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**IN THE COURT OF ABDUL BASIT**  
**ADDITIONAL SESSIONS JUDGE-II/JUDGE SPECIAL COURT,**  
**ORAKZAI**

Case no. 14/3 of 2023

Date of institution: 22.03.2023

Date of decision: 10.01.2024

Date of consignment:

State through Mujahid Khan SI/NET of the Kalaya Police Station Orakzai  
(complainant)

Versus

1. Riayat Khan (aged about 28 years) s/o Ali Baaz Khan, Caste Feroz Khel resident of Tappa Jaisal Khel, Goen, District Orakzai (accused facing trial)
2. Iran *alias* Fida son of Khoba Gul and
3. Arif son of Shireen Gul Caste Zakha Khel Afridi (absconding accused)

**FIR No. 122 DATED: 16.12.2022 U/S 9-D CNSA**  
**KALAYA POLICE STATION, ORAKZAI**

**JUDGMENT**

1. Accused Riayat Khan is facing trial and accused Iran alias Fida and Arif are absconding in the subject case registered under section 9 D-CNSA of Kalaya Police Station, Orakzai.
2. Mujahid Khan, the complainant, reported that he along with police officials was on patrol duty in the area and had arranged barricade when spy informed him that Riayat Khan shall transport/smuggle narcotics through pickup to district Khyber at any time; that on the basis of said information, a red color double cabin pickup registration no. BD 6881 approaching from headquarter direction was stopped for checking at about 1000 hours, driver Riayat Khan was deboarded, bodily searched, however, nothing incriminating recovered from his possession; that during search of pickup, two secret cavities found,

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which were opened through key, out of which seven packets of chars recovered from first cavity and eight packets of chars recovered from second cavity, which were weighed through digital scale on the spot and found to contain 1000 grams chars in each packet making total of 15000 grams chars; that 10 grams chars each separated from 15 packets containing serial parcels no. 1-15 through sharp article for chemical analysis and sealed in parcels no. 1-16, 2-17, 3-18, 4-19, 5-20, 6-21, 7-22, 8-23, 9-24, 10-25, 11-26, 12-27, 13-28, 14-29 and 15-30 with seal of SH; that the recovered chars, samples and double cabin pick registration no. BD 6881 engine no. ZL 2446 chassis no. LN56-0025146 were taken into possession by the police and driver Riayat Khan was arrested on the spot, hence, FIR.

3. During investigation, accused facing trial revealed that two persons namely Iran *alias* Fida and Arif were actual owners of the recovered vehicle and chars so they were also nominated in case as co-accused.
4. On completion of investigation, complete challan under section 9-D CNSA was put in court against accused facing trial and absconding accused. As accused Iran *alias* Fida and Arif were absconding; therefore, statement of search witness was recorded and prosecution was permitted to lead evidence against absconding accused within the meaning of Section 512 of the Code of Criminal Procedure, 1898 to preserve the same in order to use it against them when needed.
5. Accused facing trial was summoned through *zamima bay*. On his attendance, the copies of the case furnished to him under section 265-C Cr.PC. The accused facing trial was charge sheeted u/s 9-D CNSA to which he pleaded not his guilt and claimed trial.

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6. Prosecution produced following evidence in support of its case;
7. The statement of Mujahid Khan SI (complainant) was recorded as PW-1. He confirmed the initial report Ex.PA to be true. Recovery of contraband & vehicle vide recovery memo, Ex.PW 1/1, was testified to be genuine. He arrested the accused and issued his card of arrest, Exh.PW 1/2. He produced recovered contraband, Ex.P-1 to P-15, and vehicle along with key, Exh.PW-16. Murasila, Exh. PA-1 was also drafted by this witness. One of the marginal witnesses to the recovery memo was Hameed Ullah Constable, who was examined as PW-2. It was testified that the recovery was made from accused and was documented vide recovery memo already exhibit, Exh.PW 1/1. He took the murasila, recovery memo and card of arrest to the police station for registration of FIR. Shal Muhammad SI/OII appeared as PW-3, who has submitted interim challan, Exh.PW 3/1, & complete challan, Exh.PW 3/2, against accused before the Court. Muhammad Jameel Muharrir, was examined as PW-4, who has registered the FIR, Ex.PA, on receipt of murasila. He also kept the case property in the *malkhana* for safe custody and made entries in relevant register. He produced register No. 19, Exh.PW 4/1, arrival and departure reports, Exh.PW 4/2 and Exh.PW 4/3. PW-5 is the statement of Muhammad Khalil, who has taken the parcels 16 to 30 containing samples of chars to FSL Peshawar for chemical analysis. He is also marginal witness to the recovery memo, Exh.PW 5/1, vide which investigation officer took into possession CDR data. Investigation officer of the case was Muhammad Haneef SI, who has entered in the witness box as PW-6. He prepared site plan, Exh.PB. Preparation

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of site plan and examination of witnesses was confirmed by this witness. He vide applications, Exh.PW 6/1 & Exh.PW 6/2, requested DPO Orakzai for issuing English letters to FSL Peshawar and ETO Excise & Taxation Office about recovered vehicle, reports whereof are exhibit, Exh.PW 6/3 and Exh.PW 6/4. He had produced the accused before the Illaqa Magistrate vide application, Exh.PW 6/5. FSL application is Exh.PW 6/6, FSL report is Exh.PZ, application to learned Judicial Magistrate for confession of accused is Exh.PW 6/7, correction memo in respect of serial number of the case property is Exh.PW.PW 6/8, naqal mad is Exh.PW 6/9, notices are Exh.PW 6/10 and Exh.PW 6/11, correction memo in respect of name of accused is Exh.PW 6/12, CDR data is Exh.PW 6/13, nomination memo is Exh.PW 6/14, separate applications to learned Judicial Magistrate for obtaining warrant u/s 204 and 87 are Exh.PW 6/15 and Exh.PW 6/16, transit receipt is Exh.PW 6/17. On completion of investigation, he handed over the case file to SHO for onward submission of complete challan against the accused.

8. Prosecution closed its evidence.
9. The statement of accused was recorded under section 342 CrPC, wherein, he again denied from the charges and adhered to his innocence. In reply to a question, he neither wished to be examined under oath nor to produce evidence in defense.
10. Arguments heard and record perused.
11. Learned APP for State argued that the prosecution has proved the case against accused beyond shadow of doubt; that recovery of contrabands is proved from possession of accused; that prosecution

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witnesses are consistent in their statements in respect of recovery of narcotics from accused; that FSL result in respect of the samples separated from contraband transported by accused facing trial are in positive; that there is no malafide on part of prosecution to falsely involve the accused in the case, therefore, he requested to award him maximum punishment.

12. Counsel for accused facing trial argued that prosecution has failed to prove its case against accused beyond reasonable shadow of doubt; that prosecution evidence contradicts & suffers major inconsistencies; that prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that complainant has not recorded the statement of any private person regarding recovery; that recovery is not effected from the immediate possession of accused facing trial; that accused facing trial has not confessed his guilt; that the case against accused facing trial is not proved and request is made for his acquittal.

13. Viewing the arguments advanced by learned counsel for parties, the evidence and record before the court, it is observed that local police has allegedly found accused facing trial transporting 15000 grams charrs in secret cavities of double cabin pickup, to be called vehicle, which was reported to be the ownership of absconding accused; therefore, prosecution is under heavy duty to prove its case against them beyond shadow of slightest doubt from the moment of receiving spy information by local police to the interception of the accused facing trial, his transporting the contraband in the vehicle, taking of samples from recovered contraband, preparation of recovery memo,

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drafting the murasila, witnessing of whole proceedings by marginal witnesses, registration of case, the safe transmission of recovered articles, fair investigation of the case and laboratory reports etc. To prove this, prosecution has led the evidence of many witnesses and court has to see the mode and manner of the recovery of contraband and chain of safe transmission of contraband from spot to the police station and FSL, which are the most important aspects of the case because if this chain is found to be intact and statements of witnesses are consistent, then, prosecution succeeds in proving the case against accused. As per record, the complainant has allegedly recovered the contraband; taken samples from each packet having parcels no. 1-15, separated and sealed each test sample in parcels no. 16-30. To start with, the separation of test samples by complainant from recovered packets parcels no. 1-15 created huge ambiguity in the case because complainant has allegedly separated 10 grams chars as test sample from each packet and placed each test sample in separate parcels giving it numbers as 1 to 16, 2 to 17 and so on until the last packet was given the number as 15 to 30, which admittedly infers that test sample taken from packet no. 1 was placed in parcels no. 1, 2, 3....16 and test sample taken from packet no. 2 was placed in parcels no. 2, 3, 4....17 and so on, which created huge ambiguity in the prosecution case, however, the correction slip dated 20.12.2022, Exh.PW 6/8, clarifies that it was just a clerical mistake on the part of complainant, who intended the taking of test sample from packet no. 1 and placing it in separate parcel marked as parcel no. 16 being the corresponding to packet no. 1 and so on. This was a human error and

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not fatal to case, which was later on rectified but strange enough this error was again repeated by complainant in his statement recorded as PW-1 that speaks otherwise and leads to inference that complainant actually meant the same, otherwise, he must have deposed in light of facts brought in the correction memo, Exh.PW 6/8. This also reflects that the correction memo was not prepared on his instance rather the investigation officer has prepared this, otherwise, the investigation officer must have recorded the fresh statement of the complainant under section 161 CrPC and the complainant would have deposed accordingly. More so, complainant (PW-1) admitted overwriting on parcel numbers of parcels exhibit P-1, P-29, P-6, P-15, P-7, P-11, P-4 and P-9, which not only leads concoction in the case but also raises a question that if parcel no. P-29 was produced before the court, then, the parcel no. 29 sent for chemical analysis belonged to which case. Hameedullah (PW-2), marginal witness to the recovery memo, stated that the parcel numbers produced before the court were having parcel numbers 1-15, however, on seeing those in court, he admitted that some of parcel numbers were not having parcel numbers 1-15. Muhammad Jameel (PW-4) admitted that Muharrir is the custodian of daily diaries, registers no. 19 and 21 and he makes entries in register no. 19 about receiving and handing over the case properties to police officials, however, in view of his statement safe custody of the case property in *maalkhana* of the police station and its onward transmission to laboratory for chemical analysis is found alarming because on 20.12.2022, he has handed over parcels no. 16-30 to investigation officer (OII) on his request for chemical examination,

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however, record is silent about handing over of any parcel to the investigation officer for FSL on that day. On the other side, statement of Muhammad Jameel (PW-4) also provides that these samples were not received at laboratory and were returned to him by investigation officer on very day for the reason mentioned in daily diary no. 23 dated 20.12.2022; nonetheless, no entry about return of these parcels is available in register no. 19 of the police station. More so, contents of daily diary no. 23 dated 20.12.2022, Exh.PW 6/9, provides that investigation officer along with police officials took samples along with other articles to FSL Peshawar and delivered all other articles there for tests except parcels no. 16-30, which were returned by the laboratory officials to constable Khaleel-ur-Rehman with direction that those parcels must be produced/deposited by the seizing officer himself to laboratory on 21.12.2022 and had also discussion on it with Director FSL, Peshawar; therefore, the parcels no. 16-30 were once again returned to Muharrir of Police Station for safe custody, nevertheless, there is nothing on record that either the test samples/ parcels were handed over to complainant/seizing officer for taking to FSL, Peshawar or the seizing officer has taken these samples to FSL, Peshawar & had discussion with Director FSL, Peshawar. Similarly, Muhammad Khaleel (PW-5) stated that on 20.12.2022, investigation officer had delivered him parcels no. 16-30 along with application for FSL Peshawar, however, added that he has brought those parcels back and handed over to OII (investigation officer) on 22.12.2022, which is totally in conflict with the statement of investigation officer and entries made in daily diary no. 23, which also avails that if test

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samples packed in parcels no. 16-30 were delivered to Muhammad Khaleel on 20.12.2022 by investigation officer, then, these remained in his custody for two days without any plausible reason and finally he has returned the parcels on 22.12.2022, which casts serious doubt about safe custody of parcels. On the other hand, entry at serial no. 84 of the register no. 19, Exh.PW 4/1, and application addressed to Director FSL, Peshawar, Exh.PW 6/6, provides that these samples were delivered to constable Khaleel-ur-Rehman for safe transmission to Peshawar on 22.12.2022 and there is no entry about handing over these parcels to anyone on 20.12.2022. Likewise, there is also no route certificate available on file, which not only doubts safe custody of test samples in *maalkhana* of police station but the chain of safe transmission of test sample to FSL, Peshawar is also found broken; therefore, the forensic laboratory report cannot be trusted.

15. Besides above, complainant (PW-1) reiterated facts of the murasila report in verbatim; however, he admitted that his report is silent as to where he was on patrolling at relevant time when he has received the spy information. He even admitted that his report is also silent that when, how and by whom has conveyed information to him, which questions patrolling of complainant with the police staff in nearby area, where the occurrence has alleged occurred. Apart from above, if complainant has arrested the accused facing trial on the spot, then, as per call data record (CDR), he must have been shown present on the spot at the time of occurrence, however, the investigation officer (PW-6) has mentioned the cell number of complainant and admitted that as per CDR, complainant was not shown present/available with

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accused facing trial on spot at the time of occurrence, which totally shakes the foundation of case and infers hatching of a false case against accused facing trial.

16. If this aspect is ignored and it is presumed that the alleged recovery has been affected from accused facing trial from the given place, which is situated opposite to patrol pump, which was admittedly operative and employee were present there but in spite of this complainant did not cite a single person as marginal witness to the whole proceedings on apprehension to suppress the true facts from bringing on record. Likewise, complainant and marginal witness to recovery memo did not mention that in which part of the vehicle, the secret cavities were made for placing the contraband nor any laboratory report about the making and existence of secret cavities beneath the body of vehicle is available on file despite fact that the investigation officer has specifically asked for it through application Exh.PW 6/1.

17. This is surprising to note that the color of contraband transported by accused facing trial was stated by complainant to be yellowish grey (*zard, khar*), however, the FSL report, Exh.PZ, revealed the color to be solid brown, which also raises question about genuine recovery and transportation of contraband by accused facing trial.

18. Besides above, the record is completely silent as to fact that who has brought the recovered vehicle from place of occurrence to the police station. Even, complainant did not know that who has driven the vehicle from spot to the police station. Likewise, the key of the vehicle was taken into possession by the police; however, there is

admittedly no mentioning of this fact in the recovery memo and the murasila report. Moreover, PW-2 deposed that complainant has also taken into possession the opened cover of alleged cavities through recovery memo in his presence, however, perusal of recovery memo does not suggest taking of any opened covers of the secret cavities, which reflects that the recovery proceedings were not conducted/ made in front of marginal witnesses.

19. Importantly, complainant (PW-1) in his examination-in-chief alleged that he has sent murasila report, recovery memo, & card of arrest to police station through Hameedullah but in cross-examination, he stated that constable Hameedullah remained present with him on spot right from start till completion of proceedings, which leads to inference that police has conducted all proceedings in casual manner and deposed false facts to enrobed accused facing trial in the case.

20. It is known to all that when recovery is effected from the accused, the seizing officer prepares the recovery memo, card of arrest and murasila report on the spot, where after, murasila is sent to police station for registration of the case and an FIR is registered. In the instant case, perusal of recovery memo and card of arrest of the accused provide that it contains the FIR number, however, when complainant was questioned that as to who has written FIR number on it, he has shown ignorance to this. On the other side, Hameedullah (PW-2) affirmed that Mujahid Khan (complainant) had already mentioned the FIR number before the preparation of recovery memo and murasila report on the spot. Even, PW-2 admitted that card of arrest of the accused facing trial also born the serial number of FIR,

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when he took it to the police station for handing over there, which explicitly transpires that the writing of FIR number was not possible before registration of case and therefore apprehends that recovery memo and murasila report of the accused were prepared in the police station and not on the spot and creates genuine doubt not only in the mode and manner of transportation of alleged contraband by the accused facing trial but also about the recovery proceedings etc.

21. From above appreciation of evidence it is held that the proceedings of making arrest of accused and seizure of narcotics had become doubtful. Moreover there are many major discrepancies and contradictions in the case of prosecution as discussed above. In view of above discussed facts of the case, the prosecution failed to bring home the guilt against accused facing trial, hence, while extending the benefit of doubt, the accused facing trial Riayat Khan son of Ali Baaz Khan is acquitted from the charge leveled against him. As accused facing trial Riayat Khan is in custody and behind the bars; therefore, he be released forthwith if not required in any other case.

22. So far absconding accused Iran *alias* Fida and Arif are concerned, it is held that they have also been nominated in the FIR and in absence of any rebuttal on their part, there exists prima facie strong case against them; that is why, perpetual warrant of arrest is issued against them. Names of accused Iran *alias* Fida son of Khoba Gul and Arif son of Shireen Gul be entered in the register maintained for proclaimed offenders of the concerned police station and in the office of DPO, Orakzai. On their arrest, supplementary challan along with detail of this file be submitted before the concerned court.

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23. Case properties are directed to be kept intact till arrest and trial of absconding accused and be furnished before the trial court as and when required.
24. File consigned to record room after completion and compilation.

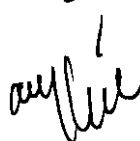


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**CERTIFICATE**

It is certified that this judgment of mine consists of thirteen (13) pages & each page is duly signed by me after necessary corrections.



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