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**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL JUDGE/JM,**  
**ORAKZAI AT BABER MELA**

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Case No. 05/02 of 2023.  
Date of Original Institution: 05.07.2023.  
Date of Transfer In: 28.02.2024.  
Date of Decision 29.05.2024.

FIR No. 06 Dated: 17.03.2023 U/S 15AA, PS Dabori

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Order No. 28  
29.05.2024

DPP for the state present. Accused/petitioner Muhammad Abbas on bail along with counsel present. Today, the case is fixed for arguments on the application U/S 249-A Cr. PC. Arguments heard. Accused/petitioner namely Muhammad Zeeshan is facing trial in case FIR No. 06, dated 17.03.2023, U/S 15AA of PS Dabori.

Brief facts of the case are that on 17.03.2023 at 13:30 hours near Nikot situated at Spedar Ali Khel, within the criminal jurisdiction of PS Dabori, Upper Orakzai, the complainant along with other police nafri raided the house of accused required in case FIR No. 05, dated 17.03.2023, U/S 324/34 PPC PS Dabori. During search a person was found in injured condition duly armed with Kalashnikov. The local police recovered and took into possession one Kalashnikov bearing No. 56-16152771 along with a fixed charger containing 17 cartridges of 7.62 bore to which the accused failed to produce any license. Accused/injured disclosed his name as Muhammad Abbas S/O Ayub Khan. Accused was arrested and his card of arrest was issued. Murasila and recovery memo was drafted and sent the Murasila to the PS for

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registration of FIR through constable Abdul Haq. IO prepared the site plan on the pointation of complainant/SHO. Later on, accused and relevant documents were handed over to IO.

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

Arguments heard and available record perused which shows that statements of as many as 05 PWs have been recorded in the instant case.

*PW-01*, is the statement of SHO/complainant. During raid, arrested the accused and issued his card of arrest Ex. PW-1/1. One Kalashnikov bearing No. 56-16152771, along with a fixed charger containing 17 cartridges of 7.62 bore was recovered from the possession of accused. In this respect, recovery memo Ex. PC was prepared. Murasila Ex. PA/1 was drafted and the same was sent to the PS along with relevant documents for registration of FIR through constable Abdul Haq. Site plan was prepared at the pointation of complainant. Injury sheet of injured/accused Ex. PW-1/2 was prepared. After completion of investigation, the SHO/complainant submitted complete challan Ex. PK against accused facing trial. He was cross examined by the counsel for accused.

*PW-02*, is the statement of constable Sami Ullah. He was present with SHO/complainant during raid. He is marginal witness. He repeated the same story as deposed by PW-01. His statement was

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recorded by IO U/S 161 Cr. PC. He was thoroughly cross examined by the counsel for accused.

*PW-03*, is the statement of Khalil Ur Rehman. He received parcels No. 1 & 2 containing case property in sealed condition. He made entry of the same into register-19 and on 21.03.2023 he handed over the parcels to the IO for onward transmission to FSL. His statement was recorded by the IO U/S 161 Cr. PC. He was also cross examined by the counsel for accused.

*PW-04*, is the statement of Gul Asghar. He stated that constable Abdul Haq handed over the Murasila to him. After registration of FIR, copy of FIR along with relevant documents were handed over to IO for investigation. Copy of FIR is Ex. PA. His statement was recorded by the IO and he was also cross examined by counsel for accused.

*PW-05*, is the statement of SI Saif Ur Rehman. He is IO of the case. Copy of FIR along with relevant documents were handed over to him. He proceeded to the spot and prepared site plan Ex. PB on the pointation of complainant. He vide his application Ex. PW-5/1 requested for judicial remand of accused. Accused was committed to judicial lock-up. He drafted another application Ex. PW-5/2 and road permit certificate Ex. PW-5/3 for sending case property to FSL through constable Muhammad Ismail. In this respect he annexed naqalmad No. 8, 10, 12 & 16 which are Ex. PW-5/4 to Ex. PW-5/7 respectively. FSL report is Ex. PZ. He recorded the statements of all the PWs including accused U/S 161 Cr. PC. After completion of investigation, he handed over the case file to SHO for onward proceedings. He was also cross examined by the counsel for accused at length.

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APP for the state abandoned PW Abdul Haq being witness of the same facts as deposed by PW-02.

Application U/S 249-A Cr. PC for acquittal of accused submitted. Notice of which is given to the prosecution. Arguments heard and available record perused which shows that the accused facing trial was arrested in injured condition along with Kalashnikov bearing No. 56-16152771 along with a fixed magazine containing 17 live rounds of 7.62 bore. It is also alleged that another accused namely Muhammad Zeeshan S/O Ayub Khan was apprehended and on his body search one pistol 30 bore was recovered from his possession. During cross examination, complainant Muhammad Imtiaz SHO, PS Ghiljo has stated that he does not remember the exact time of reaching to the place of occurrence. He also failed to disclose the names of all the police officials accompanied with him at the time of occurrence at the spot. The site plan Ex. PB available on the case file shows that there is no mention regarding presence of accused Zeeshan in the site plan at the time of occurrence rather the presence of accused Zeeshan is shown in another site plan where the presence of accused Muhammad Abbas is missing despite of the facts that in the FIR, the presence of both accused have been shown near to each other and they were allegedly arrested at the same time. Investigation officer during his cross examination has stated that time of occurrence in case FIR No. 05, dated 17.03.2023, U/S 324 PPC is mentioned as 12:40 hours where after, SHO proceeded to hospital THQ, Mishti Mela from PS Dabori and the distance between the PS and THQ, Misthi Mela can be covered in 30 minutes from one side. The SHO after reaching the

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Ordnance  
Mishti Mela

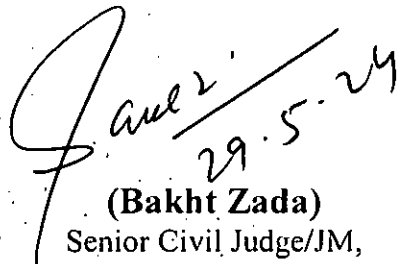
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hospital wrote Murasila and after necessary proceedings, he went back to the PS, but astonishingly the time of report is mentioned as 13:50 hours in the FIR, while in Murasila the time of report is mentioned as 14:10 hours which are creating doubts regarding the actual mode and manner of the occurrence. Furthermore, no independent witnesses have been cited on the recovery memo to prove the case of prosecution. It is also worth mentioning here that the main case U/S 324 PPC, compromise has already been effected and the private witnesses of the complainant are not pursuing the case against the accused facing trial. I, therefore, accept the instant application U/S 249-A Cr. PC and acquit the accused Muhammad Abbas from the charges levelled against him. He is on bail. His sureties stand discharged from their liability. Case property be dealt with in accordance with the law.

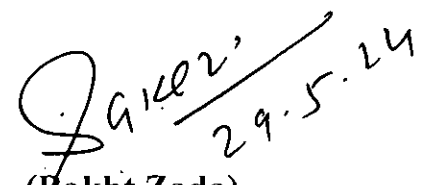
Case file be consigned to record room after completion and compilation.

Announced  
29.05.2024

  
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**CERTIFICATE**

It is certified that this judgment consists of 05 pages. Each page has been dictated, read, corrected and signed by me.

  
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