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

Case No. 6/3 of 2022.

Date of Institution.....11.10.2022.

Date of Decision..... 25.07.2023.

State through:

Sub Inspector Shal Muhammad SHO, PS Kalaya.....Complainant

VERSES

Shah Nawaz Khan S/O Zahir Gul R/O Qaum Feroz Khel, Tappa Qeemat
Khel, village Mirbak, Tehsil Lower, District OrakzaiAccused

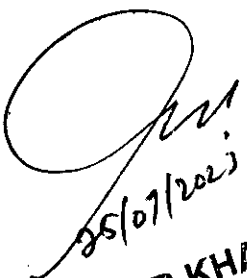
Case FIR No. 53, Dated 22.05.2022 U/S 5 Explosive Substances Act, 2013,
PS Kalaya.

JUDGMENT:

25.07.2023

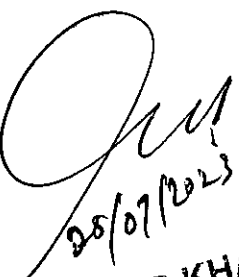
Through this judgment I am going to dispose of the instant case registered against accused Shah Nawaz Khan vide FIR No. 53, Dated 22.05.2022 U/S 5 Explosive Substances Act, 2013, PS Kalaya.

1. Brief facts of the prosecution's case are that, on 22.05.2022 at 14:00 hours, SI Shal Muhammad, SHO/complainant along with other police nafri were on area patrol. Barricade was improvised at Mirbak Kalay main road Headquarter. A suspect, holding a plastic envelop of black colored was coming from headquarter chowk. He was stopped. He disclosed his name as Shahnawaz Khan S/O Zahir Gul R/O Qaum Feroz Khel Tappa Qeemat Khel, Meerbak, Lower Orakzai. His body search was conducted which led to the recovery of 02 hand grenades bearing Nos. 90Y3PRM-2 and 84Y3PRM-2.


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Bomb disposal staff was called to the spot. The BDS made the hand grenades safe. Hand grenade No. 1 bearing No. 90Y3PRM-2 and hand grenade No. 2 bearing No. 84Y3PRM-2 were packed and sealed into parcel No. 1 by affixing 03 seals with mark of SH. Accused was formally arrested. Murasila was drafted at the spot and sent to PS for registration of the case through constable Yousaf Ali No. 544. On the strength of Murasila, the instant case was registered against accused facing trial.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused was formally indicted. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
4. Prosecution produced five (05) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.

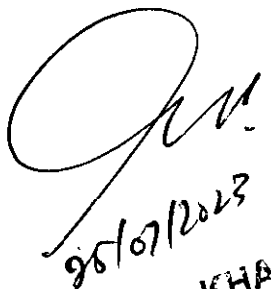

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PW-01 is the statement of Constable Jamshed Ullah No. 151. He stated that on 25.05.2022, he took parcel No. 1 containing case property to BDU, Peshawar for examination. As report of BDU, Orakzai was not available, therefore, the case property was returned back by BDU, Peshawar and on 08.06.2022, he again took the case property to BDU, Peshawar along with report. On his return, he

handed over receipt to the SI/IO. His statement was recorded u/s 161 Cr.PC.

6. SI Minhaz Husain, who investigated the case, deposed as PW-02. He prepared site plan Ex-PB on the pointation of SHO/complainant SI Shal Muhammad. He recorded statements of PWs u/s 161 Cr.PC. Accused Shahnawaz Khan was handed over to him for interrogation/completion of investigation. On 23.05.2022, he produced the accused before the court for obtaining physical custody vide his application Ex-PW-2/1. Two days physical custody was granted. He interrogated the accused and recorded his statement u/s 161 Cr. PC. After expiry of period of physical custody of accused, he produced him before the court for recording his confessional statement u/s 164/364 Cr. PC vide his application Ex-PW-2/2. Accused refused to confess his guilt before the court, resultantly, he was committed to judicial lock-up. The recovered Hand Grenades were sent to BDU, Peshawar vide his application Ex-PW-2/3. BDU report was received and placed on file. The same is Ex-PW-2/4. After completion of investigation, case file was handed over to SHO concerned for submission of challan.

7. PW-03 is the statement of complainant SHO Shal Muhammad. He reproduced the story narrated in the FIR. He drafted murasila at the spot. Murasila is Ex.PW-3/2. Recovery memo is Ex.PW-3/1. Card of arrest is Ex.PW-3/3. Murasila was sent to PS through constable Yousaf Ali No. 544 for registration of the case. Parcel No. 1



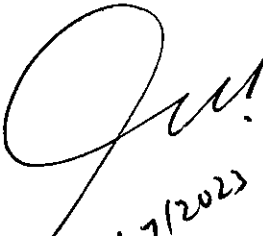
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containing case property is Ex.P-1. He pointed out the spot to IO who prepared site plan on his pointation. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex.PW-3/4.

8. Constable Yousaf Ali No. 544 was examined as PW-04. He is one of the marginal witnesses to the recovery memo Ex.PW-3/1 vide which SHO/complainant took into possession a black color plastic envelope containing 02 hand grenades from possession of the accused. Murasila, recovery memo and card of arrest were handed over to him which he further handed over to Muharrir of PS. His statement was recorded by IO U/S 161 Cr. PC.

9. PW-05 is the statement of Muhammad Jameel, Muharrir. He registered the FIR on receipt of murasila brought by Constable Yousaf Ali No. 544 from Shal Muhammad SHO/complainant. Copy of FIR is Ex. PA. Accused and case property was handed over to him. Case property was kept in safe custody in Malkhana of PS. Entry was made in register 19. Copy of the same is Ex.PW-5/1.

On 25.05.2022, parcel containing case property was handed over to IO for examination through BDU, Peshawar. Parcel was returned back. On 08.06.2022, parcel was again handed over to IO for examination through BDU, Peshawar as previously, the same was returned un-examined. He has also made entry in DD regarding departure from and arrival to PS of SHO Shal Muhammad. Copy of the same is Ex.PW-5/2. His statement was recorded U/S 161 Cr.PC.

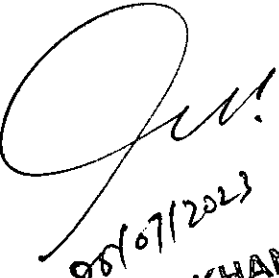

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10. PW Muhammad Rasool No. 1423 was abandoned by prosecution and closed its evidence.

11. Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein he pleaded not his guilt and did not wish to be examined on oath. He opted not to produce defense evidence.

12. PW-02, stated in his cross examination that he left PS for spot at about 15:00 hours in official vehicle. He recorded statement of marginal witnesses at the spot. He recorded statements of BDU staff in PS at evening time. The hand grenades were defused by BDU, staff. Their names are Ishtiaq and Sadiq Ullah. It is correct that there is no BDU, Orakzai report on file. PW-03 stated in his cross examination that barricade was improvised at 13:40 hours. He informed Muharrir of PS who informed BDS. The BDS reached to spot within 20 minutes. The hand grenades were kept in safe custody till arrival of BDS. BDS completed their proceedings in 15/20 minutes. Hand grenades were handed over to him by BDS after making it safe. Hand grenades remained in his custody. Hand grenades remained in his custody for about 03/04 hours as he continued gasht. Accused was also in his custody during these 03/04 hours.

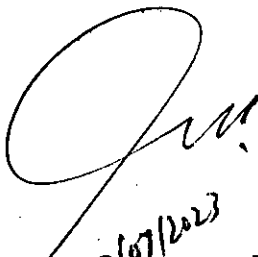
13. PW-04 stated in his cross examination that barricade was improvised at about 14:00 hours. After 05 minutes of the improvisation of the barricade, the occurrence took place. BDS arrived to the spot before his departure from the spot. Hand


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grenades were made safe in his presence. PW-05 deposed that SHO/complainant called him to inform BDU, Orakzai. He does not remember the time of phone call by SHO. At the time of phone call by SHO, constable Yousaf Ali was not present in PS. He called BDU from his own phone cell. He does not remember to whom he made phone call. He handed over parcels to constable Yousaf Ali on the direction of OII on 25.05.2022.

14. Record transpires that the alleged occurrence took place on 22.05.2022 at 14:00 hours on main road, Mirbak Kalay, Kalaya, Orakzai. It was reported through Murasila at 14:30 hours and FIR was registered at 14:30 hours.

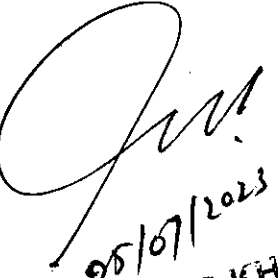
15. As per available record, after the alleged recovery, Bomb Disposal Staff, Orakzai was called to the spot to defuse/made safe the hand grenades. They defused/made safe the hand grenades and thereafter, the same were packed and sealed into parcel No.1 Ex.P-1. However, per available record, there is no report of BDS, Orakzai which fact was also admitted by PWs. PW-01 deposed that he took parcel No. 1 containing the recovered hand grenades to BDU, Peshawar on 25.05.2022 but due to non-availability of report of BDU, Orakzai, the case property was returned back and he took the same to BDU, Peshawar on 08.06.2022. Names of Bomb Disposal Staff, Orakzai have not been mentioned in the calendar of witnesses of challan form. None of them was produced as witness during trial


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to support the case of prosecution. No report of BDS, Orakzai is placed on file which is injurious to the case of prosecution.

16. Per Ex. PW-3/1 (recovery memo) and Ex. PW-3/2 (memo report), the recovered hand grenades were packed and sealed at the spot. Before sealing the same into parcel Ex. P-1, Bomb Disposal Staff, Orakzai was called to the spot and when grenades were defused/made safe, the same were packed and sealed into parcel. However, there is no report of BDS, Orakzai which contradicts the record. Moreso, per Ex.PW-2/4 (Report of BDU, Special Branch KPK, Peshawar), the items/hand grenades were alive and dangerous, therefore, advised to be handled with care and recommended for early destruction. This also contradicts the record. Similarly, the alleged recovery was effected on 22.05.2022 and the case property was sent to BDU, KPK, Peshawar on 08.06.2022. This delay is also fatal to the case of prosecution.

17. PW-03, who is complainant of the case, stated in his cross examination that barricade was improvised at 13:40 hours. After the recovery, Muharrir of PS was informed, who informed BDU, Orakzai but this fact is nowhere mentioned in Ex.PW-3/1 (recovery memo) and Ex.PW-3/2 (murasila). Similarly, PW-04, who is one of the marginal witnesses, stated in his cross examination that barricade was improvised at 02:00 pm and after 05 minutes of the improvisation of barricade, accused reached the spot. This also contradicts the record and statement of PW-03 (complainant).

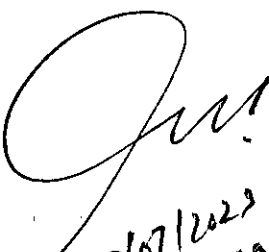

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Ex.PW-5/1 is the extract of register 19, prepared by PW-05 but there is no detail of the case property in Ex.PW-5/1.

18. PW-02 (IO), stated that no private person was associated/examined at the spot despite the fact that the place of occurrence is a main road and busy place. Prosecution witnesses during cross examination deposed that accused was arrested on main road, Mirbak which is a busy place and there were other persons available at the time on the road but no independent person was associated as witness. Facts and circumstances of the case coupled with absence of any prior criminal record doubts as to the veracity of prosecution's case, benefit of which would go to accused facing trial as a matter of right.

19. Furthermore, per record, accused was coming from the side of headquarter chowk where there is police and army check posts. It does not appeal to prudent mind that accused dared to cross police and army check posts with hand grenades in his possession.

20. The report/Murasila, chalking of FIR and arrival of IO to the spot are all contradictory. Recovery is doubtful. BDU, Orakzai report is not placed on file. There are material contradictions in the statements of PWs. Accused has not confessed his guilt before the court. There is no criminal history of accused facing trial. There is nothing on record which could show that accused is or was a member of any proscribed organization.


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- 21.** Prosecution was bound to prove its case against the accused beyond any shadow of doubt but there are so many dents and doubts in the prosecution case benefit of which goes to the accused facing trial. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.
- 22.** As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Shahnawaz is hereby acquitted from the charges leveled against him. He is on bail. Sureties of accused discharged from their liability. Case property be dealt with in accordance with law.
- 23.** Case file be consigned to Record room after its completion and necessary compilation.

Announced
25.07.2023



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CERTIFICATE

Certified that my judgment of today consists of nine (09) pages, each page has been read, signed and corrected by me where necessary.



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