

IN THE COURT OF ZAHIR KHAN,
JUDICIAL MAGISTRATE-I, TEHSIL KALAYA, ORAKZAI

Case No. 8/3 of 2022

Case FIR No. 58 Dated: 08.06.2022 U/S 11-A CNSA,
PS Kalaya

Order. No. 07

26.08.2022

APP for the state present. Accused Touseef Haider produced in custody. Counsel for accused present. Remaining PWs absent despite service. Arguments on application U/S 249-A Cr.PC already heard and record gone through.

Brief facts of the case are that on the day of occurrence, complainant and Constables Rafi Ullah No. 325, Hameed Ullah No. 1198 had improvised barricade near Kalaya School Chowk when a young person was coming on foot towards them. His body search was conducted being suspect and during his body search, 10 grams ICE was recovered from the side pocket of the suspect person who disclosed his name as Touseef Haider S/O Khadim Ali R/O Qoum Bar Muhammad Khel. The recovered ICE was taken into possession in presence of marginal witnesses and sealed into parcel No. 2. One gram was separated for FSL examination and it was sealed into parcel No. 1. Murasila was drafted at the spot and sent to the PS through Constable Hameed Ullah for registration of the case. Accused was formally arrested. After completion of investigation, complete challan was put in court against the accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed.

Jud.

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Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused.

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Three PWs were produced by prosecution. Counsel for accused filed application U/S 249-A Cr. PC. Arguments on application were heard. Remaining prosecution evidence was also summoned but none of the remaining PWs appeared before the court to record their statements, hence, court is going to dispose of application U/S 249-A Cr.PC.

Statement of Inspector Incharge Narcotics Eradication Team, Farooq Khan recorded as PW-01. He stated that he and Constable Rafi Ullah No. 325, Hameed Ullah No. 1198 had improvised barricade near Kalaya School Chowk when a young person was coming on foot towards them. His body search was conducted being suspect and during his body search, 10 grams ICE was recovered from the side pocket of the accused who disclosed his name as Touseef Haider S/O Khadim Ali R/O Qoum Bar Muhammad Khel. The recovered ICE was taken into possession in presence of marginal witnesses and sealed into parcel No. 2. One gram was separated for FSL examination and it was sealed into parcel No. 1. Recovery memo is Ex. PW-1/1. Murasila was drafted at the spot and sent to the PS through Constable Hameed Ullah for registration of the case. Murasila is Ex. PA. Parcel No. 2 is Ex. P2. Card of arrest of accused is Ex. PW-1/2. He has also pointed out spot to the IO who prepared site plan on his pointation.

Statement of Constable Rafi Ullah, PS Kalaya, Lower Orakzai was recorded as PW-02. He stated that, on the day of occurrence, he was present with complainant Inspector Farooq Khan. In his presence, complainant recovered and took into possession 10 grams ICE from the side pocket of the accused facing trial vide recovery memo already exhibited as Ex. PW-1/1. One gram was separated for FSL examination



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and it was sealed into parcel No. 1 while rest was packed and sealed into parcel No. 2 already exhibited as Ex. P1. His statement was recorded by the IO U/S 161 Cr.PC.

Statement of AMHC Asmat Ali, PS Kalaya, Lower Orakzai recorded as PW-03. He stated that, on the relevant day, he was present in the PS. He received Murasila through Constable Hameed Ullah No. 1198 from Farooq Khan NET/Inspector along with recovery memo and card of arrest of the accused. On the strength of Murasila, he registered FIR No. 58 dated 08.06.2022 U/S 11-A CNSA. After registration of FIR, copy of FIR and other relevant documents were handed over to the IO for investigation. Similarly, when Farooq Khan Inspector returned to the PS, he handed over the accused and case property to him and he made entry in register-19. To this effect, his statement was recorded by the IO U/S 161 Cr. PC. On 10.06.2022, he handed over the case property to the IO. His statement was recorded by IO U/S 161 Cr. PC.

Record transpires that the occurrence took place on 08.06.2022 at 14:00 hours and it was reported through Murasila at 14:30 hours. FIR was registered at 15:00 hours. Statement of seizing officer namely Farooq Khan, inspector in charge Narcotics Eradication Team, Lower Orakzai was recorded as PW-01. He stated in his cross examination that preparation/drafting of Murasila etc took about 30 minutes. Constable



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Hameed Ullah left the spot for PS after 20 minutes of drafting Murasila. IO reached to the spot after an hour at about 03:30 PM. Constable Hameed Ullah, who took Murasila to PS did not return back to the spot. The IO remained at the spot for about 20 minutes. He also stated that he has not

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mentioned in the Murasila whether the recovered ICE was present in a shopper, envelope or it was in open condition.

Constable Rafi Ullah, one of the marginal witnesses to the recovery memo Ex. PW-1/1 stated in his cross examination that he cannot tell whether the recovered ICE was in a shopper, envelope or in open condition. He also stated that they returned to the PS from the spot at about 03:00 PM. The IO reached the spot at about 14:30 hours.

Asmat Ali, AMHC who deposed as PW-03 stated in his cross examination that he has not produced daily diary and register-19 before the court. He also stated that Murasila was brought to the PS at 14:30 hours. Complainant Farooq Khan Inspector returned to PS at 17:10 hours.

As stated above, the occurrence took place on 08.06.2022 at 14:00 hours. It was reported through Murasila at 14:30 hours and FIR was registered at 15:00 hours. The preparation of Murasila etc by complainant took about 30 minutes. Per statement of PW-01, the IO reached the spot at about 03:30 PM. On the other hand, PW-02 stated that IO reached the spot at about **02:30 PM**. When FIR was registered at **03:00 PM** then how IO reached the spot at 02:30 PM. When the IO visited the spot, FIR was not registered. There is material contradiction in the statements of PW-01 and PW-02. Similarly, PW-01 in his cross examination stated that the IO reached the spot at about 03:30 PM while on the other hand, PW-02, in his cross examination stated that they returned to PS at about 03:00 PM which means that at the time of arrival of the IO to the spot, complainant was not present there. PW-03 stated that complainant Farooq Khan returned to PS at 17:10 hours. There is contradiction in the statements of PWs. Furthermore, per record, site plan was prepared at the instance of



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complainant Farooq Khan but the eye-witnesses i.e., marginal witnesses to the recovery memo were not present at the spot as site plan was not prepared in presence of eye-witnesses. More so, there is nothing in the Murasila or recovery memo whether the recovered ICE was present in a shopper, envelope or in open condition.

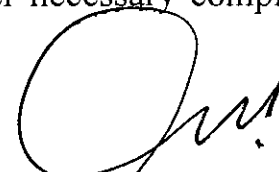
As per available record, there is no criminal history of accused which could show that accused is involved or convicted in such like cases. Accused facing trial did not confess his guilt before the court. There are material contradictions in the statements of PWs. There are so many dents and doubts in case or prosecution benefit of which goes to the accused per law. The remaining PWs did not bother to appear before the court despite service of notice. Accused is behind the bar since 08.06.2022.

There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is hereby accepted and accused facing trial is acquitted from the charges levelled against him. He is in custody. He be released, if not required in any other case.

Case property i.e., 09 grams of ICE be dealt with in accordance with the law.

File be consigned to record room after necessary completion and compilation.

Announced.
26.08.2022



(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai