

(SI)

*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.11/3 of 2021

Date of institution: 04.06.2021

Date of decision: 10.12.2022

**The State**

.....Versus.....

Naqeeb Khan son of Ashraf, resident of Qaum Aka Khel, Tappa Sanzal Khel,  
District Khyber. .... (Accused on trial)

**Case FIR No.45, Dated 06.04.2021 u/s 9-D of KP-CNSA, 2019  
registered at Police Station Kalaya Orakzai.**

**JUDGMENT**

Accused named above faced trial before this Court in case FIR No.45 dated 06.04.2021 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 Khan Muhammad SI along with other police officials of Police Station Kalaya Orakzai, were available on barricade. One person came towards the barricade from Mishti side who was riding on Motorcycle. He was stopped for the purpose of checking. On search, the complainant recovered 03 packets of chars from rear seat of the Motorcycle, which were wrapped in yellow scotch tape, having weight of 1200 grams of each packet with total quantity of 3600 grams. Accused was arrested on the spot. Murasila was drafted at the place of occurrence and sent to Police Station

  
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for bringing criminal law into motion which was given effect in the stated FIR that culminated into present case.

3. After conclusion of the investigation, complete challan against the accused facing trial was presented. He was summoned being on bail 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. The prosecution in order to prove its case against the accused, produced and examined as many as six (06) witnesses. The prosecution evidence is sketched below for ease of reference in determination of guilt or innocence of accused:

5. Ain Ullah Muharrir, who had registered the FIR Ex.PA on receipt of Murasila, was examined as PW-1. Malak Abdul Janan SHO was examined as PW-2, who has submitted the complete challan Ex.PW-2/1. The star prosecution witness was complainant Khan Muhammad SI, whose statement was recorded as PW-3. He confirmed the Murasila Ex.PA/1 to be true. Recovery of contraband vide recovery memo Ex.PW 3/2 was testified to be genuine. He also confirmed that he issued the card of arrest of the accused and exhibited that same as Ex.PW-3/1, recovery memo as Ex.PW-3/2, case property i.e Parcel 4,5 and 6 exhibited as P-1 to P-3, Motorcycle as P-4 with

keys P-5 and registration book as P-6. One of the marginal witness to the recovery memo was Abdul Ghafar Constable, who was examined as PW-4.

Investigation Officer of the case was Shal Muhammad SHO who entered the witness box as PW-5. Preparation of site plan Ex.PB and examination of witnesses was confirmed by this witness. He exhibited FSL result as Ex.PZ.

Muhammad Ishaq SI was examined as PW-6, who produced record pertaining to dispatch of case property to the FSL for chemical analysis.

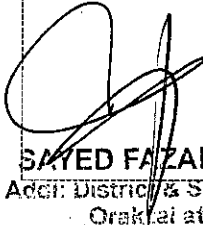
6. After the closure of prosecution evidence, statements of accused was recorded u/s 342 of the Cr.PC. Accused neither opted examination on oath nor opted to produce evidence in his defence.

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-3 and PW-4. That the recovery memo Ex.PW.3/2 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 there is nothing on record which could show any kind of *mala fide* on part of police in charging the accused. He concluded that accused has been arrested on the spot and has been specifically named in

the contents of FIR.

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9. Conversely, learned defence counsel argued that no recovery has been made 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. He concluded that samples have been sent with considerable delay which creates a reasonable doubt.

10. Chain of custody of the recovered material play 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, prompt and safe transmission of material to FSL are questions of paramount importance. In present case, the samples of chars were sent to the FSL with unexplained delay of 07 days which is obviously a substantial delay doubted the case reasonably. It has been settled in "Qaisar etc. vs State" case reported as 2022 SCMR 1641 by August the Supreme Court of Pakistan, that any break in the chain of safe custody or safe transmission of representative samples, makes the report of chemical examiner worthless and unreliable for justifying conviction of the accused.

11. The accused facing trial has not recorded confession before the Court. He remained in police custody for sufficient time but no further recovery was made. The accused has no previous criminal history in such like offences.




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12. The examination of record as discussed above has given birth to reasonable doubt, the benefit of which has to be extended in favour of accused as was ordained in 2003 PLD 84 [Peshawar]. These facts and circumstances render the evidence as insufficient to believe the mode and manner of the crime narrated.

13. No witness from public either associated with recovery of chars or to cite as marginal witness to the recovery memo Ex.PW-3/2.

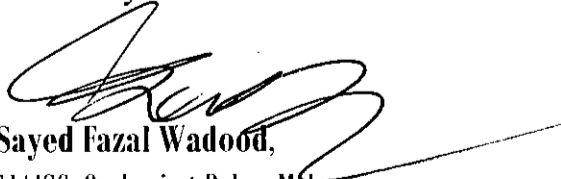
14. In the light of above discussion, it is being held that the prosecution evidence is falling under insufficient category of cogency; whereas, the secure category evidence is full of material contradictions that had given birth to reasonable doubt. Consequently, the benefit of doubt is extended to the accused facing trial and resultantly, accused Naqeeb Khan son of Ashraf resident of Qaum Aka Khel, Tappa Sanzal Khel, District Khyber is acquitted from the charges levelled against him. He is on bail, his bails bonds stand canceled and his sureties are absolved from the liabilities of bail bonds. Case property; the chars, shall be destroyed. File be consigned to District Record Room, Orakzai after its necessary completion and compilation within the span allowed for.

**ANNOUNCED**  
10.12.2022

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

**CERTIFICATE:**

Certified that this Judgment is consisting upon five (05) 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