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IN THE COURT OF REHMAT ULLAH WAZIR,
JM-I/MTMC, ORAKZAI AT BABER MELA

SPECIAL CASE NO. : 10/3 OF 2020
DATE OF INSTITUTION : 17.06.2020
DATE OF DECISION : 20.01.2021

STATE THROUGH INSPECTOR, MUHAMMAD FAROOQ, STORI KHEL
POST, PS: L/ORAKZAI.

.....(COMPLAINANT)

-VERSUS-

1. KHALID S/O GULI SHAH, AGED ABOUT 38 YEARS R/O TIRAH,
SHALOBAR, MIRAN KHEL DONNGA MAIDAN, DISTRICT
KHYBER PRESENTLY R/O ZERHA L/ORAKZAI.

..... (ACCUSED FACING TRIAL)

Present: Nisar Ahmed, Assistant Public Prosecutor for state.
: Sana Ullah Khan Advocates for accused facing trial.

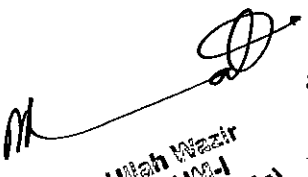
FIR No. 37 **Dated:** 08.05.2020 **U/S:** 11A(CNSA) Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019

Police Station: Lower Orakzai

JUDGEMENT

20.01.2021

- (1). The story of the prosecution as per contents of Murasila
Ex. PA/1 converted into FIR Ex. PA is that, on 08.05.2020,
Inspector, Muhammad Farooq Khan alongwith other police
officials were busy in patrolling in the locality and on 14:00 hrs
when the accused namely Khalid was intercepted being suspected
and upon search, a white plastic bag containing ice was recovered
from his side pocket and after weighing the same through digital
scale, the same came out to be 12 gms in total. The police officials
separated 01 gm ice from the packet and packed and sealed the
same in parcel no. 01 for chemical analysis of FSL, whereas,


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remaining quantity of ice was packed and sealed in a separate parcel no. 02. The local police took into possession the recovered ice through recovery memo. The accused was accordingly arrested by issuing card of arrest which is Ex.PW-4/2. Murasila Ex.PA/1 was drafted and sent to the PS which was converted into FIR which is Ex.PA. Hence, the case in hand.

(2). Upon the receipt of case file for the purpose of trial, notice was issued to the accused facing trial and upon his appearance, proceedings were initiated and he was charge sheeted to which he pleaded not guilty and claimed trial and accordingly the witnesses were summoned.

(3). PW-1 Muhammad Shafiq appeared before the court and stated to have submitted complete challan in the instant case. PW-2 Libab Ali appeared before the court and deposed that he received Murasila from Inspector Muhammad Farooq Khan through constable Sameer and incorporated its contents in the shape of FIR which is Ex.PA. That inspector Muhammad Farooq Khan came to the PS and handed over to me the parcel no. 01 & parcel no. 02 and he entered in the register no. 19. Mr. Khan Wada constable appeared as PW-03 and stated that he has taken the samples of ice to FSL Peshawar. PW-04, inspector Muhammad Farooq Khan stated that at the time of occurrence, he alongwith other police officials were on gusht, where he met with one suspected person and on his body search, 12 gms ice were


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recovered from his side pocket and were wrapped in white plastic bag. That on weighment through digital scale, found 12 gms, out of which 01 gm was separated for FSL and sealed in separate parcel no. 01 while the remaining 11 gms were sealed in separate parcel no. 02 which is Ex.P-1 and that 3/3 seals having monogram in the name of MS were affixed on the same. That the same were taken into possession through recovery memo which is Ex.PW-4/1 in the presence of marginal witnesses. That the accused disclosed his name as Khalid. That Murasila which is Ex.PA/1 was drafted by me and that his card of arrest which is Ex.PW-4/2 was issued by me. That the site plan was prepared by the I.O on my pointation. The ASI, Taj Muhammad appeared as PW-05 and stated that he signed the recovery memo as a marginal witness and further fully narrated the same story as deposed by the inspector Muhammad Farooq Khan. Further, Mr. Shal Muhammad, SI/I.O appeared as PW-06 and stated that he was the I.O in the instant case and that after receipt of the relevant documents, he rushed to the spot, where he prepared recovery sketch which is Ex.PB on the pointation of the complainant. He produced FSL application, Road certificate and FSL report which are Ex.PW-6/3, Ex.PW-6/4 and Ex.PZ respectively.


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- (4). Thereafter, prosecution closed its evidence. After that, statement of the accused was recorded U/S 342 Cr.P.C but the accused neither wished to be examined on oath nor produced evidence in defence. Accordingly, arguments of the learned APP

for the state and counsel for the accused facing trial heard and case file perused.

(5). From the arguments and record available on file, it reveals that the accused facing trial is directly, by name charged for the daylight occurrence reported within 15 minutes of the occurrence. The accused were arrested red handed and the contraband was recovered from his immediate possession. The nature of substance recovered proved to be AMPHETAMINE (ICE) via report of FSL Ex. PZ. The sample of ice was sent to the FSL Peshawar on 11.05.2020 i.e. within 72 hours of the occurrence but due to closure of FSL on account of COVID-19, the second application has been sent on 01.06.2020, thus there is no delay on the part of the local police in sending the sample of ice to FSL. Besides the FSL report overleaf showing the proper/full protocol used for the test of the samples and result thereof is positive as provided by Rule 6 of Control of Narcotic Substances (Government analysts) Rules, 2001.

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(6). The witnesses of the prosecution proved the safe custody of the case property and sample of ice from the venue of occurrence to the PS and from there the sample of ice to the FSL Peshawar and remaining ice in possession of Moharrir inside the Mal-Khana of the PS. The complainant, Inspector Muhammad Farooq Khan as PW-04 in his evidence alleged that after completion of proceedings at the spot, he sent the accused and case property through the constable Sameer to the Moharrir of

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the PS for further proceedings. This statement of the complainant was fortified by the Additional Muharrir Libab Ali as PW-02. The prosecution also examined constable Khan Wada as PW-03 who deposed regarding the taking of sample of ice to the FSL Peshawar. The defence throughout in his cross-examination has not alleged any interference, tempering or changing nature of the case property from the spot to the PS or while the same were lying in the Mal-Khana of the PS till its final dispatch to the FSL Peshawar.

- (7). The recovery witnesses Inspector Muhammad Farooq Khan PW-04 and ASI Taj Muhammad PW-05 in their evidence stood firm regarding mode and manner of the occurrence and despite they being cross-examined at length, nothing favourable to the accused could be extracted from their mouths. Nothing was alleged by the defence that either the accused was charged for certain ill-will, ulterior motives or malafide. The story deposed by the ocular account in the absence of any malafide etc on their part is thus confidence inspiring, trustworthy and reliable. No doubt certain minor omissions do exist in the evidence of the prosecution but these are not of such nature either to deny the presence or proceedings of the witnesses carried out at the spot at the relevant time of the occurrence. There exist no major contradictions in between the statements of the ocular account or the formal witnesses and all the



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witnesses deposed in line with the story reported in the first information report.

- (8). The detailed discussion of the case would lead to the conclusion that the prosecution has successfully established the guilt of the accused facing trial and have concluded the same in their favour. There exist no major contradictions in the evidence of the prosecution leading towards doubts in favour of accused facing trial. Therefore, this Court safely held that the accused facing trial on the basis of evidence produced is guilty of the offence charged for. Thus, the accused namely Khalid S/O Guli Shah is convicted for having in his possession 12 grams AMPHETAMINE (ICE) and sentenced u/s 11-A of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 to suffer simple imprisonment for a period of 07 years and also to pay fine of Rs. 300,000/- (Three lacs). In case of default, the accused shall further suffer simple imprisonment for 06 months. The case property i.e. AMPHETAMINE (ICE) be destroyed after the expiry of period provided for appeal/revision.

- (09). File be consigned to the Record Room after its necessary completion and compilation.

Announced
20.01.2021

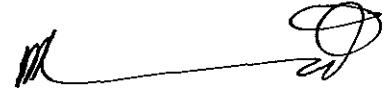

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CERTIFICATE

Certified that this judgment consists of Seven (07) pages.
Each page has been read, corrected where-ever necessary and
signed by me.

Dated: 20.01.2021



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