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**IN THE COURT OF SESSIONS JUDGE, ORAKZAI AT BABER MELA**

Case Title: State VS Muhammad Umar

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 No.08	03.08.2022	<p>DPP, Umar Niaz for the State present and Sana Ullah Khan advocate for accused present. Accused, Muhammad Umar on bail present. PWs Tajmin Khan ASHO and Muhammad Idrees present and examined as PW-3 and PW-4 respectively while PW Muhammad Inam is abandoned by the prosecution. Counsel for the accused submitted application for acquittal of the accused u/s 265-K CrPC. Notice of the application is given to the prosecution and arguments heard. To come up for order on application u/s 265-K CrPC/evidence of prosecution for 05.08.2022. Remaining PWs also be summoned for date fixed.</p> <p style="text-align: right;"> (SHAUKAT AHMAD KHAN) Sessions Judge/Judge Special Court, Orakzai at Baber Mela</p>
Order No.09	05.08.2022	<p>DPP, Umar Niaz for the State present and Sana Ullah Khan advocate for accused present. Accused, Muhammad Umar on bail present.</p> <p>(2). The accused Muhammad Umar charged for the offence u/s 9 (d) of Khyber Pakhtunkhwa CNSA, 2019 vide FIR no. 09, dated 10.05.2022 of PS Ghiljo, District Orakzai, present.</p> <p>(3). The case of the prosecution as per Murasila based FIR is; that on 10.05.2022 the complainant, Tajmin Khan ASHO along with other police officials acting on</p> <p style="text-align: left;"></p>

FIR no. 09, Dated: 10/05/22, u/s 9 CNSA, PS Ghiljo

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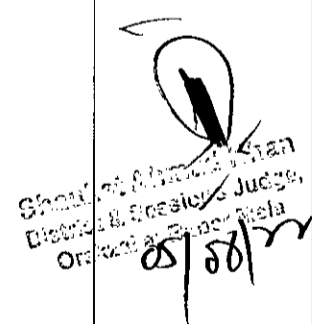
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Contin. Order No.09		<p>information regarding smuggling of narcotics from Mamozai, laid a picket on the spot where at about 1110 hours, a person on way from Mamozai side towards the picket having a white colour plastic bag on his shoulder, was stopped for checking. The search of the bag led the complainant to the recovery of 3000 grams of chars. The complainant separated 10 grams of chars from the total quantity for chemical analysis of FSL, packed and sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 2990 grams and empty bag were sealed in parcels no. 2 &amp; 3 respectively by affixing monograms on all the parcels. The accused disclosed his name as Muhammad Umar s/o Khial Afzal who was arrested by issuing his card of arrest. The complainant took into possession the recovered chars vide recovery memo. Murasila was drafted and sent to the PS through constable Muhammad Idrees which was converted into FIR by Abdul Manan MHC.</p> <p>After registration of FIR, it was handed over to Abdul Malik OII for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan at the pointation of complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 12.05.2022, the IO took the samples for chemical analysis to FSL vide his application</p>

*Signature*  
Sd/- *Abdul Malik*  
District & Sessions Judge,  
Orakzai at Baber Mela  
12/05/22

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<p>Contin. Order No.09</p>		<p>and road permit certificate, the result whereof was received and placed on file by him. After completion of investigation, the IO handed over the case file to Muhammad Ibrahim SHO who submitted complete challan against the accused facing trial.</p> <p>(4). Upon receipt of 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 has so far examined Muhammad Ibrahim SHO as PW-1, who has submitted complete challan in the instant case; Abdul Manan MHC as PW-2 who has registered FIR on the basis of Murasila, received the case property from IO, kept the same in mal khana by making entry of the same in register no. 19 and has handed over the representative sample to IO for taking the same to FSL; Tajmin ASHO as PW-3, who is complainant of the case and Muhammad Idrees as PW-4 who besides eyewitness of the occurrence, is the marginal witness of recovery memo and transmitted the Murasila from the spot to the PS for registration of FIR.</p>

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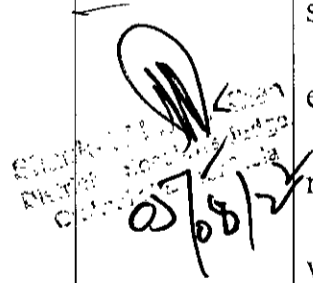
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<p>Contin. Order No.09</p>		<p>Thereafter, counsel for the accused submitted application for acquittal of the accused u/s 265-K CrPC for the reasons mentioned therein.</p> <p>(5). I heard arguments and perused the record.</p> <p>(6). Perusal of the case file shows that as discussed above the case of prosecution as per available record is, that information regarding the smuggling of chars was received to the complainant during patrolling of the area at which he laid a picket near Barlas check-post where at 1110 hours a person having a plastic bag on his shoulder was stopped for the purpose of checking, the plastic bag was searched which led the complainant to the recovery of chars which turned 3000 grams with a plastic bag of 15 grams by weighing the same through digital scale, out of which 10 grams of chars were separated for chemical analysis and packed the same in parcel no. 1 while the remaining quantity of chars and the plastic bag were sealed in parcels no. 2 and 3 respectively. The accused was arrested vide arrest card and the Murasila, card of arrest and recovery memo were sent to police station for registration of FIR through constable Muhammad Idrees.</p> <p>(7). The prosecution in order to prove the aforementioned story has examined the complainant as</p>

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Contin. Order No.09		<p>PW-3 where in his cross examination when he was asked about entry of his departure from the Police Station (PS) in the daily diary (DD), he stated that the entry of his departure was made by Moharrir Abdul Manan/PW-2 in the DD, which has been contradicted by Moharrir Abdul Manan/PW-2 in his cross examination wherein he has stated that</p> <p><i>“The entry of complainant party while leaving the PS was made in the DD by Moharrir Haq Nawaz”.</i></p> <p>With respect to recovery, weighing, packing and sealing of the alleged recovered chars, the complainant in his cross examination stated that</p> <p><i>“The alleged recovered chars were garda i.e., powdered form. I separated 10 grams of chars with knife. The recovered chars were first packed in parcels and thereafter weighed. After removing the chars from plastic bag, the chars were placed by me in the parcel. The parcel no. 2 Ex. P1, allegedly containing the recovered chars today produced in the court, is partially hard/solid and partially in powdered form.”</i></p> <p>The aforementioned statement of the complainant contradicts the version of the complainant as per Murasila</p>


and recovery memo as to the facts, that first the

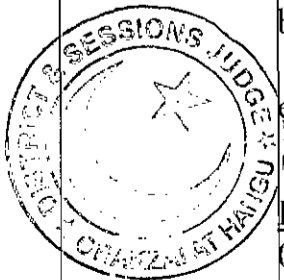
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<p>Contin. Order No.09</p>		<p>complainant has not mentioned the fact that whether the alleged recovered chars was in the form of slab or in powdered form and second when he was cross examined in this respect, he stated that the alleged recovered chars were in powdered form but the chars produced in the court in parcel no. 2 was found partially solid and partially in powdered form. Similarly, it is also not appealable to prudent mind that as to how a sample can be separated from the powder through a knife. Moreover, the representative sample when received in the FSL, the same has been mentioned as in 'solid' form and not in the form of powder. The process of weighing, separating sample, packing and sealing of the alleged recovered chars also seems doubtful, for the reasons that as per aforementioned extract of cross examination of the complainant, if the recovered chars were first packed in parcels and thereafter weighed then as to when the complainant has extracted 10 grams of chars for representative sample. Similarly, when the complainant was asked about any script written on the bag in parcel no. 3, he stated that it contained no writing/script; however, when parcel no. 3 was shown to him, he admitted that some script, written on the bag, is visible from the transparent cloth of the parcel.</p>

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Contin. Order No.09		<p>Furthermore, it has been admitted by the complainant that at the time of laying a picket, Mr. Afsar Khan SI and Muhammad Rashid were present on duty on the check-post. In circumstances of the case, the presence of both the above-named police officials is natural but none of them has been associated as witness with the occurrence even to the extent of any proceedings conducted by the complainant on the spot.</p> <p>(8). In view of what is discussed above, it is held that the evidence of prosecution recorded so far, creates serious doubts regarding the mode and manner of recovery and the proceeding conducted on the spot; therefore, there seems no probability of the conviction of the accused facing trial even if the prosecution is given opportunity to produce further evidence.</p> <p>Hence, on acceptance of application of accused Muhammad Umar, he is acquitted from the charges levelled against him u/s 265-K Cr.P.C. The accused is on bail. His sureties are absolved of the liability of bail bonds. The case property i.e., chargs be destroyed after expiry of period provided for appeal/revision. Consign.</p> <p><b>Pronounced</b> 05.08.2022</p> <p> <b>SHAUKAT AHMAD KHAN</b> Sessions Judge/Judge Special Court, Orakzai at Baber Mela</p>



**SHAUKAT AHMAD KHAN**  
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