrested. Card of arrest is Ex.PW-3/1. Murasila was drafted at the spot and sent to PS through constable Zulfaid for registration of the case. Murasila is Ex.PW-3/2. He pointed out spot to the IO who prepared site plan on his pointation. Accused and case property was handed over to Muharrir of PS.

As per FIR Ex.PA and murasila Ex.PW-3/2, the alleged occurrence took place on 09.05.2021 at 11:30 a.m. at Feroz Khel bazar which is at a distance of 2/3 KMs from PS Kalaya. Per Ex.PW-3/2 (Murasila), the occurrence was reported at 11:50 hours but as per Ex.PA (FIR), the occurrence was reported at 17:50 hours and FIR was registered at 18:20 hours. There is a distance of 2/3 KMs between the spot and PS Kalaya. There are contradictions in contents of murasila and FIR. Per Ex.PW-2/1 (memorandum of recovery), one gram was separated for FSL



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examination and it was packed and sealed into parcel No.1 but FSL report which is placed on file shows that one gram sample was sent to Laboratory for examination on 20.05.2021. This unexplained delay in sending sample for FSL examination is beyond the stipulated period and is fatal to the case of prosecution.

PW-01, deposed that he received murasila at 18:10 hours. He further deposed that it is correct that in his 161 Cr.PC statement, it is not mentioned that accused was brought by SHO to PS in handcuffs. PW-02, stated in his cross examination that soon after the recovery, they returned to PS and no other proceedings were carried out at the spot. This shows that the entire proceedings were carried out while setting in the PS.

Complainant, SI Malak Janan, who deposed as PW-03 stated in his cross examination that he consumed about 20/25 minutes on completion of entire proceedings. Constable Zulfaid, who took murasila to PS, left the spot for PS at 11:50 hours. He further stated that when constable Zulfaid left the spot, he was busy in making pointation to the IO. The IO was present at the spot when constable Zulfaid left the spot. This shows that IO was present at the spot before registration of the case.

Per record, there is no history of accused which could show his involvement or conviction in such like cases. Accused facing trial has not confessed his guilt before the court. There are material contradictions in the statements of PWs.

There are so many dents and doubts in the case of prosecution. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court,


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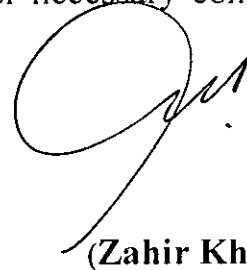
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therefore, application U/S 249-A Cr. PC is accepted and accused is acquitted from the charges levelled against him. He is on bail. His bail bonds stand cancelled. His sureties stand discharged from their liability.

Case property be dealt with in accordance with the law.

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

Announced
29.04.2023



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