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

SPECIAL CASE NO. : 13/3 OF 2020
DATE OF INSTITUTION : 07.08.2020
DATE OF DECISION : 06.02.2021

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

.....(COMPLAINANT)

-VERSUS-

1. MOHIB ULLAH S/O AQAL BAZ , AGED ABOUT 26 YEARS R/O
QOUM FERAZ KHEL, TAPA QEEMAT KHEL, VILLAGE LIYARA
MELA L/ORAKZAI.

..... (ACCUSED FACING TRIAL)


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

FIR No. 66 **Dated:** 26.06.2020 **U/S:** 11A(CNSA) Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Lower Orakzai

JUDGEMENT

06.02.2021

(1). The story of the prosecution as per contents of Murasila
Ex. PA/1 converted into FIR Ex. PA is that, on 26.06.2020,
Inspector, Farooq Khan alongwith other police officials were on
duty on the Nakabandi and on 15:00 hrs when the accused namely
Mohib Ullah 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 06 gms in total. The police officials separated 01


Rehmat Ullah Wazir
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gm ice from the packet and packed and sealed the same in parcel no. 01 for chemical analysis of FSL, whereas, 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-3/2. 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 which is Ex-PW-1/1. PW-2 Libab Ali appeared before the court and deposed that he received Murasila from Inspector Farooq Khan through constable Khan Said and incorporated its contents in the shape of FIR which is Ex.PA. That inspector 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. Inspector Farooq Khan appeared as PW-03, stated that at the time of occurrence, he

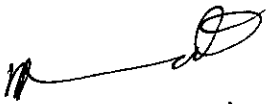
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 Retired Magistrate
 Civil Judge (Senior Division)
 Criminal Justice Commission

alongwith other police officials were on duty on Nakabandi, where he met with one suspected person and on his body search, 06 gms ice were recovered from his side pocket and were wrapped in white plastic bag. That on weighment through digital scale, found 06 gms, out of which 01 gm was separated for FSL and sealed in separate parcel no. 01 while the remaining 05 gms were sealed in separate parcel no.02 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-3/1 in the presence of marginal witnesses. That the accused disclosed his name as Mohib Ullah. That Murasila which is Ex.PA/1 was drafted by me and that his card of arrest which is Ex.PW-3/2 was issued by me. That the site plan was prepared by the I.O on my pointation. PW-04 Mr. Ihsan Ullah HC PP Stori Khel stated that he is the marginal witness to the recovery memo. That the contraband was recovered in his presence and he signed the recovery memo along with other marginal witness namely constable Sameer. Mr. Shal Muhammad SI, IO PS Lower Orakzai appeared as PW-05 and stated that he prepared the site plan on the pointation of the complainant which is Ex-PB. That he recorded the statements of the PWs of the recovery memos. That he sent the case property to FSL vide application which Ex-PW-05/2,

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 Mohib Ullah
 Civil Judge
 Orakzai

road certificate which is Ex-PW-05/3, received the result which is Ex-PZ. At the end Mr. Khan Wada Constable PS Lower Orakzai appeared as PW-06 and stated that the IO handed over Parcel No.01 to him along with FSL application and road certificate, which he took there.

(4). The PW-03 who is the complainant in the instant case has firstly stated that he himself drafted the Murasila, recovery memo and card of arrest but when confronted and provided with page and pen, he could not write any thing and thereafter admitted that it is correct that I have not drafted the Murasila, card of arrest and recovery memo, meaning thereby that he was not present on the spot and he has not conducted all the aforesaid proceedings. The PW-04, the marginal witness of the recovery memo has stated in his cross examination that Murasila was drafted by the seizing officer himself and is in his handwriting. Thus, both these witnesses contradict each other. The PW-05, who is the IO in the instant case has admitted in his cross examination that the occurrence pertains to 26.06.2020 while he sent the Parcel to the FSL on 02.07.2020, thus there is delay of 06 days while it is mandatory to have sent the same within 72 hours of the occurrence.


Mohib Ullah
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(5). 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.

(6). From the arguments and record available on file, it is revealed that the prosecution badly failed to prove its case against the accused facing trial. The chain of evidence is broken. The recovery on the spot is doubtful after cross examination of PW-03, who is the complainant in the instant case. There is undue delay in sending the case property to FSL, which creates doubts. The accused is always entitled to the benefits of doubt.

M (7).
Restored to file of
C.O. No. 13/3 of 2020
Q.No. 13/3 of 2020

The detailed discussion of the case would lead to the conclusion that the prosecution has badly failed the guilt of the accused facing trial. There exist major contradictions in the evidence of the prosecution leading towards doubts in favour of accused facing trial. Therefore, the accused facing trial namely Mohib Ullah S/O Aqal Baz is hereby **acquitted** from the charges levelled against him. He is on bail; his bail bonds stand cancelled and the sureties are discharged from their liability.

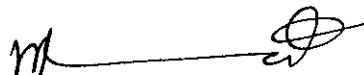
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The case property i.e. AMPHETAMINE (ICE) be destroyed after the expiry of period provided for appeal/revision.

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

Announced


06.02.2021


(Rehmat Ullah Wazir)
JM-I/MTMC,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this judgment consists of six (06) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 06.02.2021


(Rehmat Ullah Wazir)
JM-I/MTMC,
Orakzai (at Baber Mela)