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IN THE COURT OF ZAHIR KHAN,
JUDICIAL MAGISTRATE-I, TEHSIL KALAYA, ORAKZAI

Case No..... 07/3 of 2023.

Date of institution.....26.05.2023.

Date of decision.....17.06.2023.


FIR No. 33, dated 05.04.2023, U/S 11-A CNSA, PS Kalaya

Mr. Sana Ullah Khan Advocate counsel for accused facing trial.
Amir Ali Shah Dy.PP for the state

Order. No. 05
17.06.2023

Dy.PP for the state present. Accused Hamza Ullah and Sadiq Ali produced in custody from sub-jail, Orakzai at Baber Mela. PW SI Muhammad Haneef present. His statement recorded as PW-03. Counsel for accused filed application U/S 249-A Cr. PC. Arguments on application heard and record gone through.

Brief facts of the prosecution case as unfolded in the First Information Report (FIR) are that on 05.04.2023 at about 17:30 hours on main road at Bezot Muslim Abad, SI Aftab Ahmad along with other police nafri improvised barricade. Motorcycle Honda 125 without number was coming from Utman Khel side which was stopped. There were two persons on the motorcycle. The persons disclosed their names as Hamza Ullah and Sadiq Ali. Body search of the persons led to the recovery of 38 grams ice from possession of Hamza Ullah while 42 grams ice from possession of Sadiq Ali. It was weighed with digital scale. One gram each was separated for FSL which were packed and sealed into parcel No . 1 and 3 while rest were packed and sealed into


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parcel No.2 and 4 Ex.P-1 and Ex.P-2. Motorcycle Honda 125 without number was also taken into possession in presence of marginal witnesses as Ex.P-3. Murasila was drafted at the spot and it was sent to PS for registration of the case through constable Abdul Sattar No 1454. Recovery memo is Ex.PW-1/1, card of arrest is Ex.PW-1/2 and murasila is Ex.PW-1/3.

After completion of investigation, complete challan was put in court against the accused. Accused were summoned. They were produced from judicial lock-up. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. Prosecution produced 03 witnesses.

PW-01, is the statement of SHO Aftab Ahmad. He reproduced the story narrated in the FIR. Recovery memo was exhibited as Ex.PW-1/1, card of arrest as Ex.PW-1/2 and murasila as Ex.PW-1/3. After registration of the case, he pointed out the spot to the IO. He handed over the accused and case property to Muharrir of PS. After completion of investigation, he submitted complete challan against the accused.

PW-02, constable Abdul Sattar, stated that he is one of the marginal witnesses to the recovery memo exhibited as Ex.PW-1/1. He verified his signature on the recovery memo.

PW-03, SI Muhammad Haneef, has investigated the case. He prepared the site plan Ex.PB on pointation of SHO/complainant. He has recorded the statements of PWs u/s 161 Cr.PC. Application for physical custody of the accused is Ex.PW-3/1. He recorded statement of accused


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u/s 161 Cr.PC. Application for recording confessional statement of accused is Ex.PW-3/2. Application for FSL is Ex.PW-3/4 and FSL report is Ex.PW-3/5. After completion of investigation, he handed over the case file to SHO for submission of complete challan against the accused.

Per contents of murasila Ex.PW-1/3, the occurrence took place on 05.04.2023 at 17:30 hours, it was reported at 18:15 hours and FIR was registered at 18:50 hours. The spot is Bezot, Muslim Abad main road which is at a distance of 4/5 KMs from PS Kalaya.

PW-01 stated in his cross examination that they left PS at about **08:20 am**. They reached Feroz Khel at about **09:00 am**. It is correct that the spot is a plane area and visible from considerable distance. Recovery memo and card of arrest is the same which he had prepared. No addition and deletion has been made in it. Constable Abdul Sattar left the spot for PS at about **08:10 am**. He returned back to the spot at about **18:20** hours.

The IO reached the spot after **18:00** hours. They left the spot at about **18:20/18:30** hours.

PW-2 stated in his cross examination that they left PS at about **08:20 am** and reached the spot at about **09:00 am**. Accused reached the spot at about **10:00 am**. The IO reached the spot at about **11:00 am**. They waited from **8:00 am to 11:00 am** for arrival of the IO to the spot. They returned back from the spot to PS at **8:20 pm**. Murasila was handed over to him at **17:30** hours and reached to PS within 30 minutes.

PW-3 stated in his cross examination that he reached to the spot at **14:10** hours. He remained on the spot for about one hour. He returned to PS at **15:10** hours.

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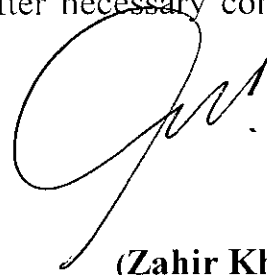
Record shows that case of prosecution is full of dents and doubts. Evidence of prosecution is badly shattered by defense. Per record, there is no history of accused which could show their involvement or conviction in such like cases. Accused facing trial have not confessed their guilt before the court. There are material contradictions in the statements of PWs. The alleged recovery from possession of accused facing trial has not been proved by prosecution.

There are so many dents and doubts in the case of prosecution. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused are acquitted from the charges leveled against them. They are in custody, they be released from custody if not required in any other case.

Case property be dealt with in accordance with the law.

File be consigned to record room after necessary completion and compilation.

Announced
17.06.2023



(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai