

SS

STATE VS ZIA UR REHMAN  
FIR No. 140 | Dated: 25.11.2021 | U/S: 9 (d) Khyber  
Pakhtunkhwa CNSA 2019 | Police station: Kalaya

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

SPECIAL CASE NO. : 68/3 OF 2021  
DATE OF INSTITUTION : 22.12.2021  
DATE OF DECISION : 29.06.2022

STATE THROUGH IMTIAZ KHAN INCHARGE NARCOTICS,  
POLICE STATION KALAYA.

.....(COMPLAINANT)

-VERSUS-

ZIA UR REHMAN S/O RAMEEN KHAN, AGED ABOUT 45 YEARS,  
R/O QUM UTMAN KHEL, TAPPA SHABI KHEL, P/O FERAZ KHEL,  
DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL IN CUSTODY)

**Present:** Umar Niaz, District Public Prosecutor for state.

: Aman khan Bangash Advocate for accused facing trial.

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Pakhtunkhwa Control of Narcotic Substances Act, 2019

**Police station:** Kalaya

JUDGEMENT

29.06.2022

The above-named accused faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR  
no. 140, dated 25.11.2021 of Police station Kalaya.

- (2).                      The case of the prosecution as per contents of Ex.  
PA/1 Murasila based FIR Ex. PA is, that on 25.11.2021, the  
complainant, Imtiaz Khan Incharge Narcotics/PW-4  
alongwith Saif Ullah no. 1460 and Yousaf Khan no. 1437  
acting on the information regarding smuggling of narcotics  
via motorcar bearing registration no. 6850/LOS of silver  
colour, laid a picket on main road from headquarter to Kohat  
in Muslim Abad Bezot, where at about 1130 hours, the above

mentioned motorcar on way from headquarter chowk was

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stopped for checking. The driver of the motorcar disclosed his name as Zia Ur Rehman s/o Rameen Khan. Upon checking of the motorcar, 15 packets of chars each weighing 1000 grams, a total of 15,000 grams wrapped with yellow colour scotch tape were recovered from behind the rear seat of the motorcar. The complainant/PW-4 separated 10 grams of chars from each packet for chemical analysis through FSL, packed and sealed the same into parcels no. 1 to 15 whereas the remaining quantity of chars weighing 14850 grams were packed and sealed in separate parcel no 16, affixing monograms of 'MS' on all the parcels. The accused was accordingly arrested by issuing his card of arrest Ex. PW 4/1. The complainant/PW-4 took into possession the recovered chars alongwith above-mentioned motorcar vide recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the POLICE STATION through constable Saif Ullah/PW-5 which was converted into FIR Ex. PA by PW-3, Humayun Khan MHC.

- (3). After registration of FIR, it was handed over to PW-6, Mehdi Hassan SI for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan Ex. PB on pointation of complainant and recorded statements of PWs u/s 161 Cr.P.C. On 26.11.2021, the IO sent the samples for chemical analysis to FSL vide application Ex. PW 6/1 and road permit certificate Ex. PW 6/2 through constable Shams

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Ul Ghani/PW-2, the result whereof Ex. PK was received and placed on file by him. On 28.11.2021, the IO drafted application for verification of vehicle which is Ex. PW 6/3. After completion of investigation, he handed over the case file to SHO Muhammad Shafiq/PW-1 who submitted complete challan Ex. PW 1/1 against the accused facing trial.

(4). Upon receipt of the case file for the purpose of trial, the accused was summoned, copies of the record were provided to him u/s 265-C Cr.P.C and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the prosecution produced as many as 05 witnesses. The gist of the evidence is as follow;

I. *Muhammad Shafiq SHO is PW-1. He has submitted complete challan Ex. PW 1/1 against the accused facing trial.*

II. *Constable Shams Ul Ghani is PW-2. He has taken the samples of recovered chars in parcels no. 1 to 15 to the FSL for chemical analysis alongwith application and road permit certificate on 26.11.2021 and after submission of the same, he was given the receipt of the parcels which he handed over to the IO.*

III. *Humayun Khan MHC is PW-3. He has registered FIR Ex. PA by incorporating the contents of Murasila Ex. PA/1 therein. He has*

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*also received the case property received from the complainant duly packed and sealed which he had kept in mal khana in safe custody while parked the motorcar in the vicinity of Police station. The witness further deposed that he has recorded entry of the case property in register 19 and handed over the samples of the case property to the IO for sending the same to FSL on 26.11.2021.*

IV. *Imtiaz Khan SI is the complainant of the case. He appeared in the witness box as PW-4. In his statement he repeated the story as narrated in the FIR.*

V. *Constable Saif Ullah appeared in the witness box as PW-5. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-4 has taken into possession the recovered chars and motorcar. He also reiterated the contents of FIR in his statement. The witness also deposed that he has taken the copies of Murasila, card of arrest and recovery memo to Police Station for registration of FIR.*

VI. *Investigating Officer Mehdi Hassan SI was examined as PW-6 who in his evidence deposed*

*[Handwritten signature and stamp]*

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*in respect of the investigation carried out by him in the instant case. He has prepared the site plan Ex. PB on the pointation of the complainant, recorded the statements of witnesses on the spot, produced the accused before the court, sent the representative samples to FSL and result of the same Ex. PK was placed on file by him, drafted application Ex. PW 6/3 for verification of the motorcar, annexing copy of register 19 Ex. PW 6/4 as well as daily diaries regarding departure and return of the complainant and submitted challan Ex. PW 6/5 against the accused.*

(5). Prosecution closed its evidence whereafter statement of the accused was recorded U/S 342 Cr.P.C but the accused neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of the learned DPP for the State and counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the state submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis

  
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have been transmitted to the FSL within the prescribed period which have been found positive for chars vide report of FSL Ex. PK. The complainant, the witness of the recovery, the official transmitted the sample to the FSL and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the alleged chars have been shown recovered from his possession and the report of FSL support the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the IO on the spot, as detailed by the prosecution on the case file. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

(8). In the light of arguments advanced by the learned DPP for the State, arguments of the learned counsel for the

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defence and the available record, following are the points for determination of charge against the accused facing trial:

- (i). Whether the recovery is proved to have been made from possession of accused facing trial in the mode and manner as detailed in the Murasila?
  - (ii). Whether the occurrence has taken place and the investigation have been conducted in the mode and manner as detailed in the file?
  - (iii). Whether the recovered substance is proved through report of FSL as chars?
- (9). With respect to mode and manner of recovery and the mode and manner of investigation allegedly conducted on the spot, the case of prosecution is, that on 25.11.2021, the complainant, Imtiaz Khan Incharge Narcotics/PW-4 alongwith Saif Ullah no. 1460 and Yousaf Khan no. 1437 acting on the information regarding smuggling of narcotics via motorcar bearing registration no. 6850/LOS of silver colour, laid a picket on main road from headquarter to Kohat in Muslim Abad Bezot, where at about 1130 hours, the above mentioned motorcar on way from headquarter chowk was stopped for checking. The driver of the motorcar disclosed his name as Zia Ur Rehman s/o Rameen Khan. Upon checking of the motorcar, 15 packets of chars each weighing 1000 grams, a total of 15,000 grams wrapped with yellow colour scotch tape were recovered from behind the rear seat

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of the motorcar. The complainant/PW-4 separated 10 grams of chars from each packet for chemical analysis through FSL, packed and sealed the same into parcels no. 1 to 15 whereas the remaining quantity of chars weighing 14850 grams were packed and sealed in separate parcel no 16, affixing monograms of 'MS' on all the parcels. The accused was accordingly arrested by issuing his card of arrest Ex. PW 4/1. The complainant/PW-4 took into possession the recovered chars alongwith above-mentioned motorcar vide recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the Police Station through constable Saif Ullah/PW-5 which was converted into FIR Ex. PA by PW-3, Humayun Khan MHC.

In order to prove its case, prosecution examined the seizing officer Imtiaz Khan SI as PW-4, constable Saif Ullah as PW-5 who besides being eyewitness of the occurrence, has also transmitted the Murasila, recovery memo and card of arrest from the spot to the Police Station for registration of FIR and after handing over these documents to MHC/PW-3, has returned to the spot. He is also a marginal witness to recovery memo Ex. PC. MHC Humayun Khan, who has registered FIR on the basis of Murasila, has been examined as PW-3. The investigating officer Mehdi Hassan SI has been examined as PW-6. The witnesses have also been cross examined but nothing beneficial to defence has been extracted from them rather they have further explained the

  
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occurrence. In his cross-examination PW-4 has explained that being incharge of Narcotics Eradication Team (NET), he used to sit in the office of DSP Kalaya which is situated at a distance of 04/05 km from the spot. He left the office of DSP Kalaya at 1000 hours accompanied by a driver and two constables for patrolling. The accused driving a motorcar was on way from Headquarter chowk on road leading to Kohat, who was first seen from a distance of 100 yards. The trunk of the motorcar is separated from the rear seat by net of metal bars with space of 02 inches (from where the recovery has been made). He further stated that he with the help of two constables namely, Saif Ullah and Yousaf Khan weighed all the packets having different sizes and consumed 40/50 minutes upon entire proceedings. Constable Saif Ullah/PW-5 went to the Police Station via motorcycle. The IO reached the spot at about 1310 hours and prepared site plan Ex. PB on pointation of complainant/PW-4. PW-5, the eyewitness was also found in conformity with the PW-4/complainant i.e., on the points of time of their departure from Police Station, time of their arrival on the spot, recovery, weighment of recovered chars by PW-4, separation of samples, packing and sealing of the same by complainant, taking Murasila, card of arrest and recovery memo to Police Station by him (PW-5), handing over of the same to Moharrir/PW-3, his return to the spot, time of arrival of IO on the spot and conducting proceedings

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by IO on the spot. Similarly, the IO in his cross examination as PW-6 was also found in conformity with the other two PWs regarding all material points including chain of events connecting the accused with the commission of offence. Learned counsel for defence during arguments referred to cross examination of PW-4 and PW-5 and submitted that neither the complainant/PW-4 nor eyewitness/PW-3 has mentioned the kind and colour of chars, that no photographs of the recovered chars and cavity has been taken at the time of recovery, that it is impossible to accommodate 15KG of chars in a space of 02 inches between rear seat & trunk, that the figure '15' has been tempered in the recovery memo with the original figure of '5', that as per version of complainant/PW-4 the accused was on way from Headquarter chowk towards Kohat but in the site plan the accused has been shown going towards the Headquarter chowk with a mark of arrow and that there are material contradictions between the statements of PWs. However, keeping the overall evidence led by prosecution where all the PWs are unanimous on all material facts, the points raised by learned counsel for defence do not create any doubt regarding the mode and manner of occurrence or recovery and the mode and manner of investigation forth following reasons.

**First**, though the colour and kind of chars are not mentioned in Murasila but no question has been put to the

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complainant/PW-4 in cross examination in that respect except that he has not mentioned these particulars in Murasila while the eyewitness/PW-5 when asked about colour of chars he has told that the colour of chars was black brown which is in conformity with report of FSL. **Second**, taking of photographs at the time of recovery are neither necessary nor the requirement of law. **Third**, 02 inches space between trunk and rear seat is enough to accommodate 15KG of chars where 02 inches run from bottom to top of seat extended up to full length of seat. **Fourth**, though there seems some overwriting over figure "5" in recovery memo which cannot be construed as tempering especially when the figure "5" has nowhere occurred on the file at any other place. **Fifth**, though an arrow towards Headquarter chowk is made in site plan Ex. PB but it does not denote the approach of accused from Kohat side towards Headquarter chowk rather it denotes the location of Headquarter chowk towards western side while the approach of accused from Headquarter chowk towards Kohat side has been specifically explained under point "B" in the site plan.

The case of the prosecution regarding the chain of the custody of the representative samples, their transmission to the FSL within the prescribed period of time and following full protocols of the tests applied in the FSL, is; that after seizure of the contrabands by the complainant containing 15

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packets, 10 grams from each of the packet has been separated and sealed by him on the spot with affixing of monograms of 'MS' on each of the parcel. The complainant, after his arrival in the Police Station, has handed over the representative samples to PW-3 Humayun Khan MHC, who has made entry of the case property in register no. 19 and has kept the same in safe custody. On 26.11.2021, the incharge investigation has collected the samples from Moharrir and has handed over the same to constable Shams Ul Ghani/PW-2 to transmit the same to FSL, who has transmitted the same against a road permit certificate and deposited the same in FSL against proper receipt which on return has been handed over to the IO by him. After receipt of FSL report Ex. PK, the same has been placed on file by the IO. The prosecution in order to prove its stance has examined the complainant as PW-4, Humayun Khan MHC as PW-3, Mehdi Hassan SI, the IO of the case as PW-6 and constable Shams Ul Ghani as PW-2. All the four witnesses have narrated the aforementioned story in their statements. The complainant/PW-4 in cross examination has told that he has weighed each packet separately through digital scale of grey colour. That while extracting samples, the yellow colour scotch tape was not removed rather cut. That he himself has weighed each packet, however, he has been assisted by constables Saif Ullah and Yousaf Khan. Regarding transmission of case property from

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spot and handing over of the same to PW-3 in the Police Station, no question has been put to PW-4/complainant. With respect to transmission of the samples to FSL, PW-2 in cross examination confirmed the facts that on 26.11.2021 the IO handed him over the samples in sealed condition along with application and transit receipt at 07:00 am and he left the Police Station, reached the FSL at 11:00 O'clock, handed over parcels to the official of FSL against a proper receipt of the same which on return he handed over to the IO and that he returned the Police Station on same day at 04:30 am. Nothing contradictory could be extracted from the mouth of PW-2 as to the fact that either the parcels were not handed over to him or these were not in sealed condition.

All the facts regarding the chain of safe custody of case property and transmission of representative samples to FSL i.e., separation of representative samples from each packet, packing and sealing of the same with packing and sealing of the remaining chars in parcel no. 16, transmission of the same form spot to Police Station, handing over of the same to Moharrir/PW-3, entry of these in register no. 19, handing over of the representative samples to IO/PW-6 and transmission of the same to FSL by PW-2 the next day of occurrence, are duly proved while in cross examination the defence has failed to extract anything contradictory towards the safe custody of case property and transmission of samples

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from the spot to the Police Station and thereafter to the FSL except that the PW-2 has not handed over the travelling ticket to IO on return.

Similarly, as per report of FSL Ex. PK, the representative samples no. 1 to 15 have been delivered to FSL on 26.11.2021, the next day of the registration of FIR without any delay and all the 15 parcels have been found positive for chars after following full protocols of the tests applied. Hence, the case of the prosecution is substantiated by the report of FSL.

- (11). In light of aforementioned discussion, it is held that the prosecution has proved the mode and manner of recovery, the mode and manner of occurrence, the mode and manner of investigation conducted on the spot, safe custody of case property, the chain of transmission of the representative samples from spot till delivery in the FSL and the positive result of FSL and has successfully proved its case against the accused facing trial without any shadow of doubt. Hence, the accused facing trial, Zia Ur Rehman is held guilty for having in his possession 15,000 grams of chars. He is convicted u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 "*punishable with death, imprisonment for life or imprisonment for a term which may extend to 14 years and with fine which may extend to Rs. 1000000 and not less than 05 lacs if the quantity of narcotics substance*

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*exceeds the limit of 01 kilograms. Provided that if the quantity exceeds 10 kilograms, the punishment shall not be less than imprisonment for life in any case."*

As the quantity of chars exceeds the limit of 10 kilograms; therefore, he is sentenced to imprisonment for life and fine of Rs. 600,000/- (six lacs). In case of default of the payment of fine, the accused shall further undergo simple imprisonment for six (06) months. The benefit of section 382-B Cr.P.C is extended to the accused. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision. The motorcar, being used in the commission of offence, is confiscated to the state. Copy of the judgement delivered to the accused today free of cost and his thumb impression to this effect obtained at the margin of the order sheet. The copy of judgement also be issued to the District Public Prosecutor u/s 373 of the Cr.P.C free of cost. Consign.

**Pronounced**  
29.06.2022


  
**SHAUKAT AHMAD KHAN**  
Sessions Judge/Judge Special Court,  
Orakzai at Baber Mela



**CERTIFICATE**

Certified that this judgement consists of fifteen (15) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 29.06.2022

  
**SHAUKAT AHMAD KHAN**  
Sessions Judge/Judge Special Court,  
Orakzai at Baber Mela