

57

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II/ JUDGE
SPECIAL COURT ORAKZAI AT BABAR MELA**

Sessions Case No:.....04 of 2019

Date of Original Institution.....17.12.2018

Date of Present Institution. 01.04.2019

Date of decision.....24.06.2019

State.....Complainant

Vs

Rakin Khan s/o Bahadar Shah r/o Utman Khel District

Orakzai..... Accused

ORDER
24.06.2019

Accused Rakin Khan on bail with his counsel Mr. Abid Ali Advocate present. Syed Amir Shah APP for the state present.

This order is intended to dispose of application submitted by the accused/petitioner Rakin Khan s/o Bahadar Shah r/o Utman Khel District Lower Orakzai u/s 265-K Cr.P.C for his acquittal in case vide information No. 2432/AC/L dated 09/11/2018 charge for recovery of 11 KG Chars by 232 Wing Orakzai Scouts at Shadala Utman khel area District Orakzai.

The accused after his arrest by the 232 Wing Orakzai Scouts at Shadala Utman Khel area was handed over to the then Political Administration Orakzai for his trial under the CNSA 1997. After the merger of FATA with Khyber Pakhtunkhwa the cases were transferred to District Courts Orakzai. The instant case file was entrusted to this Court for trial which was received by this Court on 1/04/2019. The accused was summoned and after compliance of 265-C Cr.P.C charge was framed against the accused on 29/04/2019 to which the accused pleaded not guilty and claimed trial. During the trial accused submitted an application u/s 265-K Cr.P.C for his acquittal in the instant case which was noticed to the prosecution.

Today arguments of counsel for the accused and APP for the state on the said application heard and record perused.

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In cases under the CNSA the initial burden is on the prosecution to establish a prima-facia connection of the accused with the contraband allegedly recover from the accused by producing cogent and tangible evidence as mere bald allegation is not sufficient to proceed with the trail against the accused nor the accused could be convicted on only such allegations.

The record shows that the accused is charged for the recovery of Chars, however the mode and manner of the recovery and the place of alleged recovery is nowhere mentioned in the record nor the same is reduced into writing in the form of report. The person/complainant who recovered the Chars is nowhere mention nor any eye witness of the alleged recovery has been cited in the case file to support the case against the accused. Furthermore, the statement of the complainant and eye witness are also not recorded nor the same is available on file. In the absence of material witness and their statement the prosecution could not be able to bring home charge against the accused. Furthermore, the case property is also not available nor there is anything on record that the same had been taken in possession or samples had been separated from the case property for the purpose of FSL report. It is essential that in cases of recovery of contraband samples are to be separated from the recovered contraband for the FSL report and the remaining case property is to be separately sealed. Under Rule 4 of the CNSA (Govt. Analysts) Rules 2001 reasonable quantity of narcotics was required to be dispatch to the nearest testing laboratory by which analysis may be carried out that recovered contraband was narcotics, however in the present case no such exercise has been carried out, therefore in the absence of preparation of samples for FSL and FSL report it could not be established that any Chars was recovered from the accused. Prosecution in cases of narcotics was under a heavy legal obligation to prove that the material recovered from possession of accused was narcotics in any form recognized by the CNSA 1997; for that purpose, report of FSL would assume great importance as nature of substance could be determine only on the basis of FSL report. The where about of the case property is not available on record and the accused was received by the then Political

7

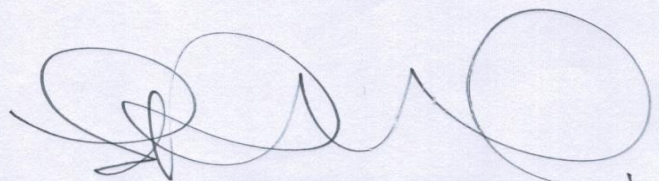
Administration Orakzai without any case property, therefore in the absence of case property the allegation of recovery of contraband could not be believe against the accused. The place of recovery and the time of recovery is also not known which was required to be mentioned or shown on record to prevent false implication of the accused. The place of recovery is neither mentioned in the shape of the site plane nor the same is identified in any other form. Similarly, the date and time of recovery is also not mentioned hence it could not be proved that when and where the alleged recovery has been affected of the accused.

In the absence of cogent and tangible evidence, mere oral allegations are not sufficient to bring home the guilt against the accused. It can be safely held that the case against the accused is of no evidence and as such to proceed with the trail of the case against the accused would be futile exercise as the ultimate result would be the acquittal of accused. The court u/s 265-K Cr.P.C has ample powers to acquit the accused at any stage of the case when there is no possibility or probability of his conviction. The record of the present case would reflect that there is no material evidence against the accused to connect him with the commission of the offence, therefore there is no possibility of the conviction of accused.

In view of the above discussion the application submitted by the accused u/s 265-K Cr.P.C is accepted and the accused is hereby acquitted from the charges leveled against him. The accused is on bail; his sureties are discharged from 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
24.06.2019



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