

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

SPECIAL CASE NO. : 30/3 OF 2022  
DATE OF INSTITUTION : 20.09.2022  
DATE OF DECISION : 12.07.2023

STATE THROUGH INSPECTOR MUHAMMAD FAROOQ, NET  
LOWER ORAKZAI

.....(COMPLAINANT)

-VERSUS-

TAIMOOR KHAN S/O NAWAB KHAN, AGED ABOUT 26 YEARS,  
R/O CASTE QAMBAR KHEL, TAPPA KHWAIDAD KHEL, WACH  
PAL

..... (ACCUSED FACING TRIAL)

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

**FIR No. 62**                      **Dated: 15.06.2022**      **U/S: 9 (d) of the Khyber**  
**Pakhtunkhwa Control of Narcotic Substances Act, 2019**  
**Police Station: Kalaya**

---

**JUDGEMENT**  
**12.07.2023**

The above-named accused faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR  
No. 62, dated 15.06.2022 of Police Station Kalaya.

- (2).                      The case of the prosecution as per contents of Murasila  
based FIR is; that on 15.06.2022, the complainant Inspector  
Farooq along with constables Younas and Ajmal Khan during  
routine patrolling, having laid a picket at Garag check-post  
were present on the spot where at about 1000 hours a motorcar  
bearing Registration No. FATA/B-8851 Kurram Agency  
having Engine No. 5A-FE and Chassis No. AE 110-5051849  
on way from Anjani Bazar towards the picket was stopped for  
the purpose of checking. The driver of the motorcar was made

**Shaukat Ahmad Khan**  
**District & Sessions Judge**  
**Orakzai at Baber Mela**  
12/07/23

62

STATE VS TAIMOOR KHAN

FIR No. 62 | Dated: 15.06.2022 | U/S: 9 (d) of the Khyber  
Pakhtunkhwa CNSA 2019. | Police Station: Kalaya

come down from motorcar but nothing incriminating was recovered from his personal search. Upon search of the motorcar, 08 packets of opium each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 8000 grams were recovered from a secret cavity made in the vehicle. The complainant separated 10 grams of opium from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 8 whereas the remaining quantity of opium weighing 7920 grams were sealed in parcels no. 9 by placing/affixing monograms of 'SH' on all the parcels. The complainant took into possession the recovered opium and the motorcar mentioned above vide recovery memo. The accused disclosed his name as **Taimoor** s/o Nawab Khan who was arrested on the spot by issuing his card of arrest. Murasila was drafted and sent to Police Station through constable Younas which was converted into FIR by Humayun Khan MHC.

- (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 18.06.2022, the IO sent the samples of contrabands for chemical analysis to FSL through constable Muhammad Raziq, the result whereof was received and placed on file by him. After completion of investigation, he handed over the

Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai at Baber Meja  
17/07/23

63

**STATE VS TAIMOOR KHAN**

**FIR No. 62 | Dated: 15.06.2022 | U/S: 9 (d) of the Khyber  
Pakhtunkhwa CNSA 2019 | Police Station: Kalaya**

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, 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. Shal Muhammad SHO appeared in the witness box as PW-1 who has submitted complete challan Ex. PW 1/1 against the accused facing trial in the instant case.
- II. Humayun Khan MM is PW-2. 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 2/1 and he has handed over the samples of the case property to the IO for sending the same to FSL on 18.06.2022.
- III. Constable Muhammad Raziq is PW-3. He has taken the samples of contrabands in parcels no. 1 to 8 to the FSL for chemical analysis on 18.06.2023 and after

  
Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai Baher Mela


15/07/23

submission of the same, he has handed over the receipt of the parcels to the IO.

IV. Investigating Officer Mehdi Hassan SI was examined as PW-4 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 4/1 and Ex. PW 4/4, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 4/2 and road permit certificate Ex. PW 4/3 and result of the same Ex. PK was placed on file by him, drafted applications Ex. PW 4/5 to Ex. PW 4/7 to his high-ups for verification of the motorcar, placed on file copy of Register No. 19 Ex. PW 2/1 and submitted the case file to SHO for its onward submission.

V. Inspector Muhammad Farooq is the complainant of the case. He as PW-5 repeated the same story as narrated in the FIR.

VI. Constable Ajmal Khan is PW-6. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered

  
Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai at Baber Mela  
12/07/23

contrabands and the motorcycle. He also reiterated the contents of FIR in his statement.

(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 opium has been recovered from possession of the accused facing trial, the recovered opium are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, though the samples for chemical analysis have not been transmitted to the FSL within the prescribed period but the same have been found positive for opium 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.

(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the

  
Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai at Baber Mela

17/07/23

alleged opium 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?

The case of prosecution, as per contents of Murasila Ex. PA/1, court statements of Inspector Muhammad Farooq as PW-5 and constable Ajmal Khan as PW-6 is, that the complainant Inspector Muhammad Farooq/PW-5 along with constables Younas and Ajmal Khan/PW-6 during routine

  
Shaukat Ayaz Khan<sup>(9)</sup>  
District & Sessions Judge,  
Orakzai at Baber Mela

17/07/23

patrolling, having laid a picket at Garag check-post were present on the spot where at about 1000 hours a motorcar bearing Registration No. FATA/B-8851 Kurram Agency having Engine No. 5A-FE and Chassis No. AE 110-5051849 on way from Anjani Bazar towards the picket was stopped for the purpose of checking. The driver of the motorcar was made come down from motorcar but nothing incriminating was recovered from his personal search. Upon search of the motorcar, 08 packets of opium each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 8000 grams were recovered from a secret cavity made in the vehicle. The complainant/PW-5 on the spot has separated 10 grams of opium from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 8 whereas the remaining quantity of opium weighing 7920 grams were sealed in parcel no. 9, placing/affixing monograms of 'SH' on all the parcels. The accused disclosing his name as **Taimoor** s/o Nawab Khan, has been arrested on the spot by issuing his card of arrest Ex. PW 5/1. The Murasila Ex. PA/1 has been transmitted by constable Younas to police station where, after registration of FIR by Humayun Khan MM/PW-2, it has been handed over to Mehdi Hassan OII/PW-4, 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 Muhammad Farooq/PW-5 and recorded the statements of marginal witnesses.

Shauq Ahmad Khan  
District & Sessions Judge,  
Orakzai at Baber Mela

17/07/23

The prosecution in order to prove its case in the mode and manner as alleged, has examined Inspector Muhammad Farooq, the complainant of the case, as PW-5 who has reiterated the contents of Murasila Ex. PA/1 and constable Ajmal Khan, the eyewitness witness of the occurrence and marginal witness of recovery memo Ex. PC as PW-6 who has repeated the same story as narrated in the FIR. The documents have been taken to the police station by constable Younas and handed over the same to Humayun Khan MM/PW-2 who has registered the FIR. In order to prove the mode and manner of investigation allegedly conducted on the spot, prosecution has examined Investigating Officer Mehdi Hassan as PW-4 who has made the site plan Ex. PB, recorded the statement of witnesses u/s 161 CrPC, produced the accused before the court of Judicial Magistrate and sent the representative samples to the FSL.

The complainant/PW-5, constable Ajmal Khan/PW-6 and constable Younis are posted in NET (Narcotics Eradication Team) and they were not stationed at any police station. As per contents of Murasila on the day of occurrence, during patrolling of the locality they had laid a barricade at Garag check post. The question that on the day of occurrence from which place they had left for patrolling, when the complainant/PW-5 was cross examined he stated that;

*“During the relevant days, I was incharge of Garag check-post and used to make a stay over there. 03/04 days*

Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai Baher Muz



*prior to the present occurrence, I had visited PS Kalaya. I collected monogram seal of 'SH' from Shal Muhammad SHO during my visit to PS Kalaya. The distance between Garag check-post and PS is 50/55 km which can be covered in 02 hours in vehicle. On the day of occurrence, we were on gasht in the area of Chapri Feroz Khel. We laid barricade at Garag check post”.*

When this question was put to the PW-6, the marginal witness of recovery memo who is eyewitness of the occurrence as well, he stated;

*“On the day of occurrence, we had left the PS Kalaya at 07:00 am. We patrolled the area on way to the check post and reached over there before 10:00 am. The preceding night we had made a stay at police station Kalaya”.*

With respect to process of sampling, preparation of parcels and sealing of the alleged recovered contrabands, the nature, kind and texture of the alleged contrabands have not been mentioned in the Murasila. It is also not mentioned that whether the alleged recovered packets were in slabs form or otherwise. On this point when the complainant was cross examined, he stated that;

*“The opium consisted of 08 packets. All were in powdered form. All the packets were not in slabs form. The sample were separated through a knife”.*

However, when the case property in parcel no. 9 produced before the court, opened at the request of counsel for


Shaukat Ahmad Khan  
District & Sessions Judge,  
Prakaj at Baber Mela  
15/07/23

defence, 08 packets were found inside and each packet consisted of various small packets, each wrapped with yellow colour scotch tape.

When the complainant was confronted with the case property, he admitted that;

*"I cannot tell the number of small packets in each of the packet. It is correct that I cannot tell that as to from which of the small packet I have collected 10 grams for FSL. It is correct that I have not weighed each small packet separately".*

Above all, even the quantity of alleged recovered contrabands whether after separation of samples it was 7020 grams or 7920 grams and whether the alleged contrabands were chars or opium? In this respect, correction has been made in the Murasila, recovery memo, challan form, register no. 19 and even in the statements of witnesses recorded u/s 161 CrPC and daily diary in respect of return of the complainant to the police station where the quantity of opium mentioned as 7020 grams after separation of 10 grams from each parcel, has been corrected as 7920 grams. In this respect, counsel for the accused produced attested copies of the daily diary and statements of constable Muhammad Raziq, Moharrir Humayun, constable Younis and constable Ajmal Khan provided to the accused u/s 265-C CrPC which are placed on file and annexures of the same documents from police file which are also placed on file as annexures A, B, and C where changes have been made in quantity of the opium. Similarly,

  
**Shaukat Ahmad Khan**  
District & Sessions Judge,  
Orakzai at Baber Mela  
17/07/23

counsel for the accused also confronted PW-2 Moharrir of the police station with copy of register no. 19 provided to the accused u/s 265-C CrPC where nature of contrabands has mentioned as *chars*. So much so PW-3/constable Muhammad Raziq who has taken the representative samples to the FSL, even in his examination-in-chief has stated that on 18.06.2022 the IO handed over parcels no. 1 to 8 containing 10 grams of *chars*.

Moreover, the parcels have been affixed with monograms of 'SH' which is in the name of Shal Muhammad, which, as per cross examination of complainant/PW-5, has been handed over to him by Shal Muhammad SHO of Police Station Kalaya. The said Shal Muhammad SHO has appeared in the witness box as PW-1, wherein he has stated that he has two monograms of abbreviation of 'SH' out of which one is in his possession while the other is used to be in possession of Moharrir of the police station, that he had not handed over monogram to complainant/PW-5 and that he does not remember that as to whether in the instant case the Moharrir of the police station had handed over monogram to some other officials or not. The Moharrir of the police station has been examined as PW-2 wherein he has categorically stated that he has not handed over a monogram to the complainant/PW-5.

With respect to drafting of Murasila Ex.PA/1, recovery memo Ex. PC and card of arrest Ex. PW 5/1, the complainant/PW-5 claimed the same to be written by him;

  
**Shaukat Ahmad Khan**  
District & Sessions Judge  
Orakzai at Baber Mela  
17/07/23

however, in cross examination when he was confronted with the contents of Murasila and was required to read the Registration number of motorcar written as “*FATA/B-8851 Kurram Agency*”, he stated that he is unable to spell and read the word “*Kurram Agency*”. The question that if the witness is unable to read the contents of his document how he could be expected to write the same.

The most important aspect is, that after drafting of the documents these have been handed over to constable Younis, who has not been produced before the court on the pretext that after a fatal road accident he is unable to give evidence but in this respect no certificate of the doctor concerned has been produced to the court.

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-5 to the Police Station and handed over the same to Humayun Khan MM/PW-2, 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 18.06.2023 who transmitted the same to FSL through constable Muhammad Raziq/PW-3 vide road permit certificate Ex. PW 6/3. In order to prove its case, the prosecution produced Humayun Khan MM as PW-2,

  
Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai at Baber Mela

17/07/23

constable Muhammad Raziq as PW-3 and Mehdi Hassan OII as PW-4. It is evident from the record that the occurrence has taken place on 15.06.2022 while as per report of FSL Ex. PK, the representative samples have been transmitted on 18.06.2022 with a delay of 03-days which has not been explained. Moreover, as discussed earlier, it is not known that whether the samples have been sent to the FSL were that of *chars* or *opium*. It is also admitted on record that every packet was consisted of various small packets and it is not known that out of which small packet sample has been separated?

Hence, in view of what is discussed above, though the representative samples, as per report of FSL Ex. PK, have been found as opium but keeping in view the failure of the prosecution to prove the safe custody of the case property, it is held that the report of FSL cannot be relied for recording conviction.

- (10). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the presence of complainant party on the spot, the mode and manner of recovery, the mode and manner of the transmission of case property from spot to police station, the mode and manner of the investigation carried out by the IO on the spot and transmission of representative samples to FSL. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Taimoor Khan** is acquitted of the charge levelled against him

  
Shaikat Ahmad Khan  
District & Sessions Judge,  
Orakzai of Baber Mela

74

**STATE VS TAIMOOR KHAN**  
**FIR No. 62 | Dated: 15.06.2022 | U/S: 9 (d) of the Khyber**  
**Pakhtunkhwa CNSA 2019 | Police Station: Kalaya**

by extending him the benefit of doubt. Accused is on bail. His bail bonds stand cancelled and his sureties are released of the liabilities of the bail bonds. The case property i.e., chargs be destroyed after the expiry of period provided for appeal/revision in accordance with law. So far, the motorcar is concerned admittedly the same is non-customs paid and is not registered in the concerned office of Motorcar Registration Authority. Therefore, the motorcar bearing Registration No. FATA/B-8851 Kurram Agency having Engine No. 5A-FE and Chassis No. AE 110-5051849 be confiscated to the state. Consign.

**Pronounced**  
12.07.2023



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

**CERTIFICATE**

Certified that this judgement consists of fourteen (14) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 12.07.2023

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