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

SPECIAL CASE NO. : 20/3 OF 2022  
DATE OF INSTITUTION : 07.06.2022  
DATE OF DECISION : 28.09.2022

STATE THROUGH ASHRAF ALI ASI, TAZI KHEL CHECK-POST  
.....(COMPLAINANT)

-VERSUS-

IJAZ SAHIL S/O AMEER UMAR KHAN, AGED ABOUT 22/23  
YEARS, R/O GULI BAGH, TEHSIL DARI, DISTRICT UPPER DIR  
..... (ACCUSED FACING TRIAL)

**Present:** DPP, Umar Niaz for the State.  
: Sana Ullah Khan Advocate for accused facing trial.

**FIR No.** 23                      **Dated:** 07.10.2021    **U/S:** 9 (d) of the  
Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 &  
468/471 PPC                      **Police Station:** Kurez Boya

JUDGEMENT  
28.09.2022

The accused named above faced trial for the offence u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 & 468/471 PPC vide FIR no. 23, dated 07.10.2021 of Police Station Kurez Boya.

- (2). The case of the prosecution as per contents of Murasila Ex. PA converted into FIR Ex. PA/1 is; that on 07.10.2021, the complainant, Ashraf Ali ASI/PW-4 acting on information regarding smuggling of huge quantity of narcotics via motorcar by accused Ijaz Sahil and absconding co-accused Muhammad Iqbal, Fazal Manan, Abdul Mateen and Gul Nawaz, laid a picket on the spot. At about 1230 hours, a black colour motorcar bearing registration number AAQ641/Sindh on way from Feroz

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Khel side which was signalled to stop by the police party at which five persons boarding the motorcar, abandoned it and tried to make their escape good from the spot, out of whom the accused facing trial was overpowered by the police party while the rest made their escape good. The search of the motorcar led the complainant to the recovery of 04 packets of chars from front pumper and 06 packets of chars from secret cavity in rear seat of the motorcar, each packet weighing 1000 grams (total 10,000 grams). The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 10 whereas the remaining quantity of chars weighing 3960 grams and 5940 grams were sealed in parcel no. 11 and parcel no. 12 respectively. The accused was arrested by issuing his card of arrest. The complainant took into possession the recovered chars along with the above-mentioned motorcar vide recovery memo Ex. PC. Murasila Ex. PA was drafted and sent to the PS through Constable Mohtashim Ali which was converted into FIR Ex. PA/1 by Moharrir of the PS.

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- (3). After registration of FIR, it was handed over to Ishtiaq Hassan OII for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan Ex. PB on pointation of complainant and recorded the

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statements of PWs u/s 161 Cr.P.C. On 11.10.2021, the IO sent the samples for chemical analysis to FSL through constable Akseer Ali vide his application and road permit certificate, the result whereof was received and placed on file by him. The IO also verified the chassis number of the recovered motorcar from FSL Peshawar and the report with "a welded and refitted chassis number" was received and placed on file by him. After completion of investigation, the IO handed over the case file to SHO who submitted complete challan against the accused facing trial.

- (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. Formal charge was reframed u/s 227 CrPC after receipt of FSL report of motorcar and the accused was charged u/s 468/471 PPC which was denied by him also. Accordingly, the prosecution has so far examined as many as 04 witnesses namely, Constable Akseer Ali, Moharrir Zaman Ali, Aftab Hassan SHO and Ashraf Ali ASI as PW-1 to PW-4 respectively.


- (5). Counsel for the accused submitted application for acquittal of the accused u/s 265-K CrPC for the reasons mentioned therein.

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(6). I heard arguments and perused the record.

(7). Perusal of the case file shows that the occurrence has allegedly taken place during night with no source of light shown on spot. The recovery has not been effected from possession of accused facing trial rather from the motorcar allegedly boarded by the accused facing trial along with absconding co-accused. However, the accused facing trial has neither been shown driving the motorcar nor a single document has been brought on record as to show that either the accused was driving the motorcar or it is owned by him. With respect to the mode and manner of occurrence, the statement of complainant has been recorded as PW-4 where in the very first line of his cross-examination he has stated that he is illiterate and that he can neither read nor write, creating a serious doubt as to how and through whom he has drafted the Murasila, recovery memo and card of arrest. Similarly, as per Murasila, the time of occurrence is 12:30 am while time of report is 12:40 am. In this respect when complainant was cross examined as to how much time he has consumed upon the preparation, weighing, opening, separation of samples and sealing of parcels, he stated that all the proceedings were conducted by him in 50 minutes. When he was put to a suggestion that while taking into account the time spent upon the proceedings

  
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of weighing and preparation of parcels, the time report came to be 01:30 am instead of 12:40 am, he answered the same in affirmative.

(8). Hence, in view of aforementioned discrepancies and dents in the case of prosecution, it is held that there is no possibility of the conviction of accused facing trial, even if the prosecution is given further opportunity to produce the remaining witnesses; therefore, accused namely, Ijaz Sahil is acquitted from the charges levelled against him u/s 265-K Cr.P.C. The accused is on bail. His bail bonds stand cancelled and his sureties are released of the liabilities of the bail bonds.

With respect to absconding co-accused Muhammad Iqbal, Fazal Janan, Abdul Mateen and Gul Nawaz, prima facie case has been made out; therefore, they are declared proclaimed offenders. Perpetual warrants of arrest be issued against them and their names be entered on the roll of register maintained for the purpose.

The case property be kept intact till arrest of the absconding accused and final disposal of the case. Consign.

**Pronounced**  
28.09.2022


  
(SHAUKAT AHMAD KHAN)  
Sessions Judge, Orakzai,  
at Baber Mela



### **CERTIFICATE**

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 28.09.2022

  
(SHAUKAT AHMAD KHAN)  
Sessions Judge, Orakzai,  
at Baber Mela