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The DPP then requested for a short adjournment to prepare arguments on application u/s 265-K CrPC. Adjourned for arguments to 04-05-2019.

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

Case No 01/9-CNSA of 2019

Date of Institution: 01-04-2019
State Vs Afzal Ameen and 02 others

Or 05
04-05-2019

Present:

APP Syed Amir Shah for State

All 03 accused on bail alongwith Abid Ali Advocate

1. This order shall dispose of the application u/s 265-K CrPC filed on behalf of the 03 accused sent for trial.
2. The 03 accused, namely (01) **Afzal Ameen** s/o Hashim Khan, caste Zakakhel, r/o Anai Bazar Landikotal District Khyber (presently r/o Maidan, Khyber Agency), (02) **Zahir Shah** s/o Abdul Wahid, caste Zakakhel, r/o Muhallah Painsi Landikotal, Distrcit Khyber and (03) **Abdul Saboor** s/o Walayat Khan, caste Mishti, Tappa Haider Khel, Village Ibrahim Zona, Central Orakzai, have been sent for trial in instant case No. 1668/AC/L dated 01-08-2018, u's 9 (c) CNSA; with allegation of smuggling hashish (25 kg) and fertilizer (4 bags of White Sona Urea). The case was registered with the Assistant Commissioner of Lower Orakzai at Kalaya, at a time when FATA Interim Governance Regulation, 2018 (FIGR, 2018) was in force.

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3. Facts of the case, according to Information Report (No. 1668/AC/L), are; that on 01.08.2018, the accused No. (01) and (02) being hashish smugglers and accused No. (03) being fertilizer carrier, were handed over to the Administration of Lower Orakzai - without case property, after having been apprehended by 235 Wing of Orakzai Scouts. According to letter No.1748/AC/L dated 13.08.2018, the case file of these accused was sent to the Deputy Commissioner of District Orakzai for their trial under CNSA, 1997. According to order sheets of the Court of Deputy Commissioner/District Judge (sic) Orakzai, the accused were produced in court on 15.08.2018, and their statement recorded; and that on the next date of hearing a Jirga (sic) was nominated with directions to probe into the matter and submit their findings immediately. Thereafter, the case was adjourned for few dates without any progress, and the same was ultimately transferred to this court on 01.04.2019; after annulment of FIGR, 2018.

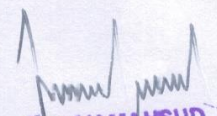
4. After perusal of record, and in light of the arguments of the counsel for accused/petitioners and the APP for State, I have come to the following conclusions:

5. In Information Report No. 1668/AC/L, which can be considered as the First Information Report made to the relevant authority, no date of arrest or recovery of narcotics/fertilizer from the accused is mentioned; neither any quantity of allegedly recovered narcotics is mentioned in this report. It is further mentioned in this letter that the accused were handed over to the Administration without case property. Whereas, according to letter of Wing Commander of 235 Wing of Orakzai Scouts dated 01.08.2018 accused No. 01 and 02 were apprehended on 27.07.2018, and accused No. 03 was apprehended on 23.07.2018. No name of any official/s, which allegedly

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apprehended the accused with narcotics/fertilizer or the name of any eyewitness is mentioned in these documents. Thus, serious doubt is created in the prosecution case regarding the time, date, mode and manner of arrest of accused.


6. There are alleged confessional statements of accused No. 01 and 02 available on record. These statements have been made before a Tehsildar/PTZ. None of these statements is admissible at law and the same cannot be proved against the accused. According to order sheet of court of DC/District Judge (sic), statements of the accused were recorded before the court on 15.08.2018: however, no such statements, with signatures of DC/Presiding Officer, are available on record.
7. There is nothing on record to prove the safe and proper custody of the allegedly recovered narcotics. The allegedly recovered narcotics/fertilizer 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/fertilizer was produced before competent authority/Court in terms of section 27 of CNSA. The case remained pending before the court of Deputy Commissioner (Special Court) but the case property was never produced in that court as well. 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 by the Council.
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.


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9. The prosecution case is full of doubts, contradictions and lacunas which cannot be filled at this stage. No useful 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 a charge against the accused.
10. In these circumstances, I don't see any probability of accused being convicted on the basis of allegations leveled against them in the instant case. Although, charge has not been framed; 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 265-K CrPC. is accepted. All 03 accused, namely **Afzal Ameen, Zahir Shah and Abdul Saboor** are **acquitted** of the charge leveled against them in the instant case. They are on bail; their 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)