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IN THE COURT OF BAKHT ZADA, SCJ/JM,
ORAKZAI AT BABER MELA

CASE NO: 10/15AA OF 2023

DATE OF INSTITUTION: 06.01.2023

DATE OF TRANSFER IN: 17.11.2023

DATE OF DECISION: 20.03.2024

STATE THROUGH: Asif Khan SI, PS: CTD Kohat
----- (Complainant)

VS

1. Usama s/o Abdul Ghani
2. Mubeen s/o Gul Ghani

Both R/O Qoum Mamozai, District Orakzai.
----- (Accused Facing Trial)

JUDGEMENT
20.03.2024

Accused Usama s/o Abdul Ghani and Mubeen s/o Gul Ghani are facing trial in case FIR No. 80, Dated: 26.11.2021, u/s 5ESA, 15AA, 7ATA of PS: CTD, District Kohat.

Brief facts of the case as alleged in the FIR are that complainant Asif Khan SI, CTD Kohat sent a Murasila to PS CTD Kohat Region for registration of FIR against the accused facing trial (1) Usama s/o Abdul Ghani and (2) Mubeen s/o Gul Ghani, R/O Mamozai, Orakzai wherein he alleged that on 26.11.2021 at 11:30 hrs, he got information that on the day of occurrence at any time, 02 terrorists are intended to go from Dabori Orakzai towards Hangu with a plan of terrorism. The

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said information were brought into the notice of the High-Ups and thereafter the complainant along with Gul Riyaz SI, Mujtaba Ali SI, Karim Khan HC 1122, Badshah Khan 905 HC, Adeel Baig 1102 along with other police contingent of PS CTD Kohat under the command of DSP/DFU Atta Muhammad Hangu reached the place of occurrence in official pick-up and made naqa bandi. Meanwhile 02 young persons coming from Dabori hills in suspicious condition were noticed. When the suspected persons came inside the circle of the police, they were asked to surrender. They made useless attempt to escape but were arrested. They disclosed their names as Usama s/o Abdul Ghani and Mobeen s/o Gul Ghani. During their body search, one 30 bore pistol without number along with fixed and spare magazine consisted of 06 live rounds of 30 bore were recovered from the fold of his shalwar while one hand grenade bearing number PO7=07-06-001. That during body search of accused Mobeen, one hande grenade bearing number 386=709-81, lever HE-P-2A1 was recovered from his side pocket which were taken into possession. BDS Kalaya was informed who reached and protected the hand grenades and sealed them in 02 separate parcels No. 01 & 02 having 01 stamp of ZH in the parcels while 03/3 ZH stamps were affixed on the parcels. The Murasila was sent to PS CTD Kohat for registration of FIR

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Scribe-Civil Judge/JM
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through head constable Karim 1122/HC and hence the above-mentioned FIR was registered.

After completion of the investigation, complete challan was submitted by the PS CTD Kohat initially against both the accused facing trial before the court of Judge Anti-Terrorism court, Kohat Division, Kohat who vide his order No. 03, Dated: 02.11.2022 deleted section-07 of Anti-Terrorism Act 1997 and the case was ordered to be sent to the ordinary court of competent jurisdiction. The accused were produced before the Additional Session Judge-IV/Child Protection Court, Kohat but vide order Dated: 19.12.2022, the learned acting Session Judge, Kohat sent back the case file to the learned ATC Kohat with the request that the case pertains to the territorial jurisdiction of District Orakzai and consequently Judge Anti-Terrorism Court Kohat Division on 21.12.2022 sent the case file to District & Sessions Judge Orakzai with the direction to the accused facing trial to appear before the said court on 06.01.2023.

Case file was received to Hon'ble D&SJ Orakzai, who marked the same for trial to the learned AD&SJ Orakzai at Baber Mela and the accused directed to appeared before the said court on the same date i.e 06.01.2023.

Orakzai
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The accused appeared before the learned AD&SJ Orakzai at Baber Mela on 06.01.2023. Provision of section 265-C Cr.P.C has already been complied with.

Formal charge against the accused were framed on 13.01.2023 to which they pleaded not guilty and claimed trial, where after the prosecution was asked to produce PWs.

The prosecution produced and recorded statements as many as 12 PWs. The gist of statements of prosecution witnesses are as follows;

PW-01: Hafiz Ur. Rehman SI, PS CTD Kohat. He received Murasila on 26.11.2021 through constable Karim from SI Asif Khan, PS CTD Kohat. He chalked out the FIR in the light of Murasila which is Ex.PA.

PW-02: Mujtaba Ali SI, PS CTD Kohat. He is marginal witness to recovery memo vide which complainant Asif Khan SI recovered one 30 bore pistol with fixed and pare magazine and 06 live rounds of 30 bore. On further search of his side pocket, one hand grenade was recovered while from accused Mobeen 01 hand grenade was recovered from his side pocket during his body search. Both the hand grenades were sealed separately in parcel No. 01 & 02 and were taken into possession vide recovery memo which is Ex.PW-2/1 which is duly signed by him and correctly bears his signatures.

[Signature]
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PW-03 is the statement of **Jamshed Khan, LHC, PS CTD Kohat**. He stated that on 20.11.2021, Muharrir handed over him the parcels No. 01 & 02 containing one hand grenade each along with application addressed to Incharge BDU Peshawar and Road Permit Certificate bearing No. 216/21 CTD for taking the same to Peshawar for examination. The same were handed over to the official of BDU Peshawar by him.

PW-04 is the statement of **Muhammad Yasin ASI, PS CTD Kohat**. He was posted as MIHC PS CTD Kohat. On 26.11.2021 complainant Asif Khan handed over to him the case property consisted of parcel No. 01 & 02 and one 30 bore pistol along with fixed and spare magazine. The same were entered in register No. 19 which is Ex.PW-4/1. On 29.11.2021, the same were sent to FSL through Jamshed Khan LHC along with Road Certificate which is Ex.PW-4/2.

PW-05 is the statement of **Javid Ali HC, BDS staff PS Kalaya**. On information of Asif Khan SI, PS CTD. He went to the place of occurrence where the case property was handed over to him. The hand grenades were examined on the spot and separate safety fuses and handed over back the same to complainant. He has prepared BDS report which is Ex.PW-5/1.

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PW-06 is the Statement of **Badshah Khan, HC, PS CTD Kohat**. He is eye-witness of the occurrence and has described the scene of recovery and arrest of the accused at the spot.

PW-07 is the statement of **Adeel Baiq, LHC, PS CTD Kohat**. He also posed as eye-witness of the occurrence and has witnessed the process of arrest and recovery from the accused facing trial.

PW-08 is the statement of **Karim Khan**. He was posted as Armorer PS CTD Kohat during the days of occurrence. He was present at the spot at the time of occurrence. He has taken Murasila from the place of occurrence to the PS for registration of FIR.

PW-09 is the statement of **Muhammad Zaman**. He was posted as Armorer PS CTD Kohat. On 27.11.2021, he examined 30 bore pistol along with fixed charged and spare magazine containing 06 live rounds of the same bore. He prepared report which is Ex.PW-9/1 and correctly signed by him.

PW-10 is the statement of **inspector Ikhtiar Ali** who has submitted complete challan against the accused which is Ex.PW-10/1 and correctly bears his signatures.

Vide order Dated: 15.11.2023, learned /AD&SJ Orakzai the case file was sent to the court of Hon'ble D&SJ Orakzai

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with the request that the case was inadvertently proceeded by his court and as the case is exclusively triable by the court of Judicial Magistrate, therefore the same may be sent to the court of competent jurisdiction. On the same day, Hon'ble D&SJ Orakzai marked the case to this court and onward evidence was recorded by the undersigned.

PW-11 is the statement of **Asif Khan, complainant, SI Special Branch Haripur then posted as SI CTD Kohat**. He repeated the whole story as alleged in the FIR that when he reached to the place of occurrence along with CTD officials under the supervision of DSP Hangu Atta Muhammad to the spot, 02 suspicious persons were seen who were coming from mountain area. They were asked to stop but they tried to escape but were overpowered by the police party. One person disclosed his name as Usama and during his body search, one 30 bore pistol along with fixed and spare magazine and 06 live rounds were recovered from his Bada Shalwar" which is Ex.P1". Similarly; 01 hand grenade bearing number P07-07-06001 was recovered from his side pocket. Another person disclosed his name as Mobeen and during his body search 01 hand grenade bearing number HE-P-2A1, lever number 386-109-81 was recovered from his side pocket. BDS Incharge was informed who reached the spot. After taking precautionary

Accepted
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measures, the same were sealed into parcel no. 01 Ex.P2 and parcel no. 02 Ex.P3 duly stamped with monogram ZH which is already Ex.PW-2/1. The accused were arrested and their card of arrest is Ex.PW-11/1 and Ex.PW-11/2 respectively. Murasila was drafted which is Ex.PA. The Murasila along with recovery memo and card of arrest was sent to PS through constable Karim 1122 for handing over the same to Muharrir for registration of FIR. The IO arrived who prepared the site plan at his pointation. During the proceedings, it was observed that there are 03 parcels, one containing 30 bore pistol and the other 02 containing hand grenades.

PW-12 is the statement of **Nazif Ur Rehman** the then **IO, PS CTD Kohat** now posted as **DSP Legal District Bannu**. He after receiving FIR prepared site plan at the pointation of the complainant which is Ex.PW-12/1. He produced both the accused facing trial before the court for obtaining their 07 days physical custody vide his application Ex.PW-12/2 which correctly bears his signatures. After obtaining 02 days physical custody from the learned judge ATC Kohat on 29.11.2021, the accused were again produced before the said court for recording their confessional statement u/s 164/364 Cr.P.C vide application Ex.PW-12/3 but he

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BARRISTER AT LAW
Senior Advocate
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accused refused and were sent to judicial lock-up. Statements of PWs were recorded u/s 161 Cr.P.C.

Statements of all the above PWs were thoroughly cross-examined by the learned counsel for the accused facing trial.

Learned DyPP for the state closed the prosecution evidence on 13.03.2024.

Statements of the accused u/s 342 Cr.P.C were recorded on 20.03.2024. They neither wished to produce any evidence in defence nor wished to be examine on oath.

Arguments of the learned APP for the state and counsel for the accused facing trial heard and available record perused.

The allegation against the accused facing trial are that the complainant received spy information that 02 terrorists are coming from Dabori Orakzai mountains towards Hangu with the intention of terrorism. The High-Ups were informed and barricade was made at the place of occurrence. Meanwhile at the time of occurrence, 02 persons coming down the Dabori mountains were found in suspicious condition, who tried to escape but overpowered by the police. That during body search of accused facing trial Usama one 30 bore pistol along with fixed and spare magazine and 06 live rounds were recovered from the shalwar fold, while 01 hand grenade was recovered from his side pocket. That during body search of another

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accused namely Mobeen, 01 hand grenade was recovered from his side pocket. All these were taken into possession after adapting safety measures vide recovery memo and sealed the same into 02 parcels. The accused were arrested, Murasila was drafted and sent to Police station CTD Kohat region and consequently the instant FIR No. 80, Dated: 26.11.2021, U/S 5ESA, 15AA, 7ATA was registered against the accused. Later on section 7 of the Anti-Terrorism Act 1997 was deleted by the learned judge Anti-Terrorist Court, Kohat and the case was sent to ordinary court of competent jurisdiction for trial.

The prosecution in order to prove their case produced as many as 12 PWs out of which PW-01 Hafeez Ur Rehman SI who has chalked the FIR at the receipt of Murasila has categorically stated during cross-examination that he has received only Murasila through constable Karim but contrary to his statement, complainant Asif Khan SI during his examination-in-chief as PW-11 has categorically stated that he handed over Murasila along with recovery memo and card of arrest of both the accused to constable Karim No. 1122. Similarly, constable Karim has stated that complainant handed over him Murasila and recover memo for sending the same to PS for registration of FIR, which were handed over by him to Hafeez Ur Rehman. The statements of PW-01, PW-08 and

Hafeez
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PW-11 are not in line with each other. PW-02 Mujtaba Ali being marginal witness to the recovery memo Ex.PW-2/1 vide which the complainant has recovered one 30 bore pistol along with fixed and spare magazine and 06 live rounds and 02 hand grenades, one each from the accused facing trial. He stated that both the hand grenades were separately sealed in 02 parcels, but at the time of examination of complainant Asif Khan as PW-11, it was observed by the court that there were 03 parcels produced before the court, one consisted of a pistol and 06 live rounds while the other two consisted of 1/1 hand grenades. PW-12, Nazeef Ur Rehman, DSP also stated during his cross-examination that the case property was handed over to him by the Muharrir and the same was consisted of 02 parcels. The statement of PW-12 is contradictory to the statement of PW-02 and to the court observation made at the time of recording statement of PW-11. It is also astonishing fact mentioned by PW-06 that complainant along with police officials left for the place of occurrence from PS CTD Kohat at about 07:30 hrs and they reached to the spot at about 10:30 hrs, but during cross-examination he stated that the complainant informed the BDS staff at about 10:30 to 10:45 AM who reached to the place of occurrence at 11:00 AM but according to Murasila the occurrence has taken place at 11:30 AM meaning thereby that

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the complainant was already in the knowledge before recovery of the alleged ammunition that hand grenades will be recovered from the accused facing trial. On the other hand, PW-07 Adeel Baig during his examination-in-chief has stated that SI informed the BDS staff Orakzai for defusing the said hand grenades which denotes that the BDS Squad was informed later on after affecting recovery. Similarly, PW-05 Javid Ali, HC BDS also stated in his examination-in-chief that he was present in PS Kalaya when complainant Asif Khan SI, PS CTD informed him about hand grenades and that when he reached to the place of occurrence, complainant Asif Khan handed over him hand grenades which he kept in the safe place. This statement of PW-05 and PW-07 are totally contradictory to the statement of PW-06 Badshah Khan who stated during cross-examination that the BDS Squad was informed at 10:30 AM to 10:45 AM, while the complainant PW 11 during his cross examination has stated that the accused were arrested on 11:30AM and the BDS squad was not present with them at the spot and they were later on informed. The statements of all these witnesses who were allegedly present at the spot at the time of occurrence are contradictory to each other and are creating doubts about the mode and manner of the occurrence. It is also a fatal ground for the case of

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prosecution that PW-08 has mentioned during cross-examination that distance between the place of occurrence and PS CTD Kohat can be covered within 03 to 3½ hours. PW-08, Karim Khan has stated that Murasila was handed over to him at about 12:50 hrs, so he might have reached the PS CTD Kohat along with Murasila at about 03:50 hrs and the investigation officer might have reached the place of occurrence after registration of FIR at about 06:50 hrs, but PW-08 has stated during his cross-examination that all the police officials left the spot with him at 12:50 PM and the accused were escorted to the PS CTD Kohat and when they reached to the PS CTD Kohat, it was about 04:00 PM. It is very much contradictory to the stance of PW-11 (complainant) who has stated that investigation officer prepared the site plan at his pointation. So as per statement of PW-08 when the complainant was not present at the spot, how the investigation officer prepared site plan at his pointation.

In view of the above contradictions in the statements of the witnesses allegedly present at the spot at the time of occurrence, the prosecution failed to bring home charges against the accused facing trial beyond any shadow of doubt and therefore, I hereby acquit both the accused from the charges levelled against them by extending benefit of doubt.

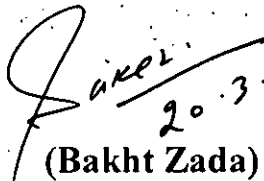
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BAHAT ZADA
Senior Civil Judge/JM
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They are on bail. Their sureties are discharged from the liability of their bail bonds. Case property also includes explosive substances in shape of grenades, therefore, the same be kept in separate portion specified for the explosive substances under the supervision of the expert and be destroyed after expiry of period provided for appeal/revision etc, while pistol be deposited in the Mall Khana of Deputy Commissioner concerned in accordance with law.

Case file be consigned to the record room after its completion and compilation.

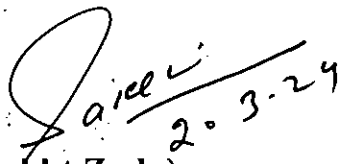
Announced
20.03.2024


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(Bakht Zada)
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CERTIFICATE

Certified that this order consists of fourteen (14) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated:20.03.2024


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(Bakht Zada)
SCJ/JM,
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