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STATE VS REHMAT ULLAH  
FIR No. 39 | Dated: 30.09.2023 | U/S: 9 (d) of the Khyber Pakhtunkhwa  
CNSA 2019 | Police Station: Mishti Mela

**IN THE COURT OF SYED OBAIDULLAH SHAH,**  
SESSIONS JUDGE/JUDGE SPECIAL COURT/ JUDGE  
JUVENILE COURT, ORAKZAI (AT BABER MELA)

SPECIAL CASE NO. : 7/2(J) OF 2023  
DATE OF INSTITUTION : 26.10.2023  
DATE OF DECISION : 27.02.2024

STATE THROUGH SHABBIR KHAN ASHO, POLICE STATION  
MISHTI MELA

.....(COMPLAINANT)

-VERSUS-

REHMAT ULLAH S/O NAIMAT KHAN, AGED ABOUT 17 YEARS,  
R/O CASTE ZAKHA KHEL, MOHALLAH SAP KHEL, LANDI  
KOTAL, TEHSIL LANDI KOTAL, DISTRICT KHYBER

..... (ACCUSED FACING TRIAL)

**Present:** Umar Niaz, District Public Prosecutor for State.

: Irfan Ullah and Hamad Hussain Advocates for accused facing  
trial.

**FIR No. 39**                      **Dated:** 30.09.2023      **U/S:** 9 (d) of the Khyber  
Pakhtunkhwa Control of Narcotic Substances Act, 2019  
**Police Station:** Mishti Mela

JUDGEMENT  
27.02.2024

The accused named above faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA Act, 2019 vide  
FIR no. 39, Dated 30.09.2023 of Police Station Mishti Mela.

(2).                      The case of the prosecution as per Murasila based FIR  
is; that on 30.09.2023 the complainant, Shabbir Khan ASHO  
along with constables Fahim Asghar No.1286, Muhammad  
Shafiq No. 228 and other police officials laid a picket on  
main road leading from Mishti Mela to Dabori at Tagha Sam  
where at about 1400 hours a person having a yellow colour  
bag on his shoulder on way from Mishti Mela towards the  
picket, on seeing the police party tried to run away but he

  
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was overpowered. Nothing incriminating was recovered from his personal search. Upon search of the bag, 08 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams of chars, making a total 8000 grams of chars were recovered. The complainant separated 10 grams of chars from each packet for chemical analysis of FSL and sealed the same into parcels no. 1 to 8 whereas the remaining quantity of chars weighing 7920 grams along with the bag were sealed into parcel no. 9, by affixing monograms of 'AA' of all parcels. The complainant took into possession the recovered chars vide recovery memo. The accused disclosed his name as Rehmat Ullah s/o Naimat Khan, who was accordingly arrested by issuing his card of arrest. Murasila was drafted and sent to the police station through Muhammad Shafiq which was converted into FIR by Moharrir Amir Khan.


- (3). After registration of FIR, it was handed over to Investigating Officer Shal Muhammad for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan on pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 02.10.2023, the IO sent the samples of chars for chemical analysis to FSL through constable Raheem Ullah, the result whereof was received and placed on file by him. After completion of investigation, he handed over the case file to

  
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SHO who submitted complete challan against the accused facing trial.

(4). Upon receipt of the case file for the purpose of trial, the accused was summoned through addendum-B, copies of the record were provided to him in line with section 265-C CrPC 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 is as follow;

- I. Aftab Ahmad SI appeared as PW-1 who has submitted complete challan Ex. PW 1/1 against the accused facing trial.
- II. Amir Khan MHC appeared in the witness box as PW-2. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has received the case property from the complainant duly packed and sealed which was kept in mal khana in safe custody. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 2/1, entries in the DD Ex. PW 2/2 and has handed over the samples of the case property to the IO for sending it to FSL on 02.10.2023.
- III. Constable Raheem Ullah appeared as PW-3. He has taken the samples of chars in parcels no. 1 to 8 to the FSL for chemical analysis on 02.10.2023 and after

  
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submission of the same, he has handed over the receipt of the parcels to the IO.

IV. Shabbir Khan ASHO is the complainant of the case. He as PW-4 repeated the same story as narrated in the FIR.

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

VI. Lastly, Investigating Officer Shal Muhammad 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 along with the case property before the court of Judicial Magistrate vide his applications Ex. PW 6/1 & Ex. PW 6/4, sent the representative samples 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, placed on file copy of Register No. 19 Ex. PW 2/1, copies of daily diaries

  
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Ex. PW 2/2 and submitted the case file to SHO for onward proceedings.

(5). Prosecution closed its evidence whereafter the statement of accused was recorded u/s 342 Cr.P.C but the accused neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of learned DPP for the State and learned 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 samples for chemical analysis have been transmitted to the FSL within the prescribed period and the same have been found positive for chars vide report of FSL. The complainant, the witnesses 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 and the report of FSL supports 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 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 learned DPP for the State, arguments of 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 occurrence has taken place in the mode and manner as alleged by the prosecution?
- (ii). Whether the investigation has been carried out in the mode and manner as alleged by the prosecution?
- (iii). Whether the case of prosecution is substantiated through report of FSL?

(9). As per contents of Murasila Ex. PA/1, the complainant, Shabbir Khan ASHO/PW-4, along with constables Fahim Asghar No.1286, Muhammad Shafiq No.

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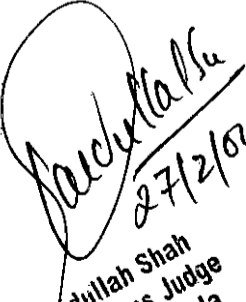
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228/PW-5 and other police officials laid a picket on main road leading from Mishti Mela to Dabori at Tagha Sam where at about 1400 hours a person having a yellow colour bag on his shoulder on way from Mishti Mela towards the picket, on seeing the police party tried to run away but he was overpowered. Nothing incriminating was recovered from his personal search. Upon search of the bag, 08 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams of chars, making a total 8000 grams of chars were recovered. The complainant separated 10 grams of chars from each packet for chemical analysis of FSL and sealed the same into parcels no. 1 to 8 whereas the remaining quantity of chars weighing 7920 grams along with the bag were sealed into parcel no. 9, by affixing monograms of 'AA' of all parcels. The complainant took into possession the recovered chars vide recovery memo Ex. PC. The accused disclosed his name as Rehmat Ullah s/o Naimat Khan, who was accordingly arrested by issuing his card of arrest Ex. PW 4/1. Murasila Ex. PA/1 was drafted and sent to the police station through Muhammad Shafiq/PW-5 which was converted into FIR Ex. PA by Moharrir Amir Khan/PW-2.

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, Shabbir Khan ASHO as PW-4. In his examination in chief,

  
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he has reiterated the story detailed in the Murasila Ex. PA/1. With respect to his presence on the spot, he produced copy of daily diary Ex. PW 2/2 wherein vide DD no. 5 of 30.09.2023, he along with constables Faheem Asghar and Muhammad Shafiq/PW-5 and other police officials have left the police station at 08:35 am for the purpose of patrolling. Similarly, vide DD no. 12 of the same date, he has returned to the police station at 1730 hours (05:30 pm). The stance of the prosecution is further supported by the statement of constable Muhammad Shafiq as PW-5 who besides being eyewitness of the occurrence is a marginal witness of the recovery memo Ex. PC as well. He has also taken the Murasila to the police station for registration of FIR. He has narrated the same story as that of narrated by the complainant in his statement as PW-5. The defence objected to a point that PW-5 have taken the documents to the police station and reached there at about 03:30 pm and the Moharrir as PW-2 stated to have consumed 10 minutes upon registration of FIR which means that the FIR must be chalked out at 03:40 pm, however this time is mentioned in the FIR as 03:30 pm. The slight difference of 10 minutes cannot be taken into consideration for acquittal of the accused. The statements of the complainant and eyewitness are tried to be shattered in the cross examination on different aspects of the mode and manner of recovery but nothing contradictory could be extracted from the mouth of

  
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any of the witness. Both the witnesses are unanimous on the point of their departure from the PS, their arrival on the spot, laying on a picket on the spot, the interception of the accused, recovery of chars from the bag, weighing of the chars on the spot through digital scale, separation of 10 grams of chars from each of the parcel, sealing all the parcels including the bag in different parcels, affixing monogram of 'AA' on each parcel, drafting of the Murasila, recovery memo and card of arrest, [transmitting] of the documents from the spot to the police station through PW-5 and registration of the FIR.

In view of what is discussed above, it is held that the statements of the complainant and the eyewitness are consistent regarding all the material points involving the recovery of chars from possession of the accused and the mode and manner of the recovery. The presence of the complainant and the eyewitness on the spot at the relevant time is also proved. The statements of both the witnesses could not have been shattered in cross examination regarding material facts. Therefore, the recovery of 8000 grams of chars from possession of the accused is proved by the prosecution beyond shadow of any doubt.

With respect to proceedings conducted by the IO on the spot, the stance of the prosecution as per Murasila Ex. PA/1, FIR Ex. PA and recovery memo Ex. PC is; that after drafting of Murasila, recovery memo and card of arrest of

  
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the accused by the complainant, the same were handed over to PW-5 constable Muhammad Shafiq who took the same to police station and handed over to PW-2 Amir Khan MHC, the Moharrir of the police station who registered FIR Ex. PA on the basis of Murasila. He handed over copy of the FIR, Murasila, card of arrest and recovery memo to Incharge Investigation Shal Muhammad/PW-6. The said Shal Muhammad OII proceeded to the spot where he prepared site plan Ex. PB on pointation of the complainant and recorded the statements of witnesses u/s 161 Cr.P.C. In order to prove its stance, the prosecution has produced Constable Muhammad Shafiq as PW-5, Amir Khan MHC as PW-2 and Shal Muhammad OII as PW-6. All the three witnesses narrated the aforementioned story in their statements. Constable Muhammad Shafiq as PW-5 in his cross examination confirmed the fact that the Murasila was handed over to him whereafter he left the spot at 03:00 pm and he reached the police station within 30 minutes i.e., 1530 hours (03:30 pm). The same fact is mentioned by Amir Khan MHC as PW-2 in his cross examination, on the basis of which he registered FIR at 03:30 pm. The complainant as PW-4 and the IO as PW-6 in their cross examinations have confirmed that the IO reached the spot at 1600 hours. The eyewitness constable Muhammad Shafiq as PW-5 narrated this fact in the words that he arrived on the spot at about

  
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1550 hours whereafter the IO came to the spot which also corroborate the statements of the complainant and the IO on this point. That part of his statement is extracted and penned down as;

*"The IO arrived on the spot after my return to the spot but I do not remember the exact time of his arrival."*

*"I reached the spot from the PS at about 03:50 pm."*

The relevant portion of the statement of complainant is as under;

*"The IO arrived on the spot at about 04:00 pm."*

The defence counsel stressed upon the site plan, putting questions to the PWs regarding presence of forest on the spot which has not been shown in the site plan. The IO/PW-5 stated that;

*"It is correct that I have shown fields on either side of the road with crops. Self-stated that some trees were also planted in the said fields but these trees have not been shown in the site plan."*

The complainant in his statement as PW-4 also confirmed the presence of trees in shape of forest on the spot. He stated that;

*"On both sides of the road, there were fields and forest (Jungle) and standing bung/maze crops in the fields."*

In view of what is discussed above, it is held that the statement of witnesses of the prosecution are consistent

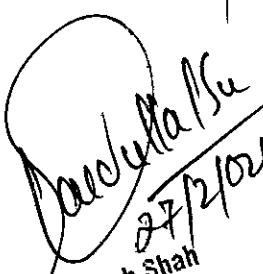
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regarding the mode and manner of the proceedings conducted on the spot and nothing contradictory could have been extracted from the mouth of any of the above-named witness either to disprove the chain of facts or the mode and manner of investigation conducted on the spot; therefore, the prosecution has proved its stance regarding proceedings conducted on the spot in the mode and manner as alleged, without shadow of any doubt.

- (11). The case of the prosecution regarding the chain of the custody of the case property, transmission of the representative samples 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/PW-4 containing 08 packets, 10 grams from each of the packet has been separated and sealed by him on the spot by affixing of three monograms of 'AA' on each of the parcel. The complainant, after his arrival to the police station, has handed over the case property including the representative samples to PW-2 Amir Khan MHC, who has made entry of the case property in register no. 19 Ex. PW 2/1 and has kept the same in safe custody. On 02.10.2023, the Incharge Investigation Shal Muhammad has collected the samples from Moharrir and handed over the same to constable Raheem Ullah/PW-3 to transmit it to FSL, who has transmitted the same against a road permit certificate and

  
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deposited it in the FSL against proper receipt which on return has been handed over to the IO. After receipt of FSL report Ex. PK, the same has been placed on file by the IO. The prosecution in order to prove its stance has examined the complainant as PW-4, Amir Khan MHC as PW-2, Shal Muhammad SI, the IO of the case as PW-6 and constable Raheem Ullah as PW-3. All the four witnesses have narrated the aforementioned story in their statements. In cross examination none of the witness has been diverted in their stance regarding handing over of the case property to Moharrir, entry of the same in register no. 19 and keeping the same in mal khana. With respect to transmission of the samples to FSL, PW-3 in cross examination confirmed the facts that on 02.10.2023 the IO handed him over the samples in sealed condition and he left the police station at 08:00 am, reached the FSL, handed over the parcels to the official of FSL against a proper receipt which on return he handed over to the IO and that he returned the police station on same day.

In view of what is discussed above, the prosecution has proved beyond shadow of any doubt the chain of the custody of case property including the representative samples from the spot till the representative samples are received in the FSL. Similarly, as per report of FSL Ex. PK, the representative samples no. 1 to 8 were found positive for chars after following full protocols of the tests applied.

  
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Hence, the case of the prosecution is substantiated by the report of FSL.

(12). In a nutshell, it is held that the prosecution has successfully proved its case against the accused facing trial without any shadow of doubt. Hence, the accused facing trial **Rehmat Ullah** is held guilty for having in his possession 8000 grams of chars. He is convicted u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 *“punishable with death, imprisonment for life for atone which may extend to 14 years and with fine which may extend to Rs. 1000000 and not less than 05 lacs if the quantity of narcotics substance exceeds the limit of 01 kilograms. Provided that if the quantity exceeds 10 kilograms, the punishment shall not be less than imprisonment for life in any case.”*

With respect to deciding the quantum of sentence, as the quantity of chars recovered from the accused is less than 10 kilograms and as the accused is juvenile besides, he is first offender and the punishment of death cannot be passed against him u/s 16 (1) of The Juvenile Justice System Act, 2018. Therefore, the accused is convicted and accordingly sentenced to imprisonment for five (05) years and fine of Rs. 500,000/- (five lacs). In case of default of the payment of fine, the accused shall further undergo simple imprisonment for six (06) months. The benefit of section 382-B Cr.P.C is

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extended to the accused. The case property i.e., chargs be destroyed after the expiry of period provided for appeal/revision. Copy of the judgment delivered to the accused today free of cost and his thumb impression to this effect obtained at the margin of the order sheet. The copy of judgement also be issued to the District Public Prosecutor u/s 373 of the Cr.P.C free of cost.

Judgment announced. File of this court be consigned to record after its necessary completion and compilation.

Dated: 27.02.2024

**SYED OBAIDULLAH SHAH**  
Sessions Judge/Judge Special Court/Judge  
Juvenile Court, Orakzai at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of fifteen (15) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 27.02.2024

**SYED OBAIDULLAH SHAH**  
Sessions Judge/Judge Special Court/Judge  
Juvenile Court, Orakzai at Baber Mela

