


FORM "A"  
FORM OF ORDER SHEET


IN THE COURT OF SYED ABBAS BUKHARI, CIVIL JUDGE/JUDICIAL MAGISTRATE/CJ-II, KALAYA ORAKZAI  
Case Title: State Vs Abdul Malcan

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order 23	16.12.2023	<p>APP for the state present. Accused facing trial namely Habib Aziz present on bail along with counsel while rest of the accused facing trial are exempted.</p> <p>Vide this order I intend to dispose of instant application filed u/s 249-A Cr.P.C.</p> <p>Arguments already heard and record perused.</p> <p>Now on perusal of the available record and valuable assistance of the learned counsel for the accused petitioners and learned APP for the stated, this court is of the humble view that accused petitioners through instant application allege that a series of contradiction exist in the statements of PWs and furthermore, there are serious dents in the evidence so far recorded by the prosecution, which make the case of prosecution one of further inquiry. Hence there is no probability of conviction of accused at later stage after recording of entire/remaining evidence of prosecution. Contrary to this learned APP for the state vehemently opposed the instant application and argued that accused have been directly charged in the instant case. Furthermore, no delay in lodging of FIR has been proved on the part of complainant. He further argued that there exist no dent in the prosecution evidence and furthermore, the application in hand is pre-mature, hence the prosecution may kindly be allowed to produce their remaining evidence in order to bring home the charge against accused facing trial.</p> <p>In given circumstances perusal of the available record would reveal that as per contents of the FIR, the complainant received information that some militants/terrorists are entering District Orakzai from District Khyber with intention to conduct terrorist activity. Upon said information, he alongwith other police personnel rushed to the spot and arranged barricade on the spot. Meanwhile four persons came from the District Khyber on foot, who were engaged and accordingly arrested by the police party and disclosed their names as accused facing trial. Upon their body search hand grenades and Pakistani currency was recovered from their possession.</p> <p>Furthermore, perusal of the evidence, so far recorded by the prosecution, in the instant case would reveal that complainant in the instant case when appeared as PW-07</p>

  
**SYED ABBAS BUKHARI**  
 Civil Judge/Judicial Magistrate/CJ-II  
 Tehsil Courts Kalaya

FORM "A"  
FORM OF ORDER SHEET

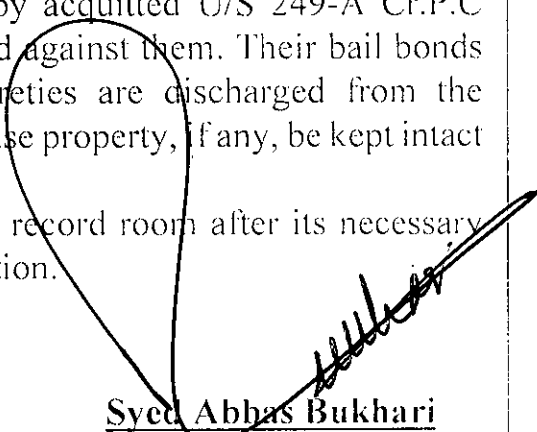
IN THE COURT OF SYED ABBAS BUKHARI, CIVIL JUDGE/JUDICIAL MAGISTRATE/C.J-II, KALAYA ORAKZAI  
Case Title: State Vs Abdul Muteen

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
	 SYED ABBAS BUKHARI C.J-II, KALAYA ORAKZAI Tehsil Courts Kalaya	<p>before this court, had deposed in his cross examination that he was accompanied by 10 police officials while PW-08 had deposed in his cross examination that 06/07 police officials were present along the complainant. On the other hand IO in the instant case when appeared as PW-09 had stated in his cross examination that 05/06 police officials were present on the spot with the complainant. Moreover in site plan Ex-PB IO has given point no.1 to point no.07 to the police party including the complainant. These all contradictory statements of PWs regarding the number of police officials at the spot make the case of prosecution one of further inquiry.</p> <p>As for as consumption of time on drafting of Murasila, recovery memo and card of arrest is concerned, PW-07, complainant, stated in his cross examination that he consumed 45 minutes on drafting of murasila, recovery memo and card of arrest while PW-08 stated in his cross examination that complainant took 60 minutes in drafting the same.</p> <p>As for as arrival of the IO to the spot is concerned, PW-07 has deposed in his cross examination that IO reached the spot at 06:00PM while PW-08 had deposed in his cross examination that IO reached the spot at about 18:25 hours.</p> <p>As for as carrier of Murasila, namely sher badshah, is concerned, PW-07 stated in his cross examination that IO alongwith constable Sher Badshah came to the spot and no other police official accompanied the IO to the spot while PW-08 in his cross examination has deposed that the carrier of murasila (constable Sher Badshah) did not came back to the spot after handing over the murasila in the PS. He further deposed that IO came to the spot alongwith other 02/03 officials. Similarly PW-09 has deposed in his cross examination that Murasila bearer Sher Badshah came to the spot from PS with him in the official vehicle.</p> <p>As for as the BDU report is concerned, PW-05 has deposed in his examination in chief that he prepared the same on the spot and handed over to complainant Muhammad Hashim. However on the other hand perusal of bail order dated: 06.07.2022 would reveal that in para no.05 of the said order it has been mentioned therein that</p>

**FORM "A"**  
**FORM OF ORDER SHEET**

IN THE COURT OF SYED ABBAS BUKHARI, CIVIL JUDGE/JUDICIAL MAGISTRATE/CJ-II, KALAYA ORAKZAI

Case Title: State Vs Abdul Mateen

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate-and that of parties or counsel where necessary
1	2	3
		<p>“no BDU report is available on record despite of sending samples on 27.06.2022”. Furthermore, presumption of truth is attached to said bail order being judicial record and thus the stance of PW-05 that he prepared the BDU report on the spot and handed over the same to the IO does not appeal to the prudent mind.</p> <p>Furthermore, there is no record available on the record regarding previous criminal history of the accused and in this respect PW-09 has deposed in his cross examination that there is no criminal history of the accused available on the record. Moreover, no independent witness has been cited as witness in the instant case and thus prosecution failed to comply with the mandatory provisions of section 103 Cr.P.C.</p> <p>Hence, in the light of above discussion, I am of the opinion that case of prosecution is full of dents and is one of further inquiry. Furthermore, there exist vast contradiction in the statements of PWs. Hence there is no probability of the conviction of accused facing trial at later stage after recording of entire prosecution evidence rather it would be a futile exercise and would be wastage of precious time of this court. Accordingly the application filed u/s 249-A Cr.P.C. is hereby allowed and accused facing trial namely Abdul Mateen alias Abwahid, Abdul Wahid sons of Din Muhammad, Habib Aziz alias Mohib son of Meer Hassan Khan and Rahmat Ullah alias Sufian s/o Zundi Gul are hereby acquitted U/S 249-A Cr.P.C from the charges levelled against them. Their bail bonds stand cancelled and sureties are discharged from the liability of bail bonds. Case property, if any, be kept intact till period of appeal.</p> <p>File be consigned to the record room after its necessary completion and compilation.</p> <p><b><u>Announced</u></b> 16.12.2023</p> <p style="text-align: right;"> <b>Syed Abbas Bukhari</b> JM-II Kalaya, Orakzai</p>