

(23)

Case Title: State Vs Gul Saidan (FIR. 55, PS: Upper)

Or-----22
23.02.2022

APP for the state present. Accused on bail present. Counsel for the accused also present.

My this order is intended to dispose off an application u/s 249-A Cr.P.C. Counsel for the accused present and argued the instant case is pending before this court since long and the prosecution has recorded the statement of the seizing officer, which clearly reveals that there is no probability of the accused being convicted of the offence because the proceedings conducted as per the record are against the law and the charge is groundless, thus, recording further evidence will be a futile exercise and would be result less and at the end requested for the acquittal of the instant accused.

On the other hand, Learned APP for the stated opposed the application and argued that there is sufficient evidence against the instant accused, therefore, the application should not be accepted at this stage.

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that it is an admitted fact on the part of the seizing officer that he had the information through unknown source that the accused had in possession some huge explosive substances and weapons but he did not bother to get search warrant from the concerned magistrate. Further, it is an admitted fact that the accused was present outside the house from where the above weapons/explosive substances were recovered but in the whole record, it is not clear that how the local police assumed that the alleged house is the ownership of the accused rather it is mentioned in the cross examination of the seizing officer that it was the accused who identified the house as his ownership and we entered in the house on his pointation which is totally illogical and against the law. Further it

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Rohmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Babar, Mela)

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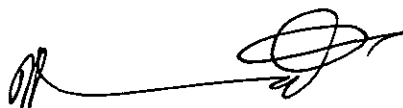
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is admitted that the house was situated in the middle of the Dabori village and the public gathered when we raided the house but no one from the public was made witness either to the recovery memo or statement of anyone recorded w.r.t the ownership of the house. On the other hand it is admitted that the house was lying vacant since long but later on stated that the accused was present in the said house. Thus, there are contradictions in the statement of the seizing officer, who is the star witness of the prosecution. Also, there are illegalities committed by police as it is mandatory u/s 103 Cr.P.C to associate independent and disinterested witnesses from the locality to the recovery proceedings, which admittedly has not been done by the local police and also, no reason of such omission has been given. Guidance in this respect is derived from YLR-2005, Peshawar, Page: 621 and PCRLJ-1995, Peshawar, Page: 455.

Thus, in the light of the aforesaid findings, it is established that there is no probability of the accused being convicted of any offence. therefore, the application in hand is accepted and the accused namely Gul Saidan S/O Noor Imam is hereby acquitted from the charges levelled against him. He is on bail. His bail bonds stand cancelled and sureties are discharged from the liability of bail bonds.

File be consigned to the record room after its necessary completion and compilation.

Announced
23.02.2022


(Rehmat Ullah Wazir)
JM-I/MTMC,
Orakzai (at Baber Mela)