

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

SPECIAL CASE NO. : 8/3 OF 2024  
DATE OF ORIGINAL : 20.02.2024  
DATE OF DECISION : 28.06.2024

STATE THROUGH MUHAMMAD YOUNAS SHO POLICE  
STATION KUREZ

.....(COMPLAINANT)

-VERSUS-

MUJAHID KHAN S/O JANAT GUL, AGED ABOUT 27 YEARS, R/O  
CASTE MALAK DEEN KHEL, TAPA UMAR KHEL, BARA,  
DISTRICT KHYBER

..... (ACCUSED FACING TRIAL)

**Present** : Umar Niaz, District Public Prosecutor for State.  
: Sana Ullah Khan Advocate, the counsel for accused facing  
trial.

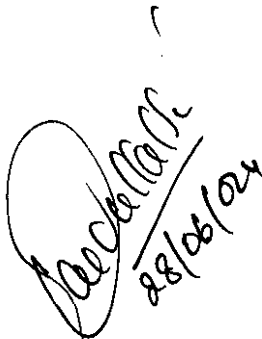
**FIR No. 01**                      **Dated: 14.01.2024**      **U/S: 9 (d) of the Khyber**  
**Pakhtunkhwa Control of Narcotic Substances Act, 2019**  
**Police Station: Kurez**

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JUDGEMENT  
28.06.2024

The above-named accused faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR  
No. 01, dated 14.01.2024 of Police Station Kurez.

(2).                      The case of the prosecution as outlined in the  
Murasila based FIR is as follows; on 14.01.2024, the  
complainant Muhammad Younas SHO along with  
constables Junaid Ali and Saif Ullah in official vehicle  
driven by Inshad Ali during routine patrolling were present  
on the spot at Balkot Landoka Road where at about 1020  
hours a motorcycle driven by a person heading from Dara  
Mani Khel towards the spot was signalled to stop but he tried  
to escape and fell down who was overpowered by the police

  
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party. A sack was found in possession of the person wherefrom 09 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 9,000 grams were recovered. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 9 whereas the remaining quantity of chars weighing 8910 grams was sealed in parcels no. 10. The spot proceedings were captured through a mobile which was copied into a USB by sealing it into parcel no. 11. Monograms of 'MY' was placed/affixed on all parcels. The complainant took into possession the recovered chars and the motorcycle in question vide recovery memo. The accused disclosed his name as Mujahid Khan s/o Janat Gul who was arrested on the spot by issuing his card of arrest. Murasila was drafted and sent to Police Station through Constable Saif Ullah which was converted into FIR by Intikhab Ali MHC.

- (3). After registration of FIR, it was handed over to Investigating Officer Hashim Khan 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 16.01.2024, the IO sent the samples of chars for chemical analysis to FSL through constable Khial Hussain, the result whereof was received and placed on file by him. The IO also

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sent the motorcycle to MVE for its examination. After completion of investigation, he handed over the case file to 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;

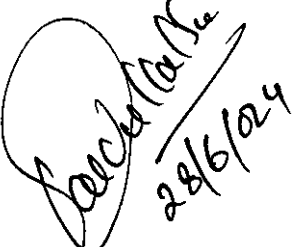
I. Constable Khial Hussain is PW-1. He has taken the samples of chars in parcels no. 1 to 9 to the FSL for chemical analysis on 16.01.2024 and after submission of the same, he has handed over the receipt of the parcels to the IO.

II. Intikhab Ali 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 he had kept in mal khana in safe custody besides parked the motorcycle in vicinity of the police station. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 2/1, entries in the DDs

  
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which is Ex. PW 2/2 and has handed over the samples of the case property to the IO for sending it to FSL.

- III. Muhammad Younas SHO is the complainant of the case. He as PW-3 repeated the same story as narrated in the FIR Ex. PA. He has submitted complete challan Ex. PW 3/2 against the accused facing trial in the instant case.
- IV. Constable Saif Ullah appeared as PW-4. 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 and the motorcycle. He also reiterated the contents of FIR in his statement.
- V. Investigating Officer Hashim Khan was examined as PW-5 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 before the court of Judicial Magistrate vide his applications Ex. PW 5/1 and Ex. PW 5/4, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 5/2 and road permit certificate Ex. PW 5/3 and

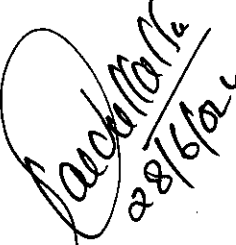
  
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result of the same Ex. PK was placed on file by him, drafted a letter Ex. PW 5/6 and an application Ex. PW 5/7 addressing the ETO Kohat and MVE respectively for verification of the motorcycle, placed on file copy of Register No. 19 Ex. PW 2/1, copies of daily diaries, report of ETO Kohat as Ex. PW 5/9 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,

  
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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 and that the prosecution has proved its case beyond shadow of any doubt.

(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?

  
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(iii). Whether the case of prosecution is substantiated through report of FSL?

(9). The case of prosecution, as per contents of Murasila Ex. PA/1, court statements of Muhammad Younas SHO as PW-3 and Constable Saif Ullah as PW-4 is, that the complainant Muhammad Younas SHO/PW-3 along with constables Junaid Ali and Saif Ullah/PW-4 in official vehicle driven by Inshad Ali during routine patrolling were present on the spot at Balkot Landoka Road where at about 1020 hours a motorcycle driven by a person heading from Dara Mani Khel towards the spot was signalled to stop but he tried to escape and fell down who was overpowered by the police party. A sack was found in possession of the person wherefrom 09 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 9,000 grams were recovered. The complainant/PW-3 have shown himself to have separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 9 whereas the remaining quantity of chars weighing 8910 grams were sealed in parcel no. 10 by placing/affixing monograms of 'MY' on all parcels. The complainant/PW-3 have taken into possession the recovered chars and the motorcycle in question vide recovery memo Ex. PC. The accused disclosed his name as **Mujahid Khan** s/o Janat Gul who was arrested on the spot by issuing his

  
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card of arrest Ex. PW 3/1. The Murasila Ex. PA/1 has been transmitted by Constable Safi Ullah/PW-4 to police station where, after registration of FIR by Intikhab Ali MHC/PW-2, it has been handed over to Hashim Khan/PW-5, the IO of the case. The IO has visited the spot and conducted investigation by making a site plan Ex. PB on pointation of Muhammad Younas SHO/PW-3 and recorded the statements of marginal witnesses u/s 161 CrPC.

The prosecution in order to prove its case in the mode and manner as alleged, has examined Muhammad Younas SHO, the complainant of the case, as PW-3 who has reiterated the contents of Murasila Ex. PA/1 and Constable Saif Ullah, the eyewitness of the occurrence and marginal witness of recovery memo Ex. PC as PW-4 who besides repeating the same story as narrated in the FIR, has stated to have taken the documents to the police station for registration of FIR and handed over the documents to Intikhab Ali MHC/PW-2 who has registered the FIR Ex. PA.

As per Murasila Ex. PA/1, the complainant/PW-3 had intercepted the accused, made recovery from his possession, sealed it into multifarious parcels and drafted the documents. During cross-examination, Muhammad Younas/PW-3 stated that he handed over Murasila Ex. PA/1 to Constable Saif Ullah/PW-4 at 11:40 hours. However, this time is also noted as the report time in FIR Ex. PA, which raises suspicions as

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it seems improbable for two distinct proceedings to occur simultaneously. Reliance is placed on **2023 MLD 2047** in case title **Shakeel Ahmad VS The State**.

Moreover, the Murasila carrier/PW-4/Constable Saif Ullah when cross examined on a point of taking the documents to the police station and his return to the spot, stated that he returned to the spot at 10:00 am, which is not appealable to a prudent that how could he return to the spot at the time when the accused was not even intercepted.

Furthermore, this witness of paramount importance has neither in his court statement as PW-3 nor in his report Ex. PA/1 has mentioned that whether the chars were pukhta or garda which were recovered in the instant case. The texture of the recovered chars was also not mentioned in the Murasila Ex. PA/1. In addition, with respect to overpowering of the accused, PW-3 in his cross examination stated that the accused was signalled to stop but he tried to escape who was chased for 20/25 paces. The relevant portion of his statement is;

*"I have chased the motorcycle for about 20/25 paces on the spot."*


In contrast, Constable Saif Ullah/PW-4, the eyewitness of the occurrence and the Murasila Ex. PA/1 provide a different account. He stated that the accused, while attempting to escape, fell down and it was at that moment the

  
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recovery was made from his possession. This PW also contradicts the complainant/PW-3 while clarifying the fact of knotting the sack wherefrom the alleged chars were recovered. According to the complainant/PW-3 the sack was self-knotted; however, PW-4 said that it was knotted with a rope.

In view of what is discussed above, it is held that there are glaring contradictions between the statements of PWs, creating doubts regarding the mode and manner of the occurrence as alleged by the prosecution.

- (10). Regarding the investigation conducted on the spot, as per contents of Murasila Ex. PA/1, the IO has visited the spot and prepared site plan Ex. PB on pointation of the complainant. As per statement of Constable Saif Ullah/PW-4, the IO/PW-5 arrived on the spot and recorded their statements including that of the driver, Inshad Ali, u/s 161 CrPC; but the entire record is silent to confirm this fact, even the driver has not been produced before the court for examination. Moreover, careful examination of the site plan Ex. PB shows that the place of occurrence is a straight road but how come it possible that a person having huge quantity of chars in his possession would straightaway proceed towards the police party despite being visible to him. During cross-examination, the IO (PW-5) testified that after leaving the police station, he arranged a private vehicle. However, it

  
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is astonishing to note that the entry of this private vehicle was made in the daily diary Ex. PW 2/2 by the Moharrir/PW-2 even though the IO had arranged the vehicle after departing from the police station, casting doubt on how the Moharrir was aware of this detail. The Investigation Officer/PW-5 has neither testified the factum of the registration of the motorcycle in the name of accused nor has proved the nexus of the accused with the motorcycle nor produced any receipt through which the motorcycle was given to him on rent. These contradictions in the entire record show that either the occurrence has not taken place on the spot or the IO has not visited the spot at all.

- (11). With respect to safe custody of transportation of case property from the spot to the police station, entry of the same in register No. 19 Ex. PW 2/1 and later on sending the same to the FSL for chemical analysis, the case of prosecution is, that the complainant/PW-3 transported the case property from the spot to the police station and handed over the same to Moharrir who makes its entry in register no. 19 and the IO on 16.01.2024 sent the representative samples in parcels no. 1 to 9 to the FSL through constable Khial Hussain/PW-1 vide road permit certificate Ex. PW 5/3. In order to prove its case, the prosecution relied upon the statements of Muhammad Younas SHO as PW-3, Intikhab Ali MHC as PW-2, constable Khial Hussain as PW-1 and Hashim Khan OII as

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PW-5. Though the FSL report Ex. PK regarding chars is positive but these glaring contradictions between the statements of prosecution witnesses with respect to the mode and manner of the occurrence and the investigation carried out by the IO and the record significantly undermine the strength of the prosecution's case and the FSL report alone cannot be taken into consideration for conviction of the accused.

(12). Before parting with the order, it is pertinent to mention here that the delinquent police officials, through their false statements and fabricated evidence, have gravely undermined the justice system, leading to the acquittal of individuals accused of carrying contraband. Their dishonest testimonies not only obstruct the course of justice but also allow dangerous offenders to evade legal consequences. Such actions erode public trust in law enforcement and compromise the integrity of legal proceedings. When those sworn to uphold the law become agents of deception, they betray their duty and endanger society. It is imperative to hold these officials accountable to restore faith in the judicial system and ensure that justice is served impartially and truthfully.

(13). The investigating officer did not gather any documentation regarding the accused's prior involvement in similar cases and no records were obtained indicating that the accused had been either charged or convicted in such like

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cases. Consequently, it is reasonable to conclude that the accused is a first offender. In these circumstances, it is imperative to consider this aspect when evaluating the evidence presented by the prosecution. As the prosecution has failed to prove the alleged recovery of chars from possession of the accused facing trial in the mode and manner as detailed in the report. Similarly, the prosecution has also failed to prove the alleged mode and manner of the investigation carried out by the IO on the spot. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt; therefore, the accused namely, **Mujahid Khan** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is in custody. He be released forthwith, if not required in any other case. Case property i.e., chars be destroyed after the period provided for appeal/revision.

Judgment announced. File of this court be consigned to record after its necessary completion and compilation. Copy of this judgment be sent to the District Police Officer, Orakzai for information and compliance.

Dated: 28.06.2024

*Syed Obaidullah Shah*  
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**CERTIFICATE**

Certified that this judgment consists of thirteen (13) pages. Each page has been read, corrected wherever necessary and signed by me.  
Dated: 28.06.2024

*Syed Obaidullah Shah*  
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Sessions Judge/Judge Special Court,  
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