

IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI

Case No5/3 of 2022.

Date of institution.....21.09.2022.

Date of decision.....22.11.2023.

Case FIR No. 14 Dated: 13.03.2022 U/S 05 Explosive Substances Act, 2013, PS CTD,
KohatOrder. 25

22.11.2023

Accused Muhammad Zahid on bail present. Arguments on application u/s 249-A Cr.PC already heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that on 13.03.2022, complainant SI Hashim Khan along with Abdul Hameed IHC, Badshah Khan HC No. 905, Umar Hayat No. 1140, Adeel Baig No. 1102, Tahir Khan No. 1532 and other police nafri, under the command of DSP CTD Asif Mehmood, were busy in search operation at Mishti Mela, Utman Zai Orakzai when received information that accused Muhammad Zahid S/O Aqel Khan R/O Mishti, Utman Zai, Orakzai, who supplies arms and ammunitions to terrorists, is present in his house. On this information, they rushed to the house of accused where he was present. He was interrogated and on his pointation, a sack lying beneath the charpai in the residential room of the spot house was recovered. On checking the same, it was containing 06 RPG-07 shells, 06 propelling of RPG-07 shells which he took into possession accordingly. BDU staff was called to the spot who defused/made safe the shells. Certificate was handed over to him. The recovered shells were packed and sealed into parcel No. 1 and 2 (Ex.P-1 and Ex.P-2) by affixing seals in the mark of HK and 1/1 seal was put inside the parcels. Accused was arrested at the spot. Murasila was also drafted at the spot and sent to PS CTD, Kohat for



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registration of the case through Abdul Hameed IHC. Recovery memo is Ex.PW-4/1, Card of arrest is Ex.PW-4/2, Murasila is Ex.PW-4/3. Accused and case property was handed over to Muharrir of PS. After registration of the case, he pointed out the spot to the IO who prepared site plan on his pointation.

After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 05 PWs have been examined.

Ishtiaq Ali, Incharge BDU, was examined as PW-01. He stated that on 13.03.2022, he was present in PS Kalaya when received message through wireless from control room, PS Mishti Mela. He proceeded to the spot i.e. Utmanri, Mishti Mela, Orakzai where complainant SI Hashim Khan was present who produced sections of RPG-07 along with six fuses of RPG-07. After doing the needful, he prepared report at the spot and handed over the same to SI Hashim Khan. Report is Ex. PW-1/1.

Muhammad Tariq DSP, CTD Kohat was examined as PW-02. He stated that after receiving copy of FIR along with other relevant documents, he proceeded to the spot and prepared site plan Ex.PB on the pointation of complainant SI Hashim Khan. Accused was handed over to him for interrogation/completion of investigation. On 14.03.2022, he produced the accused before the court for obtaining his physical custody vide his application Ex.PW-2/1. 02-days physical custody of the accused was granted by the court. He interrogated the accused and recorded his statement u/s 161 Cr.PC. On 15.03.2022, he vide his application Ex.PW-



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2/2 applied for provision of financial information regarding the accused facing trial. Correspondings were made by Superintendent of Police, CTD Kohat region, Kohat. Letter No. 582-84/CTD dated Kohat the 16-3-2022, letter No. 568/CTD dated Kohat the 16-3-2022 and letter No. 581/CTD Kohat the 16-3-2022, letter No. 580/CTD dated Kohat the 16-3-2022 are Ex. PW-2/3 to Ex. PW-2/6. After expiry of period of physical custody of accused, he produced the accused before the court concerned for recording his confessional statement u/s 164/364 Cr.PC vide his application Ex. PW-2/7. Accused refused to confess his guilt before the court, resultantly, accused was committed to judicial lock-up. He has also sent the recovered 06 RPG-07 shells and propelling of RPG-07, 06 shells to BDU, Peshawar for examination. Copy of application is Ex. PW-2/8. BDU report was received and placed on file. The same is Ex. PW-2/9. He has also recorded statements of PWs u/s 161 Cr.PC. Efforts were made to collect information regarding properties of accused facing trial but no property of the accused was traced. There is no land record in this newly merged districts and to this effect he recorded statements of Malak Syed Ameen and Habib Ullah which are placed on file. After completion of investigation, case file was handed over to SHO concerned for submission of complete challan against the accused.



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PW-03, is the statement of Jamshid LHC, CTD Kohat region, Kohat. He stated that parcels containing case property consisting of 06 RPG-07 shells and 06 RPG propelling of RPG-07 shells along with road permit certificate and application was handed over to him by Muharrir of PS CTD Kohat and he took the same to BDU Peshawar for examination. He obtained receiving signature of the official concerned. After examination, case property was handed over to him. He returned back

and handed over receipt to Muharrir accordingly. His statement was recorded by IO u/s 161 Cr.PC.

Sub-Inspector Hashim Khan, who is complainant of the case, was examined as PW-04. He stated that during the days of occurrence, he was posted in CTD Orakzai. On the day of occurrence, he along with Abdul Hameed IHC, Badshah khan HC No. 905, Umar Hayat No. 1140, Adeel Baig No. 1102, Tahir Khan No. 1532 and other police nafri, under the command of DSP CTD Asif Mehmood were busy in search operation at Mishti Mela, Utman Zai Orakzai when received information that accused Muhammad Zahid S/O Aqel Khan R/O Mishti, Utman Zai Orakzai, who supplies heavy arms and ammunitions to terrorists, is present in his house. On this information, they rushed to the house of accused where he was present. He was interrogated and on his pointation, a sack lying beneath the charpai in the residential room of the spot house, was taken into possession which was containing 06 RPG-07 shells, 06 propelling of RPG-07 shells. BDU staff was called to the spot who defused/made safe the shells. Certificate was handed over to him. The recovered shells were packed and sealed into parcel No. 1 and 2 by affixing seals with mark of HK and 1/1 seal was put inside the parcels. Accused was arrested at the spot. Murasila was also drafted at the spot and sent to PS CTD, Kohat for registration of the case through Abdul Hameed IHC. Recovery memo is Ex.PW-4/1, card of arrest is Ex.PW-4/2, murasila is Ex.PW-4/3. Accused and case property was handed over to Muharrir of PS. After registration of the case, he pointed out the spot to the IO who prepared site plan on his pointation.



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Assistant Sub-Inspector, Abdul Hameed Khan, PS CTD Kohat, who is one of the marginal witnesses, was examined as PW-05. He


stated that during the days of occurrence, he was posted as IHC at PS CTD Kohat. On the day of occurrence, he was present with the complainant SI Hashim Khan during house search of the accused and in his presence, the complainant recovered and took into possession a sack lying beneath the charpai in the residential room of the spot house on the pointation of the accused. On checking the same, it was containing 06 RPG-07 shells, 06 propelling of RPG-07 shells which was taken into possession vide recovery memo exhibited as Ex.PW-4/1 in his presence. The recovered items were packed and sealed into parcel No. 1 and 2 by affixing 3/3 seals in the mark of HK, 01/01 seal was put inside the parcels. Parcels containing case property are Ex.P-1 and Ex.P-2. Murasila was handed over to him which he took to PS CTD Kohat for registration of the case. BDU staff was called to the spot who defused/made safe the shells. His statement was recorded u/s 161 Cr.PC.

Perusal of record transpires that the alleged occurrence took place on 13.03.2022 at 13:00 hours in the house of accused Muhammad Zahid situated at Qaum Mishti, Utmanri, Orakzai and it was reported on 13.03.2022 at 14:00 hours and FIR was registered on 13.03.2022 at 17:30 hours. PW-01 stated in his cross examination that his statement was recorded by IO u/s 161 Cr.PC on 13.03.2022 while on the other hand, IO who deposed as PW-02, stated that he visited the spot on 14.03.2022 and recorded statements of PWs u/s 161 Cr.PC. On 13.03.2022, IO did not visit the spot then how it is possible that statement of PW-01 was recorded on 13.03.2022? PW-01 also deposed that BDU staff consisted of three officials. He does not know name of the IO. PW-02 stated in his cross examining that relevant DD report of CTD Kohat is not placed on file. He cannot tell exact time of spot inspection. He also deposed that he


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was accompanied with by lady constable, however, he has not recorded statement of the said lady constable. It is correct that he has not placed on file any documentary proof regarding ownership of accused in respect of the spot house. He does not know name of the village where the spot house is situated which means he never visited the spot house. He reached the spot at about 12:00/01:00 pm. PW-03 stated in his cross examination that parcels containing case property were handed over to him on 15.03.2022 by the Muharrir. PW-04 stated in his cross examination that only one official from BDU Orakzai came to the spot. On the other hand, PW-05 stated in his cross examination that 02 BDU officials came to the spot before 01:00 pm. PW-01, who is one of the BDU officials, stated that they were three officials who went to the spot when called upon. PW-04 also deposed that it is correct that no search warrant was obtained from the court concerned despite prior information. He does not remember the time of arrival of IO to the spot. He was not accompanied with by any lady constable at the time of house search. At the time of spot pointation, BDU official was present which contradicts statement of PW-01. It was single story house. It was consisting of 03 rooms. He cannot tell the color of main gate of the spot house. It is correct that name of the BDU official is not mentioned in the murasila. PW-05 stated in his cross examination that the spot was visited by the IO on the following day of the occurrence but he was not present during spot pointation/inspection. Two BDU officials came to the spot before 01:00 pm. He left the spot alone for PS. It was about 01:00 pm when he left the spot for PS. Packing and sealing of the parcels took about one hour. Preparation of murasila, recovery memo and card of arrest by complainant took about 30 minutes. He does not remember color of the


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main gate of the spot house. He reached PS CTD Kohat at about 02:00 pm. Per record, the recovery was made at 13:00 hours, time of report is 14:00 hours and time of registration of FIR is 17:30 hours. Per statement of PW-05, preparation of the murasila, recovery memo and card of arrest took about 30 minutes while packing and sealing of the parcels took about one hour. If the spot proceedings took about one hour and 30 minutes, then how it is possible that the murasila carrier left the spot for PS at 13:00 hours. He also deposed that he reached PS CTD Kohat at about 14:00 hours. The spot is situated at Mishti Mela Utmanri, Lower Orakzai and the PS is situated at Kohat. The distance in between Mishti Mela Utmanri, Orakzai and Kohat would be 90/95 KMs. It does not appeal to prudent mind that murasila bearer reached PS CTD Kohat within one hour from Mishti Mela, Orakzai. There are so many material contradictions in the statements of PWs which is fatal to the case of prosecution. There are so many dents and doubts in the case of prosecution.

Furthermore, recovery of the arms and ammunitions has not been effected from the personal possession of the accused facing trial rather the alleged recovery was made from a joint house. Despite prior information regarding supply of arms and ammunitions by the accused to terrorists, no search warrant was obtained from the court concerned. Neither any lady constable nor any private person from the locality was associated. The mode and manner of arrest of the accused facing trial and that of the recovery is not confidence inspiring. Nothing incriminating has been recovered from the direct possession of accused facing trial or on his pointation despite grant of police remand by the court. Accused has not confessed his guilt before the court. There are so many dents and



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doubts in case of prosecution benefit of which goes to the accused. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial is acquitted from the charges leveled against him. He is on bail. His sureties stand discharged from their liability.

Case property be dealt with in accordance with law.

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

Announced.
22.11.2023



(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai