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IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II,
ORAKZAI AT BABAR MELA

Case No:.....01 of 2019
Date of Institution.....01.04.2019
Date of Decision.....09.07.2019

Amir Janan s/o Eid Bar Shah r/o Chapper Mishti District Central
OrakzaiAccused/Petitioner

Vs

State

ORDER
09.07.2019

Accused Amir Janan on bail with counsel present. Umar Niaz DPP for the state present.

This order is intended to dispose of application u/s 265-K Cr.P.C submitted by the accused/petitioner Amir Janan s/o Eid Bar Shah r/o Chapper Mishti District Central Orakzai arrested vide information report bearing endorsement No. 3118/APA/L (Kalaya), Dated 15/12/2016 for his acquittal.

The accused/petitioner was arrested by the LEAs being suspect was in Knowledge of heavy weapons recovered from un-inhabited room/compound at Chapper Mishti Lower Orakzai and being a tribal elder of the village, despite having knowledge of such a huge cache did not inform the LEAs. On 13/12/2016 the accused was handed over to Political Administration Lower Orakzai by the LEAs Orakzai and was put behind bar at Agency Head Quarter for further investigation and interrogation.

The then Political Administration referred the case to the JIT for investigation and awaited for the report of the JIT, however despite repeated direction to the quarter concern for submission of JIT report, the case of the accused had neither been investigated nor the JIT submitted its report to prove the allegations against the accused. The case was thereafter, on 02/04/2018 referred to the Jirga constituted for the purpose to investigate the case of the accused with the consent of the accused, however despite repeated directions the Jirga also failed to convene its meeting and pass a verdict regarding the guilt or innocence of the accused. The case was thus pending and could not be investigated.

Upon the merger of erstwhile FATA in the Khyber Pakhtunkhwa the cases were transferred to the District Courts Orakzai. On 01/04/2019 the case of the accused was entrusted to this court for trial against the accused. The accused on bail was summoned, who appeared before the court on 04/04/2019. After compliance of 265-C Cr.P.C, charge was framed against the accused on 16/05/2019 to which the accused pleaded not guilty and claimed trail. The case was fixed for the prosecution evidence.

The accused during trail of the case submitted application u/s 265-K Cr.P.C for his acquittal in the instant case, which was noticed to the prosecution.

Arguments on the said application heard and record perused.

The perusal of record would transpire that the accused was suspected that despite knowledge of heavy weapons recovered from the un-inhabited room/compound at Chapper Mishti, failed to inform the LEAs. The accused after his arrest remained in the custody of Political Administration for more than two years but during this period no solid and cogent evidence has been collected to prove the allegation against the accused. The JIT and the Jirga constituted for the purpose of investigation could not probe the case to connect the accused with the commission of offence and the accused remained behind the bar without any progress in his case. No material evidence had been brought on record to support the allegations against the accused and the case against the accused remained only bald allegations.

The prosecution in its list of witnesses submitted the names of six witnesses however, during trail of the case four witnesses were abandoned by the prosecution on 11/06/2019 on the ground that those witnesses were not supporting the case of prosecution, which negates the charges against the accused. The statement of Tahir Hassan Inspector was recorded as PW-1 however, PW-1 had only received the accused at sub jail Orakzai at Babar Mela and no other material proceedings were carried out by him. During cross examination PW-1 stated that no weapons were handed over to him at that time along with accused. The only remaining witnesses, the then APA Lower Orakzai, received the accused on 13/12/2016 who was handed over by the I.S.I Kohat, is also not the material witness of the prosecution.

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There is nothing on record to prove that the accused was in knowledge of the alleged weapons nor any evidence is brought on record to prove the allegations level against the accused. Neither any recovery has been effected from the accused nor on the pointation of accused. The site plain is also not prepare to show the spot and the presence of weapons and its recovery from the spot which was necessary to support the allegations. The report of any arms expert is also not available on file to substantiate the recovery of fire arms weapons as alleged against the accused. The case property has not been produced before the court and prosecution could not able to show the where about of the case property which also put a dent in the prosecution case. The only allegations against the accused are that, the accused despite knowledge of huge quantity of arms did not inform the LEAs however, no witness is available with the prosecution to prove that the accused had knowledge of the concealment of alleged weapons. The case of the prosecution is ^{of} no evidence and the trail against the accused would be futile exercise as the ultimate result would be the acquittal of accused. No material witness is remaining with the prosecution that is to be examined and the single remaining witness even if examined by the prosecution, there is no possibility of the conviction of accused. The court in such circumstances can acquit an accused person at any stage of the case when there is no probability of his conviction on the available evidence.

In view of the above facts and discussion the application of the accused/petitioner u/s 265-K Cr.P.C is accepted and the accused is acquitted from the charges level against him. The accused is on bail, his sureties are discharged from the liability of bail bonds. Case property, if any be dealt with in accordance with law.

File be consigned to District Record Room Hangu after its necessary completion and compilation.

Announced
09.07.2019



(SHAUKAT ALI)
Additional Sessions Judge-II,
Orakzai at Babar Mela

SHAUKAT ALI
Add: District & Sessions Judge-II,
Orakzai at Hangu