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State Vs Sana Ullah
Case FIR No. 24, Dated 14.11.2022 U/S 11-A CNSA, PS Dabori

**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL JUDGE/JM,
DISTRICT ORAKZAI**

Case No.....1/3 of 2022.
Date of Institution.....10.01.2022.
Date of Decision.....25.10.2023.

State through:

Gul Asghar, ASHO, PS Dabori

.....**Complainant**

VERSES

Sana Ullah S/O Muhammad Salih, R/O Qaum Aka Khel, Sher Khel,
Tehsil Bara, District Khyber

.....**Accused**

Case FIR No. 24, Dated 14.11.2022 U/S 11-A CNSA, PS Dabori

JUDGEMENT
25.10.2023

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Through this judgement, I am going to dispose of the instant case registered against accused Sana Ullah vide Case FIR No. 24, Dated 14.11.2022 U/S 11-A CNSA, PS Dabori

1. Brief facts as per contents of FIR are that, on 14.11.2022, complainant along with constable Ihsan Ullah, Belt No. 938, Abdul Raziq, 1874, Muhammad Siddique, 1848 and other police officials were on patrolling at metaled road, Dabori to Arhanga. During patrolling he received spy information that ice is being smuggled on the way to Arhanga road. Upon that information, complainant along with other police officials made barricade at the place of occurrence. In the meanwhile, one person coming from Dabori side was stopped for the purpose of checking being suspicious. Upon the body search

of the person, plastic bag, white colour was recovered from his right-side pocket. On examination of the same was found to be ice (methamphetamine). On weighing through digital scale on the spot, the same was found 30 grams. 01 gram was packed and sealed into separate parcel No. 01 for FSL for chemical examination while the remaining 29 grams were packed and sealed into parcel No. 02 by affixing 3/3 seals monogram in the name of DB and put 01 seal inside the parcel. The person disclosed his name as Sana Ullah. He was arrested in the instant case and issued his card of arrest. He recovered and took into possession the recovered ICE through recovery memo in the presence of marginal witnesses. Murasila was drafted at the spot and sent the same to the PS through Constable Ihsan Ullah for registration of the FIR.

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 on 10.03.2023. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
4. Prosecution produced six (06) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.
5. SHO, PS Dabori, Imtiaz Khan deposed as PW-01. He stated that after completion of investigation in the instant case, he submitted

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complete challan against the accused which is Ex.PW-1/1 and correctly bears his signatures.

6. PW-02, is the statement of Abdullah HC. He stated that on 17.11.2022, I.O handed over to him parcel No. 01 in sealed condition along with FSL application and road permit certificate for chemical examination. He handed over the same to the Incharge FSL for chemical examination and obtained his signature and sealed on road permit certificate. He returned to the PS at about 04:00 PM and handed over the road permit certificate to the I.O. His statement was recorded u/s 161 Cr.P.C by the I.O.

7. PW-03, is the statement of ASHO, Gul Asghar (Complainant). He stated that on 14.11.2022, he along with constable Ihsan Ullah, Belt No. 938, Abdul Raziq, 1874, Muhammad Siddique, 1848 and other police officials were on patrolling at metaled road, Dabori to Arhanga. During patrolling he received spy information that ice is being smuggled on the way to Arhanga road. Upon that information, he along with other police officials made barricade at the place of occurrence. In the meanwhile, one person was coming from Dabori side, he stopped him for the purpose of checking being suspicious. Upon the body search of the person, plastic bag, white colour was recovered from the right side of his pocket. On examination of the same, ICE was found. On weighment through digital scale on the spot, found 30 grams of ice. 01 gram was packed and sealed into separate parcel No. 01 for FSL for chemical examination while the remaining 29 grams were packed and sealed into parcel No. 02 which

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is Ex. P1 by affixing 3/3 seals monogram in the name of DB and put 01 seal inside the parcel. The person disclosed his name as Sana Ullah. He arrested him in the instant case and issued his card of arrest Ex. PW-1/1. He recovered and took into possession the recovered ICE through recovery memo Ex. PW-1/2 in the presence of marginal witnesses. He drafted the Murasila Ex. PW-1/3 and sent the same to the PS through Constable Ihsan Ullah for registration of the FIR. The IO prepared the site plan on his pointation.

8. Abdullah MHC was examined as PW-04. He stated that he was present in the PS and received the Murasila along with other relevant documents from Gul Asghar, ASHO through constable Ahsan Ullah. He registered the FIR No. 24, Dated: 14.11.2022, U/S 11(A)CNSA. After chalking the FIR, he handed over copy of FIR and other relevant documents to the I.O for investigation. Similarly, ASHO handed over to him parcel no. 01 & 02 in sealed condition along with the accused on the return to the PS. He made entry in the register no. 19, the copy of which is Ex.PW-4/1 and kept the same in the safe custody of the PS Mall Khana. After the body search of the accused, He sent him to the police lock-up. To this extent my statement was recorded u/s 161 Cr.P.C. On 17.11.2022, he handed over parcel no. 01 containing 01 gram ice in sealed condition to the I.O to FSL for chemical examination. The I.O handed over to me Road Permit Certificate. To this extent his statement was recorded u/s 161 Cr.P.C.
9. Ihsan Ullah was examined as PW-05. He stated that he was present with ASHO/complainant Gul Asghar along with other police nafri.

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During barricade on the spot at about 17:30, complainant being found the accused in suspicious condition and upon his search, the complainant recovered one plastic shopper white colour from his right side pocket which on weighing through digital scale came out to be 30 grams ICE. In his presence, the complainant separated one gram from the total quantity for the purpose of sending it to FSL and packed and sealed into parcel No. 1 while packed and sealed the remaining quantity of ICE 29 grams into parcel No. 2. The complainant placed 1 monogram of DB inside each parcel while affixed 03 monograms on each parcel. The person disclosed his name as Sana Ullah S/O Muhammad Salih, who was arrested by complainant on spot. In his presence, the complainant prepared recovery memo already exhibited as Ex. PW-3/2, then card of arrest Ex. PW-3/1 and then drafted Murasila already exhibited as Ex. PW-3/3. After drafting these documents, they were handing over to him and he took the same to PS for registration of the case. After handing over these documents to Muharrir at PS, he returned to the spot and there the IO recorded his statement U/S 161 Cr. PC.

- 10.** Saif Ur Rehman, OII was examined as PW-06. He is IO of the case. He stated that copy of FIR and other relevant documents were handed over to him for investigation in the instant case. He proceeded to the spot and where the complainant showed the case property in sealed condition and accused to him on the spot. He prepared the site plan on the pointation of complainant. On 15.11.2022, he drafted an application to the Illaqa Judicial Magistrate for 05 days police

custody which was turned down. The application is Ex.PW-6/1. On 17.11.022, he handed over the case property in sealed condition to constable Abdullah, Belt No. 1666 along with application addressed to FSL Peshawar and Road Permit Certificate vide FSL application which is Ex.PW-6/2 and Ex.PW-6/3 respectively. FSL report is Ex.PZ. He also annexed Daily Diary regarding arrival and departure of the complainant/IO, which are Ex.PW-6/4 & Ex.PW-6/5 respectively. He recorded the statements of all the PWs including accused facing trial. After completion of investigation in the instant case, the case file was handed over to the SHO for onward proceedings.

11. PW Constable Muhammad Sadeeq was abandoned by prosecution and closed its evidence.

12. 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 defence evidence.

13. Record transpires that the alleged occurrence took place on 14.11.2022 at 17:30 hours on main road Arhanga to Dabori, Upper Orakzai. It was reported through Murasila at 17:55 hours and FIR was registered at 18:10 hours. It is the contention of the prosecution that on the eventful day the complainant along with police consisted of Ihsan Ullah Constable No. 938, Abdur Razaq Constable No. 974, Muhammad Sadeeq Constable No. 948 and others were on patrolling in the official vehicle in the area, meanwhile the informer informed the complainant that on the way to Arhanga road, ICE will be

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smuggled. On the said information, the police made barricade from Dabori to Arhanga road. Later on, a person while walking from Dabori was stopped in suspicious condition and on during body search from his right-side pocket, a plastic bag white colour was recovered. On checking, ICE was found to be 30 grams on weighing. One gram out of the said ICE was separated and sealed in the parcel by affixing stamps of DB for sending the same to FSL. On asking, the accused disclosed his name as Sana Ullah S/O Muhammad Salih. His card of arrest was issued. During the course of evidence, PW-02, Abdullah HC has stated that investigation officer handed over to him parcel No. 1 in sealed condition along with FSL application and road permit. During cross-examination, he stated that his statement was not recorded by the IO U/S 161 Cr. PC. He also disclosed that he do not know the name of the FSL official to whom he handed over the parcel for FSL. PW-03, complainant Gul Asghar ASHO stated that the place of occurrence is not a hilly area rather the same was carpeted road, but he has not associated any passer by as witness of recovery in challan. Furthermore, neither any photography has been made, nor video of the recovery process has been prepared by the police at the time of recovery, which is also violation of the directions of the superior courts. It is another aspect of the case that PW-03 during his cross-examination has disclosed that carrier of the Murasila went to PS on motorcycle but this fact is nowhere mentioned in the record or statement U/S 161 Cr. PC of the PWs. It is also not been explained that on whose motorcycle, the carrier went

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to PS. The record is silent about the same. It is also stated by PW-03 that the informer did not tell him about the physical appearance and colour of clothes of the accused and admittedly the informer was not present at the time of occurrence, then how the accused was identified by the police, furthermore, it is also not appealing to the prudent mind that how the person walking by feet dare to cross the barricade, while in possession of the alleged narcotics because he could easily avoid to cross the police barricade. The identity of the informer has also not been disclosed which further makes the whole proceedings full of doubts. The last and not the least is that counsel for the accused submitted application for de-sealing the parcel Ex. P1. The application was accepted and the parcel was requisitioned from the Mall Khana. The same was opened in presence of the learned Senior Public Prosecutor, Orakzai. The alleged narcotics/ICE was exposed to naked flame in the open court, but instead of melting the contents/the alleged Methamphetamine ICE became more harder which is not the chemical property of Methamphetamine/ICE. It was observed by the court vide order No. 20, dated 24.10.2023 that the alleged contraband was not Methamphetamine ICE rather it was something else. After this observation, there remains nothing in the case of prosecution for further discussion. The accused facing trial is a School teacher and has not remained in any such like case in the past. The prosecution failed to prove its case beyond reasonable shadow of doubts against the accused facing trial. I, therefore, acquit the accused Sana Ullah from the charges leveled against him. He is

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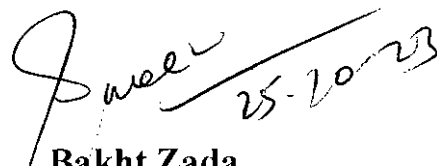
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on bail. His sureties are discharged from their liability. Case property
be kept intact till the expiry of period provided for revision/appeal.

14. Case file be consigned to Record room after its completion and
necessary compilation.

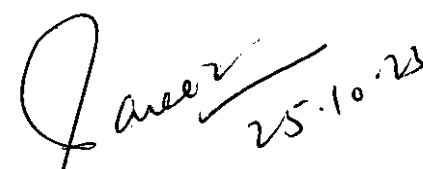
Announced

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CERTIFICATE

It is certified that this judgment consists of **09** pages. Each page
has been dictated, read, corrected and signed by me.


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