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Case No 02/9 CNSA of 2019

Date of Institution: 01-04-2019
State Vs Tehsil Khan

Or 06
08-05-2019

Present:

DPP Umar Niaz for State

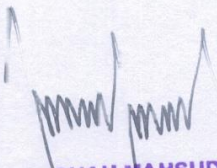
Accused on bail alongwith Abid Ali Advocate

1. This order shall dispose of the application u/s 265-K CrPC filed on behalf of accused Tehsil Khan who has been sent to face trial.
2. The accused **Tehsil Khan** s/o Meer Ajab Khan, caste Kambarkhel; resident of Wach-pal/Koko-dara Orakzai, has been sent for trial in **case No. 3236/APA/L dated 02-10-2017, u/s 9 (c) CNSA**, with allegation of smuggling hashish (170.1 kg). The case was registered with the then **Assistant Political Agent** of erstwhile **Lower Orakzai Agency** at Kalaya.
3. Facts of the case, according to Information Report (No. 3236/APA/L), are that, on 02.10.2017, the 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. According to letter No. 3266/APA/L dated 13.10.2017, the case file of accused was sent to the then Political Agent/District Magistrate of Orakzai Agency for proceeding against him under CNSA. According to order sheets of the Court of Political Agent/Sessions Judge (sic) of Orakzai Agency, the accused was produced before court on

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16.10.2017, and his statement was recorded; and that, on 19.10.2018, 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 former FATA in KP Province. According to order sheet of Deputy Commissioner/District Judge (sic), dated 06-03-2018, Jirga award was received; however, the same is not available on record.

- 4. After a 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. 3236/APA/L, which can be considered as the First Information Report made to the relevant authority, the accused was apprehended by unnamed official/s of Scouts on 02.10.2017. No quantity of narcotics, or any other detail, is mentioned in this report. It is further mentioned in this report that the accused was handed over to Political Administration without case property (hashish). Whereas, the letter/handing-over certificate from Wing Commander of 232 Wing of Orakzai Scouts, dated 30.09.2017 (available on record), shows that the accused was apprehended on 29.09.2017, and handed over to the Political Administration on 30.09.2017. No name of the official/s who allegedly arrested the accused with narcotics or of any eyewitness, neither any other detail is mentioned in these documents. Thus serious doubt is created in the prosecution case regarding the time, date and the mode and manner of arrest of accused.


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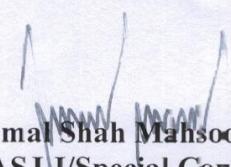
6. There are 02 alleged confessional statements of accused available on record. The first statement, dated 30.09.2017 (titled 'affidavit in respect of transport of charas'), was allegedly made before a Subedar and a Naik of Scouts; while the second undated statement before someone designated APNT.L. The quantity of allegedly recovered narcotics is mentioned in one of these statements as 170.1 kg. None of these statements is admissible at law and the same cannot be proved against the accused. According to order sheet of court of Political Agent/Sessions Judge (sic), statement of accused was recorded before the court on 16.10.2017, but no such statement with signature of Political Agent/Presiding Officer 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 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 DPP 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

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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 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 facing trial being convicted on the basis of allegations leveled against him 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 u/s 265-K CrPC. is accepted. The accused namely **Tehsil Khan** s/o Meer Ajab Khan 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
08-05-2019


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