

5

Case No 04/9-CNSA of 2019

**Date of Institution: 01-04-2019**  
**State Vs Zia ul Haq**

Or      04  
04-05-2019

**Present:**

APP Syed Amir Shah for State

Accused Zia ul Haq on bail alongwith Abid Ali Advocate

1. This order shall dispose of the application u/s 265-K CrPC, filed on behalf of the accused sent up for trial.
2. The accused **Zia ul Haq** s/o Haji Noor Saleem Afr.di, resident of Akakhel, Faridkhel has been sent for trial in **case No. 3263/APA/L dated 11-10-2017, u/s 9 (c) CNSA;** with allegation of smuggling hashish (90.5 kg). The case was registered by the then **Assistant Political Agent** of erstwhile **Lower Orakzai Agency.**
3. Facts of the instant case are: According to Information Report (No. 3263/APA/L), on 11.10.2017, the present accused was apprehended by 232 Wing of Orakzai Scouts, while smuggling hashish; and was subsequently handed over to political administration of Lower Orakzai Agency - without case property (Hashi sh). Thereafter, according to letter No.3775/APA/L dated 12.12.2017, the case file of accused was sent to the Political Agent/District Magistrate of Orakzai Agency for proceeding against him under CNSA, 1997. According to order sheets of the Court of Political Agent/Sessions Judge (sic), the accused was produced

**JAMAL SHAH KHAN**  
Addl: District & Sessions Judge-I,  
Orakzai at Hangu



6

before that court on 14.12.2017, and his statement was recorded; on the next date a Jirga (sic) was nominated and the Jirga members (Council of Elders) were directed to probe into the matter and submit their findings immediately. Thereafter, the case was adjourned regularly without any progress; and the same was ultimately transferred to this court on 01.04.2019, after merger of FATA into KP Province.

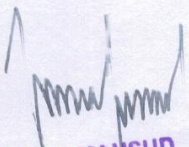
4. After perusal of record, and in light of the arguments of the counsel for accused/petitioner and the APP for State, I have come to the following conclusions:
5. According to Information Report, No. 3263/APA/L, which can be considered as the First Information Report made to relevant authority, the accused was apprehended by some unnamed Orakzai Scouts official/s on 11.10.2017. No quantity of narcotics, or other details about the matter, is given in this report. It is further mentioned in this letter that the accused was handed over to Political Administration without case property (hashish). Whereas, the letter of Wing Commander of 232 Wing of Orakzai Scouts, dated 10.10.2017 (available on record), shows that the accused was apprehended on 09.10.2017, and handed over to the Political Administration on 11.10.2017. No name of any official/s who allegedly apprehended the accused with narcotics or of any eyewitness, neither any other detail of the incident, is mentioned in this letter as well. Thus serious doubt is created in the prosecution case regarding the time, date and the mode and manner of arrest of the accused.
6. There are 02 alleged confessional statements of accused available on record. One statement (titled 'affidavit in respect of transport of charas'), dated 10.10.2017, was made

JAMAL SHAH MAHSUD  
Jd: District & Sessions Judge-I,  
Orakzai at Wangu



before a Subedar and a Naik (presumably of Scouts); and the second, undated statement, before one Shahab (PTL). The quantity of allegedly recovered narcotics is mentioned in one of these statements as 90.5 kg. None of these statements is admissible at law and the same cannot be proved against the accused. According to order sheets of court of PA/Sessions Judge (sic), statement of accused was recorded before the court on 14.12.2017, but no such statement with signature of Presiding Officer of Court is available on record.

7. There is nothing on record to prove the safe and proper custody of the allegedly recovered narcotics. The allegedly recovered narcotic is in fact non-existent. There is nothing on record to prove that any samples were taken or sent to FSL; or that the allegedly recovered narcotics was produced before competent authority/Court in terms of section 27 of CNSA. The case remained pending before the court of Political Agent for more than a year but the case property was never produced in that court. The terms of reference were drafted for Council of Elders, however, no findings were given by the Council, neither any witness was examined nor any statement recorded.
8. During arguments, the APP stressed that his office has written letters to the concerned officials of Orakzai Scouts for production of case property and for providing names of the concerned officials who arrested the accused. However, even if the same is produced before court at this stage the same could not be considered as reliable evidence, which may be used for awarding conviction.
9. The prosecution case is full of doubts, contradictions and lacunas which cannot be filled at this stage. No useful

  
JAMAL SHAH MAHSUD  
Addl: District & Sessions Judge-I,  
Orakzai at Hangu

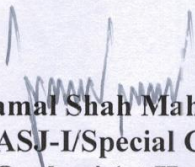


purpose could be served by summoning of witnesses, if any available against the accused. In fact, the prosecution case is so weak and doubtful that there is not even sufficient material for framing of a charge against the accused.

10. In these circumstances, I don't see any probability of accused facing trial being convicted of the offence alleged, on the basis of allegations leveled against him in the instant case. Although, charge has not been framed in the instant case; however, the provisions of Section 265-K CrPC. can be applied at any stage of the case, if there seems to be no probability of accused being convicted of any offence.

11. Resultantly, the application u/s 265-K CrPC. is accepted. The accused facing trial namely **Zia ul haq** s/o Haji Noor Saleem Afridi **is acquitted** of the charge leveled against him in the instant case. He is on bail; his sureties are discharged from the liabilities of bail bonds. Let this file be consigned to record room after necessary completion and compilation.

**Announced**  
**04-05-2019**

  
**Jamal Shah Mahsood**  
**ASJ-I/Special Court**  
**Orakzai (at Hangu)**