

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

Case No.....15/3 of 2023.

Date of Institution.....12.10.2023.

Date of Decision.....28.11.2023.

State through:

Sub-Inspector/SHO Nasir Ahmad, PS Kalaya.....**Complainant**

VERSES

Ashoor Khan S/O Muhammad Din Shah R/O Qaum Feroz Khel, Kari
Taal, Tehsil Lower, District Orakzai..... **Accused**

Case FIR No. 84, Dated 25.08.2023 U/S 11-A CNSA, PS Kalaya.

JUDGEMENT
28.11.2023

Through this judgement, I am going to dispose of the instant case registered against accused Ashoor Khan vide FIR No. 84, Dated 25.08.2023 U/S 11-A CNSA, PS Kalaya.

- I. Brief facts of the prosecution's case as unfolded in the FIR Ex.PA are that, on 25.08.2023 at 16:20 hours, near Kalaya Sports Complex, Orakzai, SHO/complainant Nasir Ahmad, who was accompanied with by Wajid Ullah No. 320, Muhammad Irshad No. 336, was on area patrol near Sport Complex Kalaya when a young person was stopped and his body search was conducted during which a white color plastic envelop was recovered from his side pocket. On checking the same, it was containing 94 grams ICE. One gram was separated for FSL examination and it was packed and sealed into parcel No. 1 while 93 grams ICE was packed and



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sealed into parcel No. 2 Ex.P-2. The person disclosed his name as Ashoor Khan S/O Muhammad Din Shah R/O Feroz Khel, Kari Taal, Orakzai. Murasila was taken into PS by constable Muhammad Irshad No. 336 for registration of the case.

2. The recovered ICE was taken into possession vide recovery memo in presence of marginal witnesses. Accused was formally arrested at the spot. Murasila was sent to PS for registration of the case through constable Muhammad Irshad No. 336 and on the strength of Murasila, case in hand was registered against the accused vide FIR Ex.PA.

3. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.

4. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Formal charge was framed to which accused pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.

Prosecution produced five (05) witnesses to prove its case against the accused while PW constable Wajid Ullah No. 320 was abandoned by the prosecution being witness of the same facts.

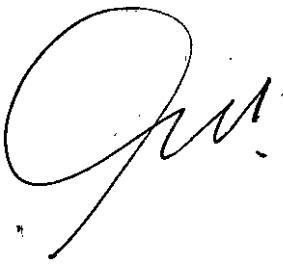
6. Complainant, Sub-Inspector Nasir Ahmad deposed as PW-01. He stated that, on the day of occurrence i.e 25.08.2023, he along with Wajid Ullah No. 320, Muhammad Irshad No. 336 were on area patrol near Kalaya Sport Complex when a young person was stopped and his body search was conducted during which a white



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color plastic envelop was recovered from his side pocket. On checking the same, it was containing 94 grams ICE. One gram was separated for FSL examination which was packed and sealed into parcel No. 1 while the remaining 93 grams ICE was packed and sealed into parcel No. 2 Ex.P-2 by affixing 3/3 seals in the mark of NA while 1/1 seal were put inside the parcels. The person disclosed his name as Ashoor Khan S/O Muhammad Din Shah R/O Feroz Khel, Kari Taal, Orakzai. The recovered ICE was taken into possession vide recovery memo Ex.PW-1/1 in presence of marginal witnesses. Accused was formally arrested vide card of arrest Ex.PW-1/2. Murasila Ex.PW-1/3 was sent to PS for registration of the case through constable Muhammad Irshad No. 336. After registration of the case, he pointed out the spot to the IO who prepared site plan on his pointation. Accused and case property was handed over to Muharrir of PS. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex.PW-1/4.

7. PW-02, is the statement of SI Minhaz Hussain. He is IO of the case. He stated that after registration of the case in hand, copy of FIR along with relevant documents were handed over to him for investigation. He proceeded to the spot and prepared site plan Ex. PB at the instance of SHO/complainant. He recorded statements of PWs U/S 161 Cr.PC. Accused was handed over to him for interrogation/further investigation. He produced the accused before



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the court for obtaining his physical custody vide his application Ex. PW-2/1 which was turned down and accused was committed to judicial lock up. He recorded statement of accused U/S 161 Cr. PC. Parcel No. 1 containing 01 gram ICE was sent to FSL vide his application Ex. PW-2/2. Road permit certificate is Ex. PW-2/3. FSL report was received and placed on file. FSL report is Ex. PW-2/4.

8. Constable Gul Kareem was examined as PW-03. He stated that during the days of occurrence, he was posted at PS Kalaya. Parcel containing sample for FSL along with application addressed to FSL Peshawar and road permit certificate were handed over to him by OII. Parcel was handed over to incharge FSL Peshawar. He obtained his signature and seal on road permit certificate. Receipt thereof, was given to him which he handed over to IO. His statement was recorded by IO u/s 161 Cr.PC.

Constable Muhammad Irshad was examined as PW-04. He is one of the marginal witnesses. He stated that on the day of occurrence, he was present with SHO Nasir Ahmad on the area patrol near Sports Complex Kalaya. In his presence, SHO/complainant recovered and took into possession a white color plastic envelope from the side pocket of accused and on checking the same, it was containing 94 grams ICE. One gram was separated for FSL examination while the rest was packed and sealed into parcel No. 2 along with envelope. 3/3 seals in the mark of NA were affixed on the parcel while 1/1 seal was put inside the parcel in his presence vide recovery memo




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already exhibited as Ex.PW-1/1. Murasila was drafted by SI Nasir Ahmad at the spot. Murasila, recovery memo and card of arrest were handed over to him which he took to PS for registration of the case. His statement was recorded by the IO U/S 161 Cr. PC.

- 10.** PW-05 is the statement of Intikhab Ali Muharrir. He stated that during the days of occurrence, he was posted as Muharrir at PS Kalaya. On the day of occurrence, he was present in the PS when received murasila from SHO Nasir Ahmad through constable Muhammad Irshad No. 336, he correctly incorporated the contents of Murasila into FIR Ex.PA which is in his hand writing and correctly bears his signature. Copy of FIR was handed over to IO for investigation. On arrival of SHO/complainant to PS, parcels containing case property and accused was handed over. Case property was kept in safe custody. Entry was made in register 19. Extract of register 19 is Ex.PW-5/1. Extracts of DD regarding departure from and arrival to PS of SHO, IO and constable Gul Karim are Ex.PW-5/2 to Ex.PW-5/5. Accused was locked-up. His statement was recorded u/s 161 Cr.PC.

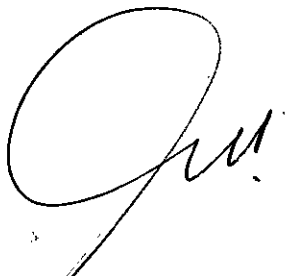
- 11.** Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein he professed his innocence, however, he did not wish to be examined on oath. He also opted not to produce defense evidence.
- 12.** Record transpires that the occurrence took place on 25.08.2023 at 16:20 hours near Kalaya Sports Complex, Lower Orakzai. It was reported on 25.08.2023 at 16:50 hours and FIR was registered on



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25.08.2023 at 17:20 hours. While going through the record available on file, it is noticed that prosecution version qua the recovery of 94 grams ICE from possession of the accused has been substantiated through the statements of PW-01 (complainant) and PW Muhammad Irshad No. 336 (marginal witness). PWs are consistent on salient aspect of the prosecution version. The chain of custody of the recovered ICE has been established. Positive FSL report Ex.PW-2/4 qua the sample further support the prosecution's case. There is nothing on record which could show any enmity of the police with the accused facing trial so as to suggest his false implication. Furthermore, admissions regarding body search of the accused by complainant at the spot, recovery of 94 grams ICE from his personal possession, sending murasila to PS for registration of the case through constable Muhammad Irshad No. 336, packing and sealing of recovered ICE at the spot, weighing the recovered ICE with digital scale have been made. The prosecution witnesses gave detailed pen-picture of the recovery of 94 grams ICE from personal possession of accused facing trial. The chain of custody of the recovered ICE remained unbroken. Per statement of complainant (PW-01), accused has history of involvement in such like cases. There may be minor discrepancies but such discrepancies are not injurious to the case of prosecution.

- 13.** As prosecution successfully proved its case against the accused facing trial, therefore, accused Ashoor Khan is convicted and



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sentenced for offence u/s 11-A of KP CNSA with simple imprisonment of four months and fine of Rs. 300,000/-. In default of payment of the fine, he shall undergo one month simple imprisonment. Benefit of Section 382-B Cr. PC is extended to the accused. Case property be dealt with in accordance with the law.

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

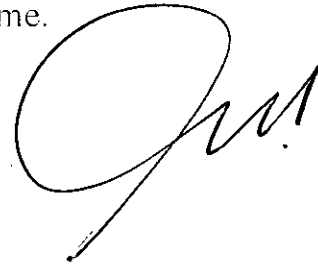
Announced
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CERTIFICATE

It is certified that this judgment consists of 07 pages. Each page has been dictated, read, corrected and signed by me.



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