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STATE VS GUL AHMAD KHAN  
FIR No. 74 | Dated: 30.07.2022 | U/S: 9 (d) of the Khyber  
Pakhtunkhwa CNSA 2019 | Police Station: Kalaya

**IN THE COURT OF SHAUKAT AHMAD KHAN**  
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI  
(AT BABER MELA)

SPECIAL CASE NO. : 36/3 OF 2022  
DATE OF INSTITUTION : 07.10.2022  
DATE OF DECISION : 27.06.2023

STATE THROUGH INSPECTOR FAROOQ KHAN NARCOTICS  
ERADICATION TEAM (NET)  
.....(COMPLAINANT)

-VERSUS-

GUL AHMAD KHAN S/O SABIL KHAN, AGED ABOUT 18 YEARS,  
R/O ZAKHA KHEL, LANDI KOTAL, DISTRICT KHYBER  
..... (ACCUSED FACING TRIAL)


**Present:** Umar Niaz, District Public Prosecutor for State.  
: Hamid Sarfaraz Advocate, the counsel for accused facing trial.

**FIR No. 74**                      **Dated:** 30.07.2022      **U/S:** 9 (d) of the Khyber  
Pakhtunkhwa Control of Narcotic Substances Act, 2019  
**Police Station:** Kalaya

JUDGEMENT  
27.06.2023

The above-named accused faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR  
No. 74, dated 30.07.2022 of Police Station Kalaya.

(2).                      The case of the prosecution as per contents of Murasila  
based FIR is; that on 30.07.2022, the complainant Inspector  
Farooq Khan along with constables Rafi Ullah and Shakeel  
Khan during routine patrolling, laid a picket on main road near  
Sam Feroz Khel Petrol Pump, where at about 1300 hours a  
motorcar bearing Registration No. LEB 1648/Lahore, Engine  
No. 2NZFE1299 and Chassis No. NZE12060447632 on way  
from Headquarter chowk towards the picket was stopped for  
the purpose of checking. The driver of the motorcar was made  
come down from motorcar, his person was searched but  
nothing incriminating were recovered from his personal

  
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search. Upon search of the motorcar, 14 packets of chars each wrapped with yellow colour scotch tape, weighing 1100 grams, making a total of 15400 grams of chars were recovered from two different secret cavities. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 14 whereas the remaining quantity of chars weighing 15260 grams were sealed in parcel no. 15 by placing/affixing monograms of 'SH' on all the parcels. The complainant took into possession the recovered chars and the motorcar bearing Registration No. LEB 1648/Lahore, Engine No. 2NZFE1299 and Chassis No. NZE12060447632 vide recovery memo. The accused disclosed his name as **Gul Ahmad Khan** s/o Sabeel Khan who was arrested on the spot by issuing his card of arrest. Murasila was drafted and sent to Police Station through constable Rafi Ullah which was converted into FIR by Asmat Ali AMHC.

- (3). After registration of FIR, it was handed over to Mehdi Hassan OII for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan on the pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 01.08.2022, the IO sent the samples of chars for chemical analysis to FSL through constable Muhammad Khalil, the result whereof was received and placed on file by him. After completion of investigation, he handed over the

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case file to SHO who submitted complete challan against the accused facing trial.

(4). Upon receipt of case file for the purpose of trial, the accused was summoned through addendum-B, copies of the record were provided to him in line with section 265-C CrPC and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

I. Asmat Ali AMHC appeared in the witness box as PW-1. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has received the case property from the complainant duly packed and sealed which he had kept in mal khana in safe custody besides parked the motorcar in vicinity of the police station. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 1/1 and he has handed over the samples of the case property to the IO for sending the same to FSL on 01.08.2022.

II. Inspector Farooq Khan is the complainant of the case. He as PW-2 repeated the same story as narrated in the FIR.

III. Constable Rafi Ullah is PW-3. He besides being eyewitness of occurrence is marginal witness of

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recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered chars and the motorcar. He also reiterated the contents of FIR in his statement.

IV. Shal Muhammad SHO appeared in the witness box as PW-4. He has submitted complete challan Ex. PW 4/1 against the accused facing trial in the instant case.

V. Constable Muhammad Khalil is PW-5. He has taken the samples of chars in parcels no. 1 to 14 to the FSL for chemical analysis on 01.08.2022 and after submission of the same, he has handed over the receipt of the parcels to the IO.

VI. Investigating Officer Mehdi Hassan SI was examined as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared the site plan Ex. PB on the pointation of the complainant, recorded the statements of witnesses on the spot, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 6/1 and Ex. PW 6/4, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 6/2 and road permit certificate Ex. PW 6/3 and result of the same Ex. PK was placed on file by him, placed on file copy of Register No. 19 Ex. PW 1/1, copies of daily diaries

  
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Ex. PW 6/5 and Ex. PW 6/6, photographs of secret cavities Ex. PW 6/7 and submitted the case file to SHO for its onward submission.

(5). Prosecution closed its evidence whereafter the statement of accused was recorded u/s 342 Cr.P.C but the accused neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of learned DPP for State and learned counsel for accused facing trial heard and case file perused.

(6). Learned DPP for State submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis have been transmitted to the FSL within the prescribed period and the same have been found positive for chars vide report of FSL Ex. PK. The complainant, the witnesses of the recovery, the official transmitted the samples to the FSL and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

  
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(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the alleged chars have been shown recovered from his possession and the report of FSL support the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the IO on the spot, as detailed by the prosecution on the case file. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

(8). In the light of arguments advanced by learned DPP for the State, arguments of learned counsel for the defence and the available record, following are the points for determination of charge against the accused facing trial:

- (i). Whether the occurrence has taken place in the mode and manner as alleged by the prosecution?
- (ii). Whether the investigation has been carried out in the mode and manner as alleged by the prosecution?
- (iii). Whether the case of prosecution is substantiated through report of FSL?

(9). The case of prosecution, as per contents of Murasila Ex. PA/1, court statements of Inspector Farooq Khan as PW-2

  
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and constable Rafi Ullah as PW-3 is, that the complainant Inspector Farooq Khan/PW-2 along with constables Rafi Ullah/PW-3 and Shakeel Khan during routine patrolling, laid a picket on main road near Sam Feroz Khel Petrol Pump, where at about 1300 hours a motorcar bearing Registration No. LEB 1648/Lahore, Engine No. 2NZFE1299 and Chassis No. NZE12060447632 on way from Headquarter chowk towards the picket was stopped for the purpose of checking. The driver of the motorcar was made come down of motorcar, his person was searched but nothing incriminating were recovered from his personal search. Upon search of the motorcar, 14 packets of chars each wrapped with yellow colour scotch tape, weighing 1100 grams, making a total of 15400 grams of chars were recovered from two different secret cavities made beneath front doors' pillars of the motorcar. The complainant/PW-2 on the spot has separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 14 whereas the remaining quantity of chars weighing 15260 grams were sealed in parcel no. 15, placing/affixing monograms of 'SH' on all the parcels. The accused disclosing his name as **Gul Ahmad Khan** s/o Sabeel Khan, was arrested on the spot by issuing his card of arrest Ex. PW 2/1. The Murasila Ex. PA/1 has been transmitted by constable Rafi Ullah/PW-3 to police station where, after registration of FIR by Asmat Ali AMHC/PW-1, it has been

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handed over to Mehdi Hassan SI/PW-6, the IO of the case. The IO has visited the spot and conducted investigation by making a site plan Ex. PB on the pointation of Inspector Farooq Khan/PW-2 and recorded the statements of marginal witnesses.

The prosecution in order to prove its case in the mode and manner as alleged, has examined Inspector Farooq Khan, the complainant of the case, as PW-2 who has reiterated the contents of Murasila Ex. PA/1 and constable Rafi Ullah, the eyewitness witness of the occurrence and marginal witness of recovery memo Ex. PC as PW-3 who besides repeating the same story as narrated in the FIR, has stated to have taken the documents to the police station for registration of FIR and handed over the documents to Asmat Ali AMHC/PW-1 who has registered the FIR. The witnesses have been cross examined. They are consistent regarding the place of their posting, the time of their departure, the place of occurrence, the laying a picket on the spot, the time of occurrence, the mode and manner of recovery from secret cavities of the motorcar, the quantity of recovered chars, the process of weighing, sampling and sealing of different parcels on the spot, the scribing of the documents, the time of departure of PW-3 for taking documents to the police station, arrival of PW-3 in the police station and registration of the FIR. Both the PWs in cross examination has stated that the complainant/PW-


  
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2 and constable Shakeel Khan, the co-marginal witness of the recovery memo Ex. PC, were posted in the 'NET' and that they were having separate office at Kalaya Headquarter wherefrom they have left for patrolling at 1200 hours in official vehicle. According to the cross examination of the complainant/PW-2, they have arrived at the spot at 12:55 pm which lend support to the contents of Murasila to the extent of time of occurrence, according to which the occurrence has taken place at 1300 hours. This stance of the complainant/PW-2 is also supported by PW-3 in his cross examination wherein he has stated that after 15 minutes of naka bandi the vehicle in question arrived on the spot. With respect to place of occurrence as mentioned in Murasila and site plan i.e., a main road near Sam Feroz Khel Petrol Pump, both the witnesses are unanimous on the fact that the occurrence has taken place at Sam Feroz Khel near Petrol Pump. With respect to recovery, the photographs of the motorcar in question with secret cavities are available on file as Ex. PW 6/7, the authenticity of which has not been questioned in cross examination. Both the witnesses are also unanimous on the fact that nothing incriminating has been recovered from the personal search of accused facing trial. Both the witnesses are also unanimous on the fact that the chars were extracted from each of the parcel through a knife. They are also unanimous regarding the fact that the monograms of 'SH' are affixed on the parcels and that the

  
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Murasila, card of arrest and recovery memo were drafted on the spot and handed over to PW-3 for taking the same to the police station.

In order to prove the mode and manner of investigation allegedly conducted on the spot, prosecution has examined Investigating Officer Mehdi Hassan SI as PW-6 who, after receiving of the copy of FIR and other documents, has proceeded to the spot, made the site plan Ex. PB and recorded the statement of witnesses u/s 161 CrPC.

The defence raised the following objections and submitted that the prosecution has failed to prove the mode and manner of occurrence and the mode and manner of investigation conducted by the IO on the spot; i.e., that no daily diary in respect of the departure of complainant from police station is produced, that the occurrence despite being allegedly occurred during broad daylight on a public road in front of a petrol pump where the witnesses of the prosecution have admitted the presence of the employees of petrol pump, no witness from the public has been associated with the occurrence even the employees of the petrol pump have not been examined with respect to the occurrence, that the colour, kind and texture of the chars has neither been mentioned in the Murasila Ex. PA nor in recovery memo Ex. PC, that the occurrence has allegedly taken place on a straight road and the police party was visible to the accused from a long distance

  
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but he has not made any effort to escape from the spot and this fact is not appealable to a prudent mind, that the secrete cavities have been shown in pillars of the motorcar but in the photographs they are visible in the frame below the front door, that the monogram of 'SH' is in the name of Shal Muhammad (the SHO of police station Kalaya) and there is no explanation to the fact that as to how the monogram of 'SH' came in possession of the complainant, that no driving license or registration document of the vehicle has been recovered from the accused facing trial, that there is contradiction between the statements of PWs and contents of Murasila to the extent of officials accompanying the complainant i.e., as per Murasila the complainant was accompanied by constables Shakeel and Rafi Ullah whereas in cross examination the complainant has stated that on way back from the spot his vehicle was driven by Rafi Ullah while the motorcar of the accused was driven by Mr. Irfan Ullah to the police station, that at the time of receiving the documents by the Moharrir/PW-1, the number of FIR was already written on the card of arrest and recovery memo which has neither been added by Moharrir nor by the IO; therefore, the fact that as to how the complainant prior to registration of FIR had come to know about the number of FIR, shows that the Murasila, card of arrest and recovery memo are not drafted on the spot.

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Careful perusal of the record reveals that as the complainant along with PWs constables Rafi Ullah and Shakeel are not posted in Police Station Kalaya rather as explained by the PWs in their cross examination that they have a separate office at Headquarter Kalaya; therefore, their departure has not entered in the daily diary of Police Station Kalaya while on return they have arrived at Police Station Kalaya; therefore, their arrival in the daily diary no. 10 of 30.07.2022 has been entered.

With respect to non-association of private witnesses; it is held that in the present societal setup no one wants to poke nose in the affairs of other especially in narcotics cases while on the other hand, by now it is a settled principle of law that the police witnesses are as good witnesses as any other witness except where some malafidi has been shown on the part of the police witnesses but in the instant case no malafidi has even been alleged. As evident from the site plan Ex. PB and admitted by the witnesses of prosecution, the police party was visible to the accused facing trial from a long distance and despite having opportunity, he has not made any effort to escape, but as the chars was kept in secret cavities of the motorcar and the accused facing trial was having no apprehension of the detection of chars; therefore, the factum of the accused being straightaway going towards the police party without making any effort of escape, is quite

  
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understandable. Though the nature, kind and colour of the recovered contraband have not been mentioned in Murasila and recovery memo but the witnesses have explained the same in their cross examination when asked about. Similarly, though the secrete cavities have been shown in the pillars of motorcar but in the photographs the cavities are visible in the frame beneath the front door of the motorcar but the complainant when cross examined on this point, he explained that to him the place of secrete cavity is called a pillar. Moreover, as the witness is not an expert of the technical parlance; therefore, he cannot be expected to know the technical name of each and every part of motorcar.

With respect to monogram of 'SH', admittedly the same is in the name of Shal Muhammad who was posted as SHO of police station Kalaya during the days of occurrence but there is no controversy or contradiction between the statements of witnesses regarding the fact that as to when and how the complainant has come in possession of the monogram and the mere fact that the complainant has not explained that as to how and when he has come in possession of the said monogram is not injurious to the case of prosecution because he has not been cross examined on this point to explain the phenomenon.

  
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With respect to the officials accompanying the complainant on the spot, the complainant and the eyewitnesses

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are unanimous on the fact that the complainant party consisted of three members i.e., the complainant Inspector Farooq Khan, the eyewitness Rafi Ullah and constable Shakeel. This fact has also been mentioned in the Murasila as well as in daily diary no. 10 of 30.07.2022 regarding arrival of the IO to the police station Kalaya. The driver Rafi Ullah and Irfan Ullah whom have been told by the complainant in his cross examination to have driven the official vehicle and motorcar of the accused, have nowhere been shown to be present with them but as evident from the Murasila, the place of occurrence is situated at a short distance of 02/03 km from police station Kalaya and it is quite possible that both the above named PWs would have come to the spot after the occurrence.

The number of FIR though admitted by the Asmat Ali AMHC to have already been written on the recovery memo and card of arrest at the time of receiving of the documents and as per cross examination of the IO he has also not added the number of FIR on the Murasila; therefore, in these circumstances, it can be none other except the complainant whom would have written the number of FIR prior to its registration but this fact alone is not sufficient to hold that the Murasila, card of arrest and recovery memo have not been drafted on the spot. There is equal possibility that at the time of drafting of these documents the complainant would have telephonically asked the number of FIR from the Moharrir of

  
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police station but in this respect no question has been put either to the complainant Inspector Farooq Khan nor Moharrir Asmat Ali AMHC.

In the light of aforementioned discussion, it is held that though there are some minor dents in the case of prosecution as mentioned above but keeping in view the evidence led by the prosecution coupled with the fact that a huge quantity of chars has been recovered from possession of the accused facing trial, these minor contradictions are not sufficient for holding that either the prosecution has not proved the mode and manner of occurrence and mode and manner of investigation conducted on the spot or such a huge quantity of chars would have been planted against the accused facing trial.

(10). With respect to transmission of the case property from the spot to the Police Station and sending of the representative samples to the FSL, the case of prosecution is, that after sampling and sealing of case property in parcels on the spot, these were brought by the complainant/PW-2 to the Police Station and handed over the same to Asmat Ali AMHC/PW-1, who deposited the same in mal khana while parked the motorcar in vicinity of police station. The representative samples were handed over by Moharrir of the Police Station to the IO on 01.08.2022 who transmitted the same to FSL through constable Muhammad Khalil/PW-5 vide road permit certificate Ex. PW 6/3.

  
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In order to prove its case; the prosecution produced Asmat Ali AMHC as PW-1, constable Muhammad Khalil as PW-5 and Mehdi Hassan OII as PW-6. PW-1 in his examination in chief has stated that he had received case property from the complainant, made entry of the same in register no. 19, handed over parcels no. 1 to 15 to the IO and a copy of the same as Ex. PW 1/1 has been placed on file. All the PWs have been lengthy cross examined on this point but nothing contradictory has been extracted from their mouths. The occurrence has taken place on 30.07.2022 which a Saturday followed by a Sunday on 31.07.2022 and on the very next day i.e., on 01.08.2022 the representative samples have been sent to the FSL without any delay. The report of the FSL Ex. PK is positive for chars.

(11). In the light of aforementioned discussion, it is held that the prosecution has successfully proved its case against the accused facing trial without any shadow of doubt. Hence, the accused facing trial, **Gul Ahmad Khan** is held guilty for having in his possession 15400 grams of chars. He is convicted u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 "*punishable with death, imprisonment for life or imprisonment for a term which may extend to 14 years and with fine which may extend to Rs. 1000000 and not less than 05 lacs if the quantity of narcotics substance exceeds the limit of 01 kilograms. Provided that if the quantity exceeds 10 kilograms,*

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*the punishment shall not be less than imprisonment for life in any case."*

As the maximum punishment provided for the offence is death with a fine which shall not be less than 05 lacs but keeping in view the quantity of chars slightly exceeding the limit of 10 kilograms and the minor contradictions, which though not sufficient for acquittal of the accused but can be counted as a mitigating circumstance; therefore, the accused **Gul Ahmad Khan** is sentenced to imprisonment for life and a fine of Rs. 500,000/- (five lacs). In case of default of the payment of fine, the accused shall further undergo simple imprisonment for six (06) months. The benefit of section 382-B Cr.P.C is extended to the accused. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision while the motorcar bearing Registration No. LEB 1648/Lahore, Engine No. 2NZFE1299 and Chassis No. NZE12060447632 being used in the commission of offence is confiscated to the State. Copy of the judgement delivered to the accused today free of cost and his thumb impression to this effect obtained at the margin of the order sheet. The copy of judgement also be issued to the District Public Prosecutor u/s 373 of the Cr.P.C free of cost. Consign.

**Pronounced**  
27.06.2023

**SHAUKAT AHMAD KHAN**  
Sessions Judge/Judge Special Court,  
Orakzai at Baber Mela

**CERTIFICATE**

Certified that this judgement consists of seventeen (17) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 27.06.2023

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Sessions Judge/Judge Special Court,  
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