

**Order...24**  
19.10.2023

**Present:**

Sr. PP for the state.

Accused namely Inayat Ullah is exempted and is represented by his pleader.

Today the case was fixed for arguments on an application U/S 249-A Cr.P.C by the Sr.PP.

Learned Sr.PP argued the afore-mentioned application while counsel for the accused already argued the said application on previous date. File be put up for order on an application Under Section 249-A Cr.P.C on **24.10.2023**.

*Sami Ullah*  
**Sami Ullah**  
Judicial Magistrate-I,  
Orakzai (at Baber Mela)

**Order...25**  
24.10.2023

**Present:**

Sr.PP for the state.

Accused namely Anayat Ullah is exempted.

Today the case was fixed for order on an application u/s 249-A Cr.P.C. Arguments from the learned counsel and for state already heard.

1. This order is intended to dispose of an application u/s 249-A Cr.P.C filed by counsel for the accused.
2. Accused Anayat Ullah is charged in case FIR No. 01, dated 20.01.2023, U/S 11-A CNSA of PS Kuriz Boya, District Orakzai.
3. Brief facts of the case are that on 20.01.2023 at about 19:10 hours at Tazi Khel Check-post, ASHO/complainant Shayaz Khan, Constable Junid Ali No. 1529, Sabir Ali No. 677 along with other police nafri i.e. Driver Syed Hassan No.674 were on routine

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movement/gasht, when one person in suspicious condition setting in third seat of Flying Coach which is in red color coming from Peshawar side, was boarded. His body search was conducted being suspect and during his body search, a white colour plastic bag containing 20 grams Meth Amphetamine (ICE) was recovered from the right-side pocket of the said person who disclosed his name as Anayat Ullah S/O Malal Khan R/O Qoam Feroz Khel, Tappa Jesal Khal District Orakzai. The recovered ICE was taken into possession and One gram was separated for FSL examination while remaining ICE along with plastic bag was packed and sealed into parcel. Murasila, Card of arrest and recovery memo were drafted at the spot and sent to the PS through Constable Junid Ali 1529 for registration of the case and on the strength of Murasila, the instant case was registered against the accused.

4. After completion of investigation, challan was put in court and the accused was summoned. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed U/S 11-A CNSA, to which the accused did not plead their guilt and claimed trial, therefore, the prosecution was called to produce evidence in support of their case.
5. The prosecution has produced six witnesses and their statement were recorded. Thereafter, counsel for accused filed application U/S 249-A Cr. PC for acquittal of the accused.
6. Arguments from the counsel for accused and learned Sr. PP already heard and record perused.
7. Record would show that the alleged occurrence took place on 20.01.2023 at 19: 10 hours, report was chalked out at 19:30 hours and FIR was chalked out at 20:20 hours. However, as per the contents of FIR, the Distance between the place of occurrence and

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the PS is 35/40 KM. PW-04, ASHO, in his statement recorded that the FIR was chalked out in the Police Station. PW-05 also stated in his statement that we, the police party remained on the spot for 20 minutes. It is pertinent to mention here that distance of 35/40 KMs cannot be covered in such short period in the hilly areas. Moreover, further contradiction regarding time of occurrence was recorded in the cross examination of the PW-05, who stated that he along with constables reached at the check post/ place of occurrence at 19:30 hours on the subject day and after 20 minutes of their arrival, the subject vehicle reached there.

8. Record further reveals that no private witness was associated with the recovery memo of the case property/contrabands.
9. Neither statement of the driver of the vehicle was recorded nor even the registration number of the vehicle is mentioned anywhere in the record.
10. Coming to the evidence of the PWs; PW-04 stated in his cross examination that they left PS for Gasht at 17:00 hours but their departure has not been noted in the daily diary. He further admitted in his cross examination that Ex.PA which is FIR, Ex.PW 4/1 which is recovery memo, Ex.PW 4/2 which is card of arrest and Ex.PB which is site plan are in the same handwriting. However, PW-01 which is the statement of the Moharrir, stated in his examination that he has received Murasila, card of arrest and recovery memo at the hand of constable Junaid Ali and Pw-01 himself chalked out FIR at the PS.
11. Thus, keeping in view, the above discussion, there are so many dents and doubts in the case of prosecution. There is no criminal history of accused. Accused has not confessed his guilt before the court. There is no probability of accused being convicted.

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12. The trial court can acquit accused U/S 249-A Cr. PC at any stage of the proceedings. Keeping in view the available record, if it is held that there is no probability of conviction of accused. Recording of full prosecution evidence would be a futile exercise and wastage of precious time of the court.
13. Resultantly, application is **Allowed**. Accused facing trial are acquitted in terms of Section 249-A Cr. PC from the charge leveled against him in case FIR No. 01 Dated: 20.01.2023 U/S 11-A CNSA registered at PS Kuriz Boya, District Orakzai. Accused is on bail. Bail bonds stands canceled and sureties are discharged from their liability. Case property, if any be dealt with in accordance with law.
14. File be consigned to record room after necessary completion and compilation.

**Announced:**

24.10.2023

*Sami Ullah*

**Sami Ullah**  
Judicial Megistrate-1,  
Orakzai at Baber Mela.