

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

SPECIAL CASE NO. : 29/3 OF 2023
DATE OF INSTITUTION : 10.07.2023
DATE OF DECISION : 31.10.2023

STATE THROUGH AFTAB HASSAN ASHO, POLICE STATION
KALAYA

.....(COMPLAINANT)

-VERSUS-

SULAIMAN S/O SAID KAREEM, AGED ABOUT 25 YEARS, R/O
CASTE FEROUZ KHEL, TAPA JAISAL KHEL, TEHSIL LOWER,
DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

Present: DPP, Umar Niaz for the State.

: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 40 Dated: 19.04.2023 U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019

Police Station: Kalaya

JUDGEMENT

31.10.2023

The accused named above faced trial for the
offence u/s 9 (d) of the Khyber Pakhtunkhwa CNSA,
2019 vide FIR No. 40, Dated 19.04.2023 of PS Kalaya.

- (2). The case of the prosecution as per contents of
Murasila based FIR is, that on 19.04.2023 the
complainant, Aftab Hassan ASHO along with other police
officials, having laid a picket on the spot, at about 0900
hours stopped a Honda 125 motorcycle having
Registration No. FR 1728/Peshawar of black colour riding
by two persons on way from Kalaya. Both the persons
were made come down of the motorcycle. The driver of
the motorcycle disclosed his name as Sulaiman s/o Said
Karim. His personal search led the complainant to the

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recovery of 02 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 2000 grams from his trouser-fold. The complainant separated 10 grams of chars from each packet, sealed the same into parcels no. 1 and 2 whereas the remaining quantity of chars weighing 990 grams in each packet were sealed in parcels no. 3 to 4. Similarly, the person riding a pillion disclosed his name as Humraz whose personal search led the complainant to the recovery of 02 packets of chars weighing 1000 grams, making a total of 2000 grams from his trouser-fold. The complainant also separated 10 grams of chars from each packet, sealed the same into parcels no. 5 and 6 whereas the remaining quantity of chars weighing 990 grams in each packet were sealed in parcels no. 7 to 8. The complainant placed/affixed monograms of 'AH' inside/on all the parcels mentioned above. The accused were arrested by issuing their joint card of arrest. The complainant took into possession the recovered chars along with the above-mentioned motorcycle vide recovery memo. Murasila was drafted and sent to the police station through constable Gulshid Ali which was converted into FIR by Asmat Ali MHC.


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- (3). After registration of FIR, it was handed over to Muhammad Hanif OII for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site

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plan on the pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. After return of complainant from the spot, he handed over the case property i.e., parcels no. 1 to 8 and motorcycle to Moharrir of police station who deposited the chars in sealed parcels in malkhana and parked the motorcycle in vicinity of the police station and made entry of the same in register No. 19 while the accused was put in lock-up. On 20.04.2023, the IO handed over the samples of recovered chars to constable Gul Karim for chemical analysis through FSL vide his application and road permit certificate, the result whereof was received and placed on file by him. After completion of investigation, the IO handed over the case file to SHO Aftab Ahmad who submitted complete challan against the accused facing trial.

- (4). Upon receipt of case file for the purpose of trial, the accused were summoned, copies of the record were provided to them u/s 265-C Cr.P.C. Accused Humraz was separately challaned u/s Juvenile Justice System Act. Formal charge was framed against the accused to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and the prosecution examined as many as 05 witnesses namely, Aftab Ahmad SHO, Asmat Ali MHC, constable Gul Karim, Aftab Hassan

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ASHO and constable Gulshid Ali as PW-1 to PW-5 respectively.

(5). Thereafter, counsel for the accused submitted application for acquittal of the accused u/s 265-K CrPC for the reasons mentioned therein.

(6). I heard arguments and perused the record.

(7). Perusal of the case file shows that as per record, the case of the prosecution is that Aftab Hassan ASHO along with other police officials has left the police station for patrolling on the day of occurrence in morning. But in this respect no copy or extract of daily diary of the relevant day is available on file. However, the witness referred to the original register of daily diary produced by Moharrir before the court in the instant case where the entry of his departure was found recorded while daily diary No. 13 of 19.04.2023 at 08:30 am via private vehicle. Similarly, with respect to process of sampling, the complainant told in his statement that he extracted the samples through screwdriver but the statement of PW-5, the eyewitness of the occurrence and marginal witness to the recovery memo, contradicted his statement where in his cross examination he (PW-5) stated that the samples of chars were extracted by the ASHO through bare hands. Moreover, PW-5, the marginal witness of the recovery memo, in his cross examination has also stated

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that he has signed the recovery memo in police station. The aforementioned contradictions between statements of PWs create doubts regarding the mode and manner of occurrence. The chain of the transmission of case property from the spot to police station and its safe custody is also not proved beyond doubt. In this respect the stance of prosecution is, that after completion of proceedings on the spot, the complainant party transmitted the case property i.e., parcels no. 1 to 8 and the motorcycle to police station where he handed over the same to Moharrir. Moharrir of police station made entry of the same in register No. 19. However, in this respect when complainant/PW-4 was cross examined, he stated that after completion of proceedings, he along with his nafri and accused returned to the police station in official vehicle. He has not spoken a single word as to how and by whom the case property i.e., chars and motorcycle were transmitted to police station. Similarly, copy of register No. 19 Ex. PW 2/1 available on file does not contain any detail of the motorcycle but original register No. 19, copy of which is placed on file as Ex. PW 2/X-1 when produced before the court, contained the details of the motorcycle ~~at~~ which creates doubts regarding its preparation at the time of handing over the case property to Moharrir of police station.


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(8). Hence, in view of what is discussed above, it is held that there is no probability of the conviction of accused facing trial, even if the prosecution is given further opportunity to produce the remaining witnesses; therefore, accused namely, Sulaiman is acquitted from the charges levelled against him u/s 265-K Cr.P.C. Accused is on bail. His bail bonds stand cancelled and his sureties are released of the liabilities of the bail bonds. The case property be destroyed after expiry of period provided for appeal/revision while motorcycle be returned to its lawful owner, if not required in other case.

Consign.

Pronounced
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CERTIFICATE

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

Dated: 31.10.2023


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Sessions Judge/Judge Special Court,
Orakzai at Baber Mela