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

SPECIAL CASE NO. : 60/3 OF 2021
DATE OF INSTITUTION : 05.11.2021
DATE OF DECISION : 21.02.2022

STATE THROUGH NAIMAT ALI SHO, PS KUREZ BOYA, DISTRICT
ORAKZAI

.....(COMPLAINANT)

-VERSUS-

1. HABIB ULLAH S/O ADAM KHAN, AGED ABOUT 24 YEARS, R/O
AWAMI GATE KHIABAN SIR SYED, RAWALPINDI
2. NAUMAN FAROOQ S/O MUHAMMAD FAROOQ, AGED ABOUT
26 YEARS, R/O ABBOTTABAD
..... (ACCUSED FACING TRIAL ON BAIL)

Present: Umar Niaz, District Public Prosecutor for State.

: Jabir Hussain and Insaf Ali Advocates for accused facing trial.

FIR No. 22 **Dated:** 10.09.2021 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kurez Boya

JUDGEMENT
21.02.2022

The accused named above faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic
Substances Act, 2019 vide FIR no. 22, dated 10.09.2021 of PS
Kurez Boya.

The case of the prosecution as per contents of Murasila
Ex. PA converted into FIR Ex. PA/1 is; that on 10.09.2021
complainant, Naimat Ali SHO, the PW-2 along with other
police officials having laid a picket, were present near Police
Station Kurez Boya. At about 1830 hours a white colour
Suzuki Van bearing registration No. DE238/Islamabad on way
from Teerah towards the picket, was stopped by the police for

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the purpose of checking. The driver of the vehicle disclosed his name as Habib Ullah s/o Adam Khan while the person seated in front seat of the vehicle disclosed his name as Nauman Farooq s/o Muhammad Farooq. Upon search of the vehicle, the complainant/PW-2 recovered 02 packets of chars from a box placed under the seat, 01 packet from right side door and 01 packet from left side door of the vehicle, each one was wrapped in yellow colour adhesive tape, on weighing each packet turned 1000 grams, a total of 4000 grams. The complainant/PW-2 separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same in parcels no. 1 to 4 whereas the remaining quantity of chars weighing 3960 grams were sealed in parcel no. 5. Both the accused were accordingly arrested by issuing their joint card of arrest, Ex. PW 2/1. The complainant/PW-2 took into possession the recovered chars alongwith Suzuki Van bearing No. DE239/Islamabad vide recovery memo Ex. PC. Murasila Ex. PA was drafted and sent to the PS through Faheem Hassan which was converted into FIR Ex. PA/1 by PW-6, AMHC Asmat Ali.

- (3). After registration of FIR, it was handed over to PW-5, Ishtiaq Hassan SI for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan Ex. PB on the pointation of complainant, sent the samples for chemical analysis to FSL vide his application Ex. PW 5/5 and road

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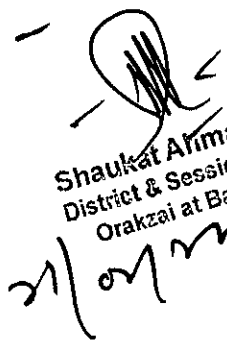
permit certificate Ex. PW 5/6 through constable Shamshir Ali, PW-1, the result whereof Ex. PK was received and placed on file by him. After completion of investigation, he handed over the case file to SHO who submitted complete challan against the accused facing trial.

(4). Upon the receipt of case file for the purpose of trial, the accused were summoned, copies of the record were provided to them in line with section 265-C Cr.P.C and formal charge was framed against them to which they pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence of prosecution is as follow;

I. Constable Shamshir Ali is PW-1. He on 21.09.2021 has taken the samples of recovered chars in parcels no. 1 to 4 alongwith application Ex. PW 5/5 and road permit certificate Ex. PW 5/6 for chemical analysis through FSL and after submission of the same, he was given the receipt of parcels which he handed over to the IO upon his return.

II. Naimat Ali SI, police line District Orakzai, appeared in the witness box as PW-2 and repeated the story narrated in the FIR.

III. Constable Asmid Ali appeared in the witness box as PW-3. He besides eyewitness of the occurrence, is the marginal witness of recovery


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memo Ex. PC as well, vide which the complainant/PW-2 has taken into possession the recovered chars alongwith Suzuki Van. He also reiterated the contents of FIR in his statement.

IV. HC Zaman Ali is PW-4. On 21.09.2021 he has handed over samples of chars in parcels no. 1 to 4 and Suzuki Van to the IO for its onward transmission to FSL.

V. Investigating Officer Ishtiaq Hassan was examined as PW-5. He has prepared the site plan Ex. PB on pointation of the complainant, recorded statements of witnesses on the spot, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/1 & Ex. PW 5/2, recorded statements of both the accused u/s 161 CrPC, sent the representative of samples to FSL vide his application Ex. PW 5/5 and road permit certificate Ex. PW 5/6 and result of the same Ex. PK was placed on file by him. He has also examined the vehicle through FSL and the report whereof is Ex. PK/1, took the vehicle to Excise and Taxation Office alongwith application Ex. PW 5/7 vide his letter to DPO Orakzai Ex. PW 5/8 and the report of ETO is Ex. PW 5/9, placed on file copy of register No. 19 Ex.

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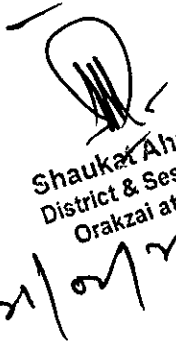
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PW 5/10 with copy of Daily Diary No. 3 Ex. PW
5/11 and submitted the case file to SHO for
onward proceedings.

VI. AMHC Asmat Ali is PW-6. He has drafted FIR
Ex. PA/1 from the contents of Murasila Ex. PA.
He has received the case property from
complainant which he has kept in mal khana in
safe custody while parked the Suzuki Van in
courtyard of PS and to that effect he has made
entry in register no. 19 Ex. PW 5/10.

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

(6). Learned DPP for the State submitted that the accused
facing trial are directly nominated in the FIR, huge quantity of
chars have 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 sample for chemical analysis has been
transmitted to the FSL which have been found positive for
chars vide report of FSL Ex. PK, the official transmitted the
sample to the FSL and the IO have been produced by the


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prosecution as witnesses, whom have fully supported the case of 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 are directly nominated in the FIR, the alleged chars have been shown recovered from possession of the accused facing trial and the report of FSL support the case of prosecution; however, the accused facing trial are falsely implicated in the instant case. 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.

In the light of arguments advanced by the learned DPP for the State and learned counsel for the 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 and the investigation have been conducted in the mode and manner as detailed in the file?

(6)

(ii). Whether the recovered substance is proved through report of FSL as chars?

(9). The case of prosecution as per Murasila Ex. PA/1, the site plane Ex. PB and recovery memo Ex. PC is, that on 10.09.2021 complainant, Naimat Ali SHO, the PW-2 alongwith other police officials having laid a picket, were present near Police Station Kurez Boya. At about 1830 hours a white colour Suzuki Van bearing registration No. DE238/Islamabad on way from Teerah towards the picket, was stopped by the police for the purpose of checking. The driver of the vehicle disclosed his name as Habib Ullah s/o Adam Khan while the person seated in front seat of the vehicle disclosed his name as Nauman Farooq s/o Muhammad Farooq. Upon search of the vehicle, the complainant/PW-2 recovered 02 packets of chars from a box placed under the seat, 01 packet from right side door and 01 packet from left side door of the vehicle, each one was wrapped in yellow colour adhesive tape, on weighing each packet turned 1000 grams, a total of 4000 grams. The complainant/PW-2 separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same in parcels no. 1 to 4 whereas the remaining quantity of chars weighing 3960 grams were sealed in parcel no. 5. Both the accused were accordingly arrested by issuing their joint card of arrest Ex. PW 2/1. The complainant/PW-2 took into possession the recovered chars alongwith Suzuki Van bearing No. DE239/Islamabad vide recovery memo Ex. PC.

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Murasila Ex. PA was drafted and sent to the PS through Faheem Hassan which was converted into FIR Ex. PA/1 by PW-6, AMHC Asmat Ali. After registration of FIR, it was handed over to PW-5, Ishtiaq Hassan (SI) for investigation who proceeded to the spot where he prepared the site plan Ex. PB and recorded the statements of PWs on the spot.

The prosecution in order to prove its case, produced complainant of the case Naimat Ali (ASI) as PW-2. He reiterated the contents of report in his examination in chief. Constable Asmid Ali who besides being eyewitness of the occurrence, is marginal witness to the recovery memo Ex. PC, was examined as PW-3. He also supported the case of prosecution in his examination in chief and narrated almost the same facts as narrated by PW-2. Both the witnesses were cross examined on the points of the departure and return of police party to the PS, the mode and manner of recovery, drafting of recovery memo, Murasila and issuance of card of arrest, the time of registration of FIR and the arrival of IO on the spot and investigation conducted by him. With respect to departure and return of the complainant party to the PS, copy of Daily Dairy No. 8 and Daily Dairy No. 16, Ex. PW 5/11, are placed on file. According to which the complainant/PW-2 along with Constable Asmid Ali/PW-3 and constable Murtaza Hassan, Faheem Hassan and Ishaq Ali had left the PS for patrolling at 1050 hours and their return to the PS has been recorded as 2030 hours, but according to the cross examination of

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complainant/PW-2, they had left the PS at 08:00 am, returned at 02:00 pm and thereafter they laid a picket in front of the PS at 05:00 pm. Similarly, when PW-3, the eyewitness of the occurrence was cross examined on this point he told a different story i.e., that they had left the PS at 05:00 pm and laid a picket in front of the PS at 05:30 pm. The aforementioned contradictions make the presence of the complainant party doubtful on the spot to the fact that as to whether, after leaving the PS at 10:50 am (as per Daily Dairy) or at 08:00 am (as per cross examination of PWs), they returned to the PS at 02:00 pm or 08:30 pm. As per version of the complainant they remained on patrolling till 08:30 pm. In that respect if the version of the complainant is taken as correct i.e., that they had left the PS at 08:00 am and returned to the PS at 02:00 pm and then laid a picket in front of the PS at about 05:00 pm, in that case there is no record that while leaving the PS again and laying a picket at 05:00 pm in front of the PS whom he was accompanied by.

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With respect to mode and manner of recovery, according to the cross examination of complainant/PW-3 they laid a picket in front of PS at 05:00 pm, the vehicle arrived at 06:30 pm, they took an hour all the proceedings including recovery, sampling and drafting of the documents and dispatched the documents through constable Faheem Hassan at about 08:00 pm, but according to Murasila Ex. PA and FIR Ex. PA/1 the occurrence has taken place at 06:30 pm, the

Murasila has been drafted at 07:00 pm and the FIR has been registered at 07:40 pm. Thus, the aforementioned story narrated by the complainant in his cross examination and the story narrated in the FIR contradicts each other i.e., if the stance of the complainant regarding dispatch of documents to the PS for registration of FIR at 08:00 pm is admitted as correct then the story disclosed in the Murasila and FIR seems incorrect where the FIR has been registered at 07:40 pm. The complainant in his cross examination about his return to PS and the arrival of IO on the spot has stated that he returned to the PS at 08:00 pm and the IO came to spot at 07:00 pm which again contradicts the version of the complainant i.e., if the stance of the complainant regarding arrival of the IO on the spot at 07:00 pm is admitted as correct in that case too, the

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story narrated in the FIR seems doubtful where at 07:00 pm even the FIR was not registered.

With respect to the recovery of alleged chars, the version of the prosecution in the Murasila Ex. PA, FIR Ex. PA/1 and court statements of PW-2 and PW-3, the complainant/PW-2 recovered two packets of chars from beneath the seat and one packet of chars each from right and left side doors of Suzuki Van. When PW-2 was cross examined on this point he stated that two packets of chars from beneath the seat were recovered by him while one packet of chars was recovered by Constable Asmid Ali (PW-3) and one packet of chars was recovered by Murtaza HC from side doors

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of the Van. This fact has neither been mentioned in the Murasila nor in court statement of the complainant or the eyewitness. Similarly, Murtaza HC who had allegedly recovered one packet of chars has not been examined. The carrier of Murasila to the PS has also not been examined.

With respect to preparation of the sampling and transmitting the same to PS and from there to FSL, the case of prosecution is that the complainant/PW-2 separated 10 grams of chars from each of packet and sealed in parcels no. 1 to 4 while remaining quantity of chars in each packet was sealed in parcel no. 5. The case property alongwith representative samples were handed over to PW-6, AMHC Asmid Ali who kept the same in Mal khana of the PS and made entry of the case property in register no.19, Ex. PW 5/10. On 21.09.2021 Head Constable Zaman Ali handed over parcels no. 1 to 4 to

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PW-5, the IO of the case, who handed over the same to PW-1 Constable Shamshir Ali for transmitting the same to FSL. Accordingly, PW-1 took the samples to FSL alongwith application to FSL vide application Ex. PW 5/5 and road permit certificate Ex. PW 5/6. PW-1, on his return, handed over the receipt issued by FSL to IO. The prosecution in order to prove its stance, produced the complainant as PW-2, Asmid Ali AHMC as PW-6, the investigation officer as PW-4 and Constable Shamshir Ali as PW-1. In their court statements they supported the contention of prosecution and narrated the aforementioned story in their examination in chief. The

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witnesses were cross examined wherein it was admitted by the IO that the samples were not dispatched to the FSL within the prescribed period of 72 hours, rather they were sent to FSL with delay of about 10 days. Moreover, with respect to deposit of the case property in Mal khana and entry of the same in register no. 19, PW-6 in his cross examination stated that the FIR was chalked by him at 1940 hours while the details of case property in register no. 19 were entered by him at 1800 hours which led to a doubt that as to how the entry of case property was made in register no. 19 even prior to recovery of the same which, as per version of prosecution has been made at 1830 hours. Similarly, extract of the copy of register no. 19, Ex. PW 5/10 is available on file, according to which representative samples in parcels no. 1 to 4 have been sent to FSL on 21.09.2021 while it has been prepared by PW-4 from the original on 10.09.2021 i.e., on the very day of occurrence which bears the antedated entry of dispatch of parcels to FSL.

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In view of the aforementioned discussion, it is held that admittedly the representative samples have not been sent to FSL within the prescribed period of 72 hours and the chain of safe custody and transmission of the representative samples is also doubtful; therefore, the report of FSL Ex. PK cannot be relied upon in support of case of the prosecution.

(10). In view of the aforementioned discussion, it is concluded that the prosecution has failed to prove the mode and manner of recovery as detailed on the file, the


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representative samples have not been sent to FSL within the prescribed period of 72 hours and its safe custody is also not proved; therefore, the accused facing trial namely, Habib Khan and Nauman Farooq are acquitted of the charge levelled against them by extending them the benefit of doubt. Accused are on bail, their bail bonds stand cancelled and their sureties are released of the liabilities of bail bonds. The case property i.e., chas be destroyed after the expiry of period provided for appeal/revision in accordance with law while the vehicle has already been returned. Consign.

Pronounced
21.02.2022


SHAUKAT AHMAD KHAN
Sessions Judge/Judge Special Court,
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CERTIFICATE

Certified that this judgement consists of thirteen (13) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 21.02.2022


SHAUKAT AHMAD KHAN
Sessions Judge/Judge Special Court,
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