

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

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| Case No. | 04/CNSA of 2024. |
| Date of Original Institution: | 01.11.2023. |
| Date of Transfer In: | 21.05.2024. |
| Date of Decision | 01.07.2024. |

FIR No. 41 Dated: 15.10.2023 U/S 11-A CNSA, PS Kurez Boya

Order No. 24

01.07.2024

DPP for the state present. Accused/petitioner Sher Badshah on bail along with counsel present. Today the case is fixed for evidence of prosecution. Statement of Altaf Ali recorded as PW-04. Learned counsel for accused/petitioner submitted application U/S 249-A Cr. PC. Notice of the same given to the prosecution for today.

2. Accused/petitioner namely Sher Badshah is facing trial in case FIR No. 41, dated 15.10.2023, U/S 11-A CNSA of PS Kurez Boya.

3. Brief facts of the case as per FIR are that on 15.10.2023 at 16:00 hours, the complainant along with Nousher Ali SI, Yahyad Ali HC No. 620, Constable Naseem Ali along with driver Inshad Ali in official vehicle have laid barricade. Meanwhile, a person coming from Chappar Mishti by foot was stopped due to suspicion. During his body

search the ASHO/complainant recovered and took into possession one plastic bag, white colour, containing ICE from the right side pocket of the accused. On weightment through digital balance, it came out 15 grams Methamphetamine (ICE). One gram was separated for sending

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the same to the FSL for chemical analysis in sealed condition, while the remaining 14 grams were sealed into parcel No. 2. Video of the recovered ICE was prepared and saved in USB which is sealed into parcel No. 3. All the parcels were sealed by putting stamps of "MY". The accused was arrested, who disclosed his name as Sher Badshah S/O Akbar Badshah, Caste Mishti, District Orakzai. Murasila, card of arrest and recovery memo was drafted and sent the same to the PS for registration of FIR through constable Yahyad Ali No. 620. FIR was registered. IO proceeded to the spot and prepared the site plan on the pointation of complainant/ASHO.

4. 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 on 14.11.2023. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused.

5. Arguments heard and available record perused which shows that statements of as many as 04 PWs have been recorded in the instant case.

6. *PW-01*, is the statement of Khayal Hussain. He stated that on 17.10.2023 the IO handed over to him parcels No. 01 & No. 3 containing one-gram ICE in sealed condition and USB along with application addressed to incharge of FSL, Peshawar and road permit certificate for chemical examination. He took the same and handed over to the incharge of FSL, Peshawar and obtained his signature and seal on road permit certificate. He returned to the PS and handed over

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road permit certificate and USB to the IO. His statement was recorded by IO U/S 161 Cr. PC.

7. *PW-02*, is the statement of Moharrir, Asmat Ali. He stated that on receipt of Murasila through constable Yahyad Ali HC along with relevant documents, he incorporated the contents of Murasila in the FIR which is Ex. PW-2/1. The ASHO Altaf Ali handed over to him the recovered contrabands and USB in sealed condition in parcels No. 1 & No. 3. He kept the same in the Mallkhana of the PS for safe custody and entry has been made out in the register-19. The extract of which is Ex. PW-2/2. He handed over the parcels No. 1 & No. 3 to the IO for FSL. His statement was recorded by IO U/S 161 Cr. PC. He was thoroughly cross examined by the counsel for accused.

8. *PW-03*, is the statement of SHO, Muhammad Younas. He submitted complete challan Ex. PW-3/1 against accused. His statement was recorded by the IO U/S 161 Cr. PC.

9. *PW-04*, is the statement of ASHO/Complainant Altaf Ali. He stated that he along with Nousher Ali SI, Bakhtiyar Ali HC No. 620, Constable Naseem Ali along with driver Inshad Ali in official vehicle have laid barricade. Meanwhile, a person coming from Chappar Mishti by foot was stopped on suspicion. During his body search the ASHO/complainant recovered and took into possession one plastic bag, white colour from the right pocket of the accused. On weighing through digital balance, it came out 15 grams Methamphetamine (ICE). One gram was separated for sending the same to the FSL for chemical analysis in sealed condition, while the remaining 14 grams were sealed into parcel No. 2. Video of the recovered ICE was

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prepared and saved in USB which is sealed into parcel No. 3. All the parcels were sealed by putting stamps of "MY". The accused was arrested, who disclosed his name as Sher Badshah S/O Akbar Badshah, Caste Mishti, District Orakzai, Murasila and recovery memo was drafted and sent the Murasila to the PS for registration of FIR through constable Bakhtiyar Ali. IO prepared the site plan on the pointation of complainant/ASHO.

10. All the PWs were thoroughly cross examined by the counsel for accused except the statement of PW-03 & PW-04.

11. At this stage during the statement of PW-04, counsel for the accused submitted an application for de-sealing the parcel Ex. P1. The application was accepted and the parcel was requisitioned from the Mall Khana. The same was opened in presence of the learned District Public Prosecutor, Orakzai, counsel for the accused and seizing officer/complainant in the open court. The contents of the parcel are examined by putting flame under some of the contents/ alleged ICE.

The contents of the parcel instead of melting become hardened and no smoke came out of it, meaning thereby that the material inside the parcel is not ICE/Methamphetamine as it is the chemical property of Methamphetamine/ ICE that the same convert into melted/liquid form after giving flame to it and it produce smoke, but in the instant case, no such chemical reaction took place. Another test is made for further confirmation by tasting a small quantity of the same with tongue and it was found that the same is "salt" and not ICE even at any stretch of imagination. The side of the parcel opened in the court is re-sealed by

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putting seal stamp of "AS" and after signing by the undersigned, the same is returned to the concerned.

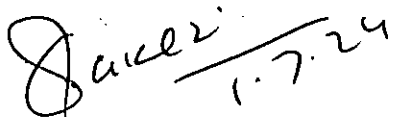
12. Learned counsel for accused/petitioner submitted an application U/S 249-A Cr. PC for acquittal of accused submitted. Notice of which is given to the prosecution. Arguments heard and available record perused which shows that the accused facing trial was arrested for having possession 15 grams Methamphetamine recovered from right side of his pocket during his body search. Today, during statement of the complainant, the case property is produced before the court for exhibition, but counsel for the accused submitted application for de-sealing of the same which is accepted and the contents of the parcel are opened in the court in presence of learned DPP for the state and counsel for the accused. The contents of the parcel were put to test by the court. Some of the contents/alleged ICE were put on aluminum foil and flame was given under the aluminum foil which instead of melting and changing into liquid form, become more hardened and the same could not produce any smoke. The chemical property of Methamphetamine/ ICE is that it convert into liquid/melted form and a huge quantity of smoke come out of it, but in the instant case no such reaction took place. This court in order to further verify and determine that what are the contents of parcel, the contents of the parcel were tasted through tongue which reveals that the same is food Salt and there is no ICE in the parcel. The parcel was re-sealed in presence of the incharge of Mallkhana in accordance with law. Now, as it has proved in the open court that the contents inside the parcel is not Methamphetamine, therefore, the prosecution have

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brought no case at all. I, therefore, accept the instant application and acquit the accused facing trial from the charges levelled against him. He is on bail. His sureties are discharged from the liability of the bail bonds. Case property be dealt in accordance with law.

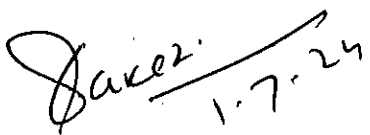
13. Case file be consigned to record room after its necessary completion and compilation.

Announced
01.07.2024


(Bakht Zada)
Senior Civil Judge/JM,
Orakzai at Baber Mela.

CERTIFICATE

It is certified that this judgment/order consists of 06 pages. Each page has been dictated, read, corrected and signed by me.


(Bakht Zada)
Senior Civil Judge/JM,
Orakzai at Baber Mela.