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STATE VS GUL SAEED
FIR No. 02 | Dated: 27.01.2022 | U/S: 9 (d) of the
Khyber Pakhtunkhwa CNSA 2019 |
Police Station: Dabori

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

SPECIAL CASE NO. : 27/3 OF 2022
DATE OF INSTITUTION : 10.08.2022
DATE OF DECISION : 24.10.2022

STATE THROUGH IMTIAZ KHAN SHO, POLICE STATION DABORI

.....(COMPLAINANT)

-VERSUS-

GUL SAEED S/O IKHTIAR GUL, AGED ABOUT 22 YEARS, R/O
ZAKHA KHEL, LANDI KOTAL DISTRICT KHYBER

..... (ACCUSED FACING TRIAL)

Present: Umar Niaz, District Public Prosecutor for State.
: Sana Ullah Khan Advocate:for accused facing trial.

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Pakhtunkhwa Control of Narcotic Substances Act, 2019
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JUDGEMENT
24.10.2022

The above-named accused faced trial for the offence u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR No. 02, Dated 27.01.2022 of Police Station Dabori.

(2). The case of the prosecution as per contents of Murasila based FIR is; that on 27.01.2022 the complainant, Imtiaz Khan SHO along with other police officials at about 1620 hours during patrolling, stopped a person on the basis of suspicion.

The personal search of whom led the complainant to the recovery of 01 packet of chars, weighing 1190 grams from his trouser-fold. The complainant separated 10 grams of chars from the packet for chemical analysis through FSL, sealed the

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same in parcel no. 1 whereas the remaining quantity of chars weighing 1180 grams were sealed in parcel no. 2 by affixing monograms of 'DB' on all the parcels. The accused disclosed his name as Gul Saeed who was accordingly 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 Police Station through constable Muhammad Mustafa which was converted into FIR by Moharrir Abdullah.

(3). After registration of FIR, it was handed over to Muhammad Ishaq SI/OII for investigation. Accordingly, after receipt of FIR, he reached on the spot, prepared site plan Ex. PB on pointation of complainant, sent the samples for chemical analysis to FSL vide his application through constable Khaista Akbar and road permit certificate, the result whereof 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.

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(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; however, during the course of proceedings the accused absconded himself, therefore after proceedings him u/s 512 CrPC, he was declared proclaimed offender. Later, the accused appeared before the court and


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applied for BBA which was confirmed. Supplementary challan against the accused was submitted and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence of prosecution is as follow;

- I. Muhammad Salman SI is PW-1. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA.
- II. Constable Khaista Akbar is PW-2. He has taken the samples of recovered chars in parcel no. 1 to the FSL along with application Ex. PW 6/2 and road permit certificate Ex. PW 6/3 for chemical analysis on 31.01.2022 and after submission of the same, he was given the receipt of the parcel which he has handed over to the IO upon his return.
- III. Moharrir Abdullah appeared in the witness box as PW-3. He has received the case property in parcels no. 1 & 2 which he has kept in mal khana in safe custody and has registered its detail in register no. 19 Ex. PW 3/1. He has also stated that he has handed over the parcel containing sample of chars for FSL to the IO on 31.01.2022.
- IV. Imtiaz Khan SHO is the complainant of the instant case. He, as PW-4, repeated the story as narrated in the FIR.


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V. Constable Talib Khan is PW-5. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-4 has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.

VI. Lastly, Investigating Officer Muhammad Ishaq SI was examined as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared the site plan Ex. PB on pointation of the complainant, recorded the statements of witnesses on the spot, produced the accused before the court of Judicial Magistrate vide his application Ex. PW 6/1, sent the representative sample to FSL along with application addressed to the incharge FSL Ex. PW 6/2 and road permit certificate Ex. PW 6/3 and result of the same Ex. PK was placed on file by him, annexing copy of register no. 19 Ex. PW 3/1 as well as copies of daily diaries regarding departure and return of the complainant Ex. PW 6/4 and submitted the case file to SHO for its onward submission.

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(5). Prosecution closed its evidence whereafter statement of the accused was recorded u/s 342 Cr.P.C but he neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of the learned DPP for the

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State, arguments of counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the state submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has 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 within the prescribed period which has been found positive for chars vide report of FSL Ex. PK. The complainant, the witness of the recovery, the official transmitted the samples to the FSL and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the 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.

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(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the alleged chars have been shown recovered from his possession and the report of FSL support the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove

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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.

(8). 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 in the mode and manner as detailed in the Murasila?
- (ii). Whether the occurrence has taken place and the investigation have been conducted in the mode and manner as detailed in the file?
- (iii). Whether the recovered substance is proved through report of FSL as chars?

(9). As per contents of Murasila Ex. PA/1, the complainant, Imtiaz Khan SHO/PW-4 along with other police officials at about 1620 hours during patrolling, stopped a person on the basis of suspicion. The personal search of whom led the complainant to the recovery of 01 packet of chars, weighing 1190 grams from his trouser-fold. The complainant/PW-4 on the spot has shown himself separated 10 grams of chars from

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the packet for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 1180 grams have been shown sealed in parcel no. 2, affixing monograms on all the parcels. The accused disclosing his name as **Gul Saeed** s/o Ikhtiar Gul, has been shown arrested on the spot by issuing his card of arrest Ex. PW 4/1. The complainant/PW-4 has shown taken into possession the recovered chars vide recovery memo Ex. PC. Murasila Ex. PA/1 has also been shown drafted and sent to the Police Station through constable Muhammad Mustafa which has been converted into FIR Ex. PA by Muhammad Salman SI/PW-1.

(10). The prosecution in order to prove the recovery of chars in the mode and manner as detailed in the Murasila Ex. PA/1 and recovery memo Ex. PC, examined the complainant, Imtiaz Khan SHO as PW-4. In his examination in chief, he has reiterated the story detailed in the Murasila Ex. PA/1. The stance of the prosecution has further been supported by the statement of constable Talib Khan as PW-5 who besides being eyewitness of the occurrence is a marginal witness of the recovery memo Ex. PC as well. He has narrated the same story as narrated by the complainant in his statement as PW-5. The investigation Officer was produced as PW-6 who stated that after receipt of Murasila, card of arrest and recovery memo along with copy of FIR, he visited the spot and conducted


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investigation over there including preparation of site plan Ex. PB on the pointation of the complainant/PW-4, and recorded the statements of marginal witnesses. As per contents of Murasila Ex. PA/1 coupled with the contents of FIR Ex. PA read with cross examination of the complainant/PW-4 and IO as PW-6, the occurrence has allegedly taken place on 27.01.2022 at 1620 hours and thereafter the complainant/PW-4 after weighing the alleged recovered chars and separating 10 grams of chars separately sealing into parcel no. 1 with parcel no. 2 containing the remaining quantity of chars, prepared the recovery memo Ex. PC and issuing card of arrest, has drafted Murasila Ex. PA/1 at 1650 hours. The documents have been sent to the Police Station through Constable Muhammad Mustafa for registration of FIR where the FIR has been registered at 1720 hours by PW-1/Muhammad Salman SI. The

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documents along with copy of FIR have been handed over to the IO/PW-6 who has reached the spot at 1730 hours for conducting investigation. The complainant/PW-4 when cross examined on these points, he almost confirmed the time of occurrence, the time of report, the time of registration of FIR and arrival of the IO on the spot. In his cross examination he also elaborated that on the day of occurrence after leaving the Police Station for patrolling, he first patrolled Dabori Bazar then laid a picket at Baghnak area and then came to the spot of occurrence at 04:20 pm (1620 hours); however, PW-5, the

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eyewitness of the occurrence who is marginal witness to the recovery memo as well, in his cross examination as PW-5 has totally contradicted the version of the prosecution as per contents of FIR and the statement of complainant as PW-4 and that of the statement of IO as PW-6. This PW told in his cross examination that on the day of occurrence, they had left the Police Station at 08:20 am thereafter went to Dabori Bazar and visited Ali Khel, Ghwanda Mela check-post where they inspected the ongoing construction work of the check-post and then went to Arhanga road (the spot of occurrence). He further told that they had left the Police Station at 08:20 am, the construction work of Ghwanda Mela check-post was checked by them at 08:30 am and thereafter at 08:45 am reached Arhanga road and the accused came on the spot at 08:50 am, the proceedings were conducted on the spot within 30 minutes

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and constable Muhammad Mustafa took the documents to the Police Station at 09:20 am. Regarding the time of return of constable Muhammad Mustafa, he stated that he returned to the spot at 06:10 pm.

The aforementioned glaring contradictions between the statements of PWs where as per statements of complainant and IO and as per record, the occurrence has allegedly taken place at about evening time while as per cross examination of the eyewitness PW-5, the occurrence has shown taken place in the morning time, show that either the said PW was not present on

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the spot at all or the proceedings/investigation have not been conducted and the occurrence has not taken place in the mode and manner as detailed on the file as per version of the prosecution. Moreover, constable Muhammad Mustafa who has transmitted the Murasila, recovery memo and card of arrest from the spot to the Police Station for registration of FIR, has also not been examined as witness and as such the chain of events from the arrest and recovery on the spot, the registration of FIR, conducting of investigation by the IO on the spot till transmission of the accused and case property to the police station, has not been proved.

With respect to transmission of the case property from the spot to the Police Station and sending the representative samples to the FSL, the case of prosecution is, that after sampling and sealing of case property in parcels on the spot, these were brought by the complainant/PW-4 to the Police Station and handed over the same to Moharrir Abdullah/PW-3 who deposited the same in Mal khana. The representative sample on 31.01.2022 was handed over by Moharrir of the Police Station to the IO who transmitted the same to FSL through constable Khaista Akbar vide road permit certificate.

In order to prove its case, the prosecution produced Moharrir Abdullah as PW-3, constable Khaista Akbar as PW-2 and IO as PW-6. They have supported the case of prosecution in their examination in chief. In cross


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examination, PW-3 who has allegedly entered case property in register no.19 Ex. PW 3/1, has admitted that it is the copy of register no. 19 but original of the same has not been produced before the court. Moreover, as per examination in chief of the IO as PW-6, he has produced the accused before the court along with case property but nothing in that respect is mentioned in register no. 19 that as to when and to whom the Moharrir/PW-3 has handed over the case property for production of the same before the court. Moreover, the occurrence has taken place on 27.01.2022 but the representative sample was sent to the FSL on 31.01.2022 with a delay of 04 days in violation of the Rule (6) of the Control of Narcotics Substance (Government Analyst) Rules, 2001 and the prosecution has failed to prove safe custody of case property during this period.

Hence, in view of what is discussed above, though the representative sample, as per report of FSL Ex. PK, has been found positive for Chars but keeping in view the failure of the prosecution to prove the safe custody of the case property, its transmission to the Police Station and transmission of the representative sample to the FSL within the prescribed period of 72 hours, it is held that the case of prosecution is not substantiated through the report of FSL.


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- (11). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the alleged recovery of chars


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from possession of the accused facing trial. It also failed to prove the mode and manner of recovery and the mode and manner of proceedings conducted on the spot as alleged by the prosecution. Similarly, the prosecution has also failed to prove the safe custody of case property and transmission of the representative sample within the prescribed period. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Gul Saeed** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is on bail, his bail bonds stand cancelled and his sureties are released of the liabilities of bail bonds. The chargs be destroyed after the expiry of period provided for appeal/revision in accordance with law. Consign.

Pronounced
24.10.2022





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Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgement consists of twelve (12) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 24.10.2022


SHAUKAT AHMAD KHAN
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela