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Case No 03/9-CNSA of 2019

Date of Institution: 01-04-2019

State Vs Zia ul Haq

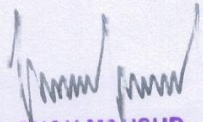
Or 07
14-05-2019

Present:

APP Zohaib Ahmed Sher for State

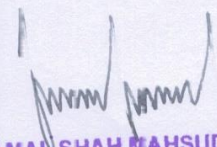
Accused Nazrab Shah on bail alongwith Mudasar Ijaz Advocate

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 **Nazrab Shah** s/o Haider Shah, resident of Mishti, Orakzai has been sent for trial in **case No. 1345/AC/L dated 13-06-2018, u/s 9 (c) CNSA;** with allegation of smuggling 41 kg of hash (sic). The case was registered by the then **Assistant Commissioner** of erstwhile **Lower Orakzai Tribal District.**
3. Facts of the case are: according to Information Report (No. 1345/AC/L), the present accused was apprehended by 232 Wing of Orakzai Scouts, while allegedly smuggling 41 kg hash; and was subsequently handed over to political administration of Lower Orakzai - without case property (Hash) – on 12-06-2018 or 13-06-2018. Thereafter, according to letter No.1247/AC/L dated 28-06-2018, the case file of accused was sent to the Deputy Commissioner of Orakzai Tribal District for proceeding against him under CNSA, 1997. According to order sheets of the Court of Deputy Commissioner/District Judge (sic), the accused was produced before that court on 28-06-2018 - again without


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

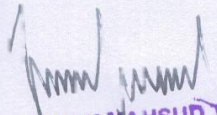
case property. On next date his statement was recorded and thereafter a Jirga (sic) was nominated. The Jirga members (Council of Elders) were directed to submit their findings, at the earliest. Thereafter, the case was adjourned for several dates without progress; and the same was ultimately transferred 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. In Information Report No. 1345/AC/L, which can be considered as the first information report made to relevant authority, no details regarding the place, time and date of arrest of accused, the mode and manner of alleged recovery or the name of official/s who arrested him are mentioned. It is further mentioned in this letter that the accused was handed over to Political Administration without case property (hash). According to a letter of Wing Commander of 232 Wing of Orakzai Scouts, dated 12.06.2018 (available on record), the accused was apprehended on 11-06-2018, and handed over to the Political Administration on 12-06-2018. 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 printed and undated statement (titled 'affidavit in respect of transport of charas'), was made


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before a Subedar and a Naik (presumably of Scouts); and the second statement, dated 14-06-2018, before someone designated PNT (C). None of these statements is admissible at law and the same cannot be proved against the accused. According to order sheets of court of DC/District Judge (sic), statement of accused was recorded before the court on 29-06-2018, 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 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 purpose could be served by summoning of witnesses, if any available against the accused. In fact, the prosecution case is


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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 **Nazrab Shah** s/o Haider Shah **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
14-05-2019

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

JAMAL SHAH MAHSUD
Add: District & Sessions J.
Orakzai at Hangu