

**IN THE COURT OF SESSIONS JUDGE/JUDGE SPECIAL COURT,
ORAKZAI AT BABER MELA**

CNSA CASE NO. : 32/3 OF 2021
 DATE OF INSTITUTION : 06.03.2021
 DATE OF DECISION : 06.03.2021
 CASE TITLE : STATE VS GULI SHAH
 U/S : 9 (d) KP CNSA
 FIR NO : 129
 DATED : 25.12.2020
 POLICE STATION : LOWER ORAKZAI KALAYA

Order No. 01
 06.03.2021

Challan for discharging the accused received from the DPP, Orakzai. Be entered.

(2). DPP, Umar Niaz for the State present. The case in hand was registered against the accused Guli Shah s/o Bahadar Khan through case FIR no. 129 dated 25.12.2020 u/s 9 (d) CNSA of PS Kalaya Lower Orakzai. The local police as per contents of the Murasila on 25.12.2020 received spy information regarding the smuggling of chars by the above-named accused and upon the said information they laid barricade at the spot namely, Algada Aso. It was about 17:00 hours when the said accused was seen at some distance coming towards the naka bandi having a blue colour plastic shoper in his hand. Upon the call of local police, the accused while throwing the plastic shoper successfully decamped from the spot. The search of the plastic shoper by the local police lead to the recovery of 02 packets chars, which each

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packet upon weighment through digital scale came out 1210 grams each (total 2420 grams). The local police separated samples from each packet for FSL, prepared recovery memo, drafted Murasila and sent the same to the PS and accordingly the FIR in question was registered against the above-named accused.

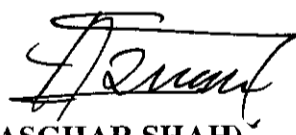
(3). Later on, the accused was arrested and was released on bail by this court on 20.02.2021 whereafter the learned DPP for the state forwarded the case and thereby requested through written application for the discharge of accused u/s 4-C (ii) and 5 (b) of The Khyber Pakhtunkhwa Prosecution Act, 2005 on the basis of weak evidence.

(4). After hearing the arguments and perusal of the case file, it reveals that admittedly the recovery of chars was neither effected from the immediate possession of the accused or upon his pointation. The local police despite prior information could not arrest the accused nor they have mentioned the feature of the accused in the initial report. Moreover, even after the arrest of the accused, no identification parade through PWs present on the spot was conducted in order to identify him to be same accused who allegedly thrown away the plastic shoper and decamped therefrom. The record is also silent with regard to the previous history of the accused regarding involvement in such like cases in the past. During the investigation, the

accused remained in custody of local police for sufficient time but neither he owned the recovered chars nor any connection of the accused was proved with the same. The case in hand on the basis of said evidence, if proceeded, would bear no fruit except acquittal. Therefore, the learned DPP for the State has very rightly requested for the discharge of accused on the strength of weak evidence. The application of the DPP is accordingly accepted and above-named accused is accordingly discharged from the case through the allegations levelled against him via FIR in question. Accused is on bail, his bail bonds stand cancelled and his sureties stand discharged from the liabilities of bail bonds. The recovered chars be destroyed in accordance with law but after the period provided for appeal/revision.

- (5). File be consigned to Session record room after its necessary completion and compilation.

Announced:
06.03.2021


(ASGHAR SHAH)
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