IN THE COURT OF SESSIONS JUDGE, ORAKZAI AT BABER MELA

Case Title: _

State

VS.

glyas Khan ete

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Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
Order No.10	30.04.2024	The case is fixed for 01.05.2024 which is a public
		holiday; therefore, it is requisitioned and listed for
		08.05.2024. Notices be issued to the state/complainant,
		the accused and his counsel for date fixed. PW Moharrir
,		Muhammad Jameel also be summoned for date fixed.
		(SYED OBARDUZLAH SHAH) Sessions Jadge/Judge Special Court, Orakzai at Baber Mela
Order No.11	08.05.2024	DPP, Umar Niaz for the State and Sana Ullah Khan
,	·	Advocate for accused present. Accused Ilyas Khan on bail present. Accused Nek Muhammad is absconding. PWs Moharrir Muhammad Jameel and Nasir Khan SHO present and examined as PW-2 and PW-3 respectively. Counsel for the accused submitted application for acquittal of the accused u/s 265-K CrPC. Notice of the
		same is given to the prosecution.
	(2).	The case of the prosecution as outlined in the Murasila Ex. PA/1 based FIR Ex. PA is as follows; that on 20.11.2023, the complainant, Nasir Khan SHO/PW-3 along with other police officials laid a picket on main road
	,	Mandra Khel Check-Post. At about 1330 hours, a motorcycle boarded by two persons on way from Anjani
	Or akan	Bazar towards Karghan, was stopped for checking. The pillion passenger came down of the motorcycle, threw a shopper and made his escape good from the spot. The search of the shopper led the complainant/PW-3 to the
Syed Obai District & S Orakzai	gran Wels	recovery of 710 grams of opium. The complainant/PW-3



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Contin. Order No.11	, · · · · · · · · · · · · · · · · · · ·	separated 10 grams of opium from the total quantity for chemical analysis of FSL and sealed the same into parcel no. 1 whereas the remaining quantity of opium weighing 700 grams were sealed in separate parcel no. 2 and the empty shopper was sealed in parcel no. 3, affixing monograms of 'NA' on all the parcels. The driver of the motorcycle disclosed his name as Nek Muhammad s/o Kulcha Khan who unveiled that the opium belongs to the accused facing trial Ilyas Khan. The complainant took into possession the recovered opium vide recovery memo Ex. PC. Murasila Ex. PA/I was drafted and sent to the police station through constable Wajid Ullah which was converted into FIR Ex. PA by Muhammad Jameel
		MHC/PW-2.
	(3).	After registration of FIR, it was handed over to
Syed C District Orakza	baiduliat Shah Sessions Judge hi at Baber Mela	Minhaz Hussain OII 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 23.11.2023, the IO sent the samples for chemical analysis to FSL vide his application and road permit certificate. After completion of investigation, the IO handed over the case file to SHO who submitted challan against the accused facing trial. -Upon receipt of case file for the purpose of trial, the accused was summoned, copies of the record were provided to him u/s 265-C Cr.P.C and formal charge was framed against him to which he pleaded not guilty and claimed trial. Regarding the absconding accused Nek Muhammad, search witness was examined as SW-1. The witnesses were summoned and the prosecution examined
	,	as many as 03 witnesses.

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Ilyas Khan etc

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1	2	3
Contin. Order No.11	(5)	
	·	and perused the record.
	(6)	
		the case of the prosecution is; that the complainant/PW-3
		along with other police officials had left the police station
·		for patrolling and laid a picket at Mandra Khel Check-
		Post, making their entries in the daily diary through
		Muhammad Jameel MHC who affirmed this during his
		examination in chief as PW-2. However, during cross-
	•	examination, he contradicted his statement and appeared
		to be unaware of which of the Madad Moharrirs had
		prepared the daily diary.
		It is also evident from the record coupled with the
		statement of complainant/PW-3 that the accused facing
		trial had fled from the spot whereas the recovery has been
		made from a plastic shopper allegedly thrown by him
		while the absconding accused was not apprehended on the
;	,	spot rather, he was served a notice whereafter he was implicated as co-accused. It is astonishing to note that
	<i>,</i> ,	despite the presence of the absconding co-accused at the
		scene, the complainant let him scot-free while charging
		the accused facing trial solely based on the assertion of
:		the co-accused. Moreover, the accused facing trial has not
		been arrested on the spot and no recovery has been
		effected from his personal possession. In addition to that
	ſ	there is no evidence on record establishing any
	(0	connection between the accused facing trial and the
/	' fury,	alleged contraband.
	The state of	Furthermore, it has been admitted by the
	On shah	complainant/PW-3 that a picket was laid on main road at
Syed (bailtu Min Judge 8 Sevicen Judge ai at laber Mela	Mandra Khel Check-Post and the presence of police
Orak	ar ar	officials of check-post is natural but no one has been

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Contin. Order No.11		associated as witness with the occurrence even to the extent of any proceedings conducted by the complainant on the spot. It is also noteworthy that the occurrence has
		taken place on 20.11.2023 while the sample for FSL has been transmitted on 23.11.2023 with a delay of 04-days
		which has not been explained. It is also pertinent to mention here that the FSL report is yet not available on
	(7)	file despite lapse of more than 05-months. In these circumstances, it is held that there is no
	(7).	possibility of the conviction of accused facing trial, even
		if the prosecution is given further opportunity to produce the remaining witnesses; therefore, accused namely, Ilyas
		Khan is acquitted from the charges levelled against him u/s 265-K Cr.P.C. Accused is on bail. His bail bonds stand
İ		cancelled and his sureties are released of the liabilities of
		the bail bonds.
		With respect to absconding accused Nek Muhammad, PWs be summoned for 10.05.202
order No.1 a	10.05.2024	(SYED OBAIDUD HISHAH) Sessions Judge/Judge Special DyPP, Iftikhar for the State present approaches the state of the stat
		Muhammad is absconding. PWs not present. NBWA be
		issued against the remaining PWs for 17.05.2024
		(SYED OBAIDULIAH SHAH) Sessions Judge Judge Special Court, Orakzai at Baber Mela
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FIR no. 108, Dated: 20 - 4 - 2023, u/s 98CNSA

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Order No.13	17.05.2024	DPP, Umar Niaz for the State present. Accused Nek Muhammad is absconding. PWs constable Wajid
		Ullah and Minhaz Hussain OII present and examined as
		PW-4 and PW-5 respectively. The prosecution
		abandoned the remaining PWs and closed its evidence.
·		It is evident from the record that despite being
		proceeded u/s 204 Cr.P.C as well as u/s 87 Cr.P.C, the
,		accused Nek Muhammad is avoiding his lawful arrest
		and there is no likelihood of his arrest in near future. As
		per evidence recorded by the prosecution, a prima facia
		case has been made out against him; hence, he is declared
		proclaimed offender. Perpetual warrant of arrest be issued
		against him and District Police Officer, Orakzai is
		directed to enter his name in the register of proclaimed
		offenders. All the legal course be adopted for his arrest
•		and he be brought before the court as and when arrested.
		Case property be kept intact till arrest of the accused and final disposal of the case.
	ESSIONS	Order announced. File of this court be consigned to
/, \ \ /,	A JUDGE	record room after its necessary completion and
SISTRIC	1 2	compilation.
10	AKZAI AJ TA	Dated: 17.05.2024
		(SYED OBAIDULLAH SHAH) Sessions Judge/Judge Special Court, Orakzai at Baber Mela

FIR no. 108, Dated: 2011-2073

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, PS Kalaya