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In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI

Special Case No.5/3 of 2022

Date of institution: 23.02.2022

Date of decision: 30.11.2022

The State

.....Versus.....

Hazrat Ullah son of Arsala Khan, resident of Qaum Mamozai, Tappa Mir Kalam
Khel, Jabar Nawasi, District Orakzai.

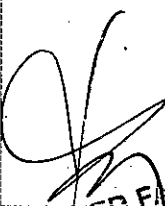
..... (Accused facing trial)

**Case FIR No.01, Dated 15.01.2022 u/s 9-D of KP-CNSA, 2019,
registered at Police Station Ghiljo Orakzai.**

JUDGMENT

Accused named above faced trial before this Court in case FIR No.01
dated 15.01.2022 u/s 9-D of Khyber Pakhtunkhwa Control of Narcotics
Substance Act, 2019, registered at Police Station Kalaya, Orakzai.

2. Facts of the case are such that Ibrahim Khan SHO along with other police
officials of Police Station Ghiljo Orakzai, laid barricade on spy information
regarding the smuggling of chars. One pedestrian was moving towards the
barricade having one blue plastic sack in his right hand. The person was stopped
on suspicion and searched by the complainant. On search of the said plastic sack,
the complainant found 03 packets of chars, which were wrapped in yellow
scotch tape, having weight of 1000 grams of each packet with total quantity of
3000 grams. Accused was arrested on the spot. Murasila was drafted at the place


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of occurrence and sent to Police Station for bringing criminal law into motion which was given effect in the captioned FIR that culminated into present case.

3. After conclusion of the investigation, complete challan against the accused facing trial was presented. He was summoned through *Zamima Bay* being in custody and on appearance, he has been provided prescribed documents of case in line with Section 265-C of the Code of Criminal Procedure-1898. Charge against the accused was framed to which he pleaded not guilty and claimed trial.

4. Prosecution was directed to produce evidence. In order to prove its case against the accused, the prosecution produced and examined as many as four (04) witnesses. The evidence is sketched below for ease of reference and determination of guilt or innocence of accused:

5. Waqas Khan, Muharrir who had registered the FIR Ex.PA on receipt of Murasila, was examined as PW-1. The star prosecution witness was complainant Ibrahim Khan SHO, whose statement was recorded as PW-2. He confirmed the Murasila Ex.2/3 to be true. Recovery of contraband vide recovery memo Ex.PW 2/1 was testified to be genuine. One of the marginal witness to the recovery memo was Muhammad Ameen Constable, who was examined as PW-3. It was testified that the recovery was made from the plastic sack possessed by the accused and was documented vide recovery memo Ex.PW-2/1. Investigation

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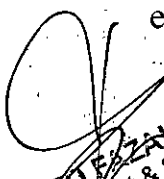
Officer of the case was Sajjad Khan SI/OII who entered the witness box as PW-

4. Preparation of site plan Ex.PB and examination of witnesses was confirmed by this witness.

6. On conclusion of evidence, statement of accused was recorded u/s 342 of the Code of Criminal Procedure, 1898. He wished to be examined on oath but not opted to produce evidence in his defence. Consequently, statement of accused was recorded under Section 340 (2) of the Code of Criminal Procedure, 1898. While recording such statement, the accused was of the stance that he was having sack wherefrom just 1 KG of chars had been recovered. The police has shown this recovery by exaggerating it to 3 KG.

7. Learned APP for the State and counsel for the accused have been heard and gone through the record with their assistance.

8. It was argued by learned APP that the recovery of narcotics is proved beyond doubt as is evident from the testimony of PW-2 and PW-3. That the recovery memo Ex.PW.2/1 has been proved to be correct and the testimony of the PWs has no contradiction on material particulars. That the offence is heinous in nature and that there is nothing on record which could show any kind of *mala fide* on part of police in charging the accused facing trial. It was concluded that the accused himself has testified recovery as true and the case being proved entails conviction.

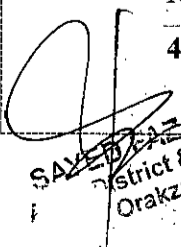

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9. Conversely, learned defence counsel argued that exaggerated recovery has been shown from possession of the accused and that the police have planted the recovery of narcotics against him with ulterior motive. That no independent witness came forward to support the prosecution case and that the testimony adduced by the prosecution is full of contradictions on material particulars. It was argued that as such very strong and consistent testimony would be required in order to prove his guilt which is missing in present case requires to be culminated with acquittal.

10. According to FIR, the accused was intercepted at barricade established on spy information on 15.01.2022 at 10:00 AM and contraband/chars weighing 3000 grams were recovered from possession of the accused in the presence of marginal witnesses namely, Constable Muhammad Ameen and Hanif Ullah Vide Recovery memo (Ex. PW 2/1). The marginal witness Muhammad Ameen constable was examined as PW-3; whereas, Hanif ullah, marginal witness was abandoned. According to PW-3, he was present with seizing officer on the eventful day. On search of the plastic sack, possessed by the accused, the complainant found 03 packets of chars; which were wrapped in yellow scotch tape; having weight of 1000 grams of each packet, with total quantity of 3000 grams. Case property was sealed, Murasila Ex.PW-2/3 was drafted and card of arrest Ex.PW-2/2 was issued.

11. With respect to proceedings conducted by the IO on the spot, the stance of the prosecution as per Murasila Ex. 2/3, FIR Ex. PA and Recovery Memo Ex. PW-2/1 is; that after drafting of Murasila, recovery memo and card of arrest of the accused by the complainant, the same were handed over to PW-3 constable Muhammad Ameen who took the same to the PS and handed over to Waqas


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Khan Muharrir PW-1, who registered FIR Ex. PA on the basis of such Murasila. He handed over copy of the FIR, Murasila, card of arrest and recovery memo to the IO Sajjad Khan PW-4. The said PW proceeded to the spot where he prepared site plan Ex. PB on the pointation of the complainant and recorded the statements of witnesses u/s 161 of the Code of Criminal Procedure, 1898. The prosecution has produced constable Muhammad Ameen as PW-3, Sajjad Khan IO as PW-4 and Waqas Khan Muharrir as PW-1. All the three witnesses narrated the aforementioned story and the sequence of different events in their statements. Constable Muhammad Ameen as PW-3 in his statement has confirmed that he left the spot and reached the PS and handed over Murasila, card of arrest and recovery memo to the Muharrir of the Police Station. Waqas Khan Muharrir as PW-1 has confirmed that the Murasila, card of arrest and recovery memo were handed over to him by Constable Muhammad Ameen and he drafted the FIR. Similarly, Sajjad Khan OI as PW-4 has confirmed that the case was handed over to him for investigation; where after, he left the PS and reached the spot. That the case property was shown to him on the spot by the seizing officer in sealed condition. He has also confirmed that the site plan Ex. PB was prepared on the spot and the statements of marginal witnesses were also recorded by him. The witnesses are also unanimous on the points of arrival of the IO on the spot, his departure and return to PS and the time of arrival of the complainant party to the PS. The statements of all the three witnesses are consistent regarding proceedings conducted by the IO on the spot, their statements could not have been shattered in cross examinations and the prosecution has proved its stance regarding proceedings conducted on the spot in the mode and manner as alleged by it; that too, without any reasonable doubt.

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12. Chain of custody of the recovered material plays pivotal role in the cases of narcotics. The departure and arrival of the Police Party, transportation of the recovered material to Police Station, its entry in the relevant register, custody at Police Station, transportation to FSL and other material questions for determination in accordance with the evidence.

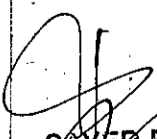
13. The case of the prosecution regarding the chain of the custody of the representative samples, their transmission to the FSL within the prescribed period of time and following full protocols of the tests applied in the FSL, is; that after seizure of the contrabands by the complainant containing 03 packets, 10 grams from each of the packet has been separated and sealed by him on the spot by affixing of three monograms of 'GJ' on each of the parcel. The complainant, after his arrival in the PS, has handed over the representative samples to PW-1 Moharrir Waqas Khan, who has made entry of the case property in Register No. 19 Ex.PW-1/2 and has kept the samples in safe custody. On 17.01.2022, the Incharge investigation has collected the samples from Muharrir for transmission to FSL, who has transmitted the same against a road permit certificate Ex.PW-1/1 and deposited the same in FSL against proper receipt Ex.PW-4/2. After receipt of FSL report Ex.PZ, the same has been placed on file by the IO. The complainant was examined as PW-2, Muharrir Waqas Khan as PW-1, Sajjad Khan, the IO of the case as PW-4 and Constable Muhammad Ameen as PW-3. All the witnesses have narrated the aforementioned story in their statements. Nothing contradictory could be extracted from the witnesses in their cross examinations. It is, therefore, can safely be concluded that recovery and its safe custody as well as transmission.

has been proved.

14. As far as objection of not associating private witnesses is concerned, the police witnesses are also believed to be good witnesses as private witnesses unless some mala fide is shown on behalf of police witness. Similarly, Section 103 of Criminal Procedure Code , 1898 has specifically been excluded in the cases under the Khyber Pakhtunkhwa CNSA Act, 2019 vide Section 231 of the ibid Act; therefore, the failure of the seizing officer or the investigating officer to associate any private witness with the occurrence does not adversely affect the case of prosecution. As per Daily Dairy, the complainant was accompanied by constables Muhammad Ameen and Hanif Ullah who had already been examined in the Court.

15. Sequel to above, it is held that the statements of the complainant and the eyewitness are consistent regarding the date, time and place of occurrence as well as the mode and manner of the recovery. The recovery from the direct possession of accused, its safe custody and transmission as discussed above had been proved. The scientific evidence in shape of FSL reports and other circumstantial evidence available on file is that of sufficient degree of cogency; therefore, the commission of offence is proved by the prosecution beyond reasonable doubt. Moreso, the witnesses of prosecution are unanimous regarding all material facts; therefore, the minor contradictions between the statement of PWs, cannot be taken to defeat the case of prosecution and in no way create reasonable doubts to shatter the case.

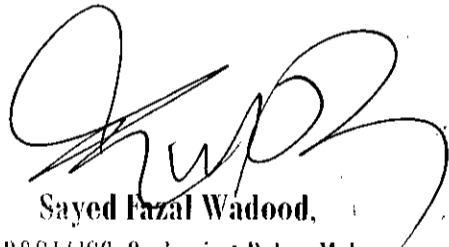
16. In circumstances, it is held that the prosecution has successfully proved its case against the accused facing trial without any shadow of reasonable doubt. Consequently, the accused facing trial, Hazrat Ullah is held guilty for having in his possession 3000 grams of chars. He is convicted u/s 9 (d) of the Khyber


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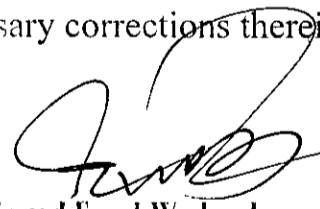
Pakhtunkhwa Control of Narcotic Substances Act, 2019 and accordingly sentenced to suffer rigorous imprisonment for one year and also to pay fine of Rs. 500,000/- (five lac). In case of default of the payment of fine, the accused shall further suffer simple imprisonment for one (01) month; however, the amount shall be made recoverable as arrear of land revenue. The benefit of Section 382-B of Code of Criminal Procedure, 1898 is extended to accused. The case property i.e., chargs be destroyed after the expiry of period provided for appeal/revision. Copy of the Judgement is delivered to the accused today free of cost and his thumb impression to this effect has been obtained at the margin of the order sheet; besides, the copy of Judgement shall also be issued to the District Public Prosecutor in line with Section-373 of the Code of Criminal Procedure, 1898 for free. Case file be consigned to District Record Room, Orakzai, after completion within specified time.

ANNOUNCED
30.11.2022


Sayed Fazal Wadood,
AD&SJ/JSC, Orakzai at Baber Mela

CERTIFICATE:

Certified that this Judgment is consisting upon eight (08) pages; each page has been read over and signed by me after making necessary corrections therein.


Sayed Fazal Wadood,
AD&SJ/JSC, Orakzai at Baber Mela