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IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE-I
TEHSIL KALAYA, DISTRICT ORAKZAI

Case No.....8/3 of 2023.

Date of Institution.....13.06.2023.

Date of Decision.....13.08.2024.

State through:

Sub-Inspector Aftab Hassan ASHO PS Kalaya, District Orakzai

.....**Complainant**

VERSES

Ishaq Ali S/O Muhammad Ishfaq R/O Qaum Mani Khel, Tappa Sabzi
Khel, Tehsil Lower, District Orakzai **Accused**

Case FIR No. 25, Dated 12.03.2023 U/S 11-A CNSA & 15-AA PS Kalaya.

JUDGMENT

13.08.2024

Through this judgment, I am going to dispose of the instant case registered against accused Ishaq Ali vide case FIR No. 25, Dated 12.03.2023 U/S 11-A CNSA & 15-AA PS Kalaya. This separate challan was submitted by prosecution for offence u/s 11-A CNSA.

1. Brief facts as per contents of FIR are that, on 12.03.2023 at 13:30 hours, at Feroz Khel Mela Bazar, Complainant, SI Aftab Ahmad ASHO PS Kalaya, who was accompanied with by other police nafri, was on area patrol in official vehicle at Feroz Khel Mela Bazar when a person in suspicious condition was stopped, during his body search, one 30 bore pistol without number along with a spare and fixed charger containing 06 live rounds of the same bore were recovered from his possession. On his further body search, a plastic envelope of white colour along with Sheesha tube, was recovered from his side


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pocket and on checking the same, it was containing 20 grams ICE. One gram ICE was separated for FSL examination which was packed and sealed into parcel No. 1 while the remaining 19 grams ICE was packed and sealed into parcel No. 2. The complainant took into possession the case property through recovery memo in the presence of marginal witnesses. The person disclosed his name as Ishaq Ali S/O Muhammad Ishfaq R/O Qaum Mani Khel, Tappa Sabzi Khel, Tehsil Lower, District Orakzai, who was formally arrested. Murasila was drafted at the spot and was sent to PS for registration of the case through Constable Gulshid Ali No. 1528 and on the strength of Murasila, the instant case was registered against the accused facing trial vide FIR Ex.PA.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial. Accused was summoned. He appeared before the court and legal formalities under Section 241-A Cr. PC were complied with. Accused was formally indicted. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence. Prosecution produced six (06) witnesses to prove its case against the accused. PW constable Junaid Ali was abandoned by prosecution and closed its evidence.

3. Constable Hamayoon Muharrir was examined as PW-01. He has incorporated the contents of murasila into FIR Ex.PA. He has also made entry in register 19 extract whereof is Ex.PW-1/1. Copies of DD are Ex.PW-1/2 to Ex.PW-1/5. PW-02 is the statement of SI Muhammad Hanif. He is IO of the case. After receiving case file for


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investigation, he proceeded to the spot and prepared site plan Ex.PB on the pointation of the complainant. He recorded statements of PWs u/s 161 Cr.PC. He also produced the accused before the court, for obtaining his physical remand vide application Ex.PW-2/1. He sent parcel containing 01 gram ICE to FSL for examination vide application Ex.PW-2/2. FSL report is Ex.PW-2/3. Copy of receipt is Ex.PW-2/4. PW-03 is the statement of SI Aftab Ahmad. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex.PW-3/1. Constable Gul Karim No.174 deposed as PW-04. He took parcel No.1 containing one gram ICE, in sealed condition to FSL Peshawar along with application and road permit certificate. Complainant, SI/ASHO Aftab Hassan deposed as PW-05. He reproduced the story narrated in the FIR. He took into possession the case property vide recovery memo Ex. PW-5/1 in the presence of marginal witnesses. Card of arrest of accused is Ex. PW-5/2. Murasila is Ex. PW-5/3. He also pointed out the spot to the IO. PW-06 is the statement of Constable Gulshid Ali No. 1528. He is one of the marginal witnesses to the recovery memo Ex.PW-5/1. He took murasila, recovery memo and card of arrest from the spot to PS for registration of the case. Thereafter, prosecution's evidence was closed.


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4. On conclusion of prosecution's evidence, statement of accused was recorded u/s 342 Cr.PC, in which he professed his innocence, however, he did not opt to record his statement on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in his favour.

5. Record shows that the alleged occurrence took place on 12.03.2023 at 13:30 hours at Feroz Khel Mela Bazar, Lower Orakzai. It was reported at 14:00 hours and FIR was registered at 14:25 hours. PW-05; SI Aftab Hassan is the complainant while PW-01 SI Muhammad Hanif is IO of the case. Although, as per Ex.PW-5/3, the incriminating articles have been allegedly recovered from the direct possession of the accused facing trial and there is a positive FSL report Ex.PW-2/3 is placed on file, however, there are material contradictions in the statements of PWs. PW-01, stated in his cross examination that on the relevant day, date and time, he was on gasht in his official vehicle. On the other hand, PW-02 stated that barricade was erected by complainant near a hotel at Feroz Khel Mela Bazar. PW-02 also stated that there was no official vehicle with the complainant which contradicts PW-01. PW-02 also deposed that no specific place/point of the alleged recovery is mentioned in the site plan. He has not mentioned any shop in the site plan in front of which the alleged recovery was made. He has not recorded statement of any shopkeeper despite the fact that Feroz Khel Mela Bazar is a busy place with so many shops. He has not mentioned the point of barricade in site plan. PW-02 also deposed that traffic police was on duty at Feroz Khel Mela bazar at the relevant time, however, they were neither associated by complainant nor by him. PW-04 stated in his cross examination that he took only parcel containing one gram ICE to FSL while as per Ex.PW-2/4, the recovered 30 bore pistol was also sent to FSL through PW-04. Similarly, PW-05 stated in his cross examination that the

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specific place/point of the alleged occurrence is not mentioned in the murasila. There are about 250 shops in Feroz Khel Mela Bazar. He left the PS at 11:30 am and reached to Feroz Khel Mela at about 01:00 pm. He does not know which document he firstly prepared. He does not know the names of constables who accompanied the IO. PW-06 stated in his cross examination that first, ASHO prepared murasila and then the other documents. He cannot point out, card of arrest on the record. He does not know, exact time of arrival of IO to the spot. Similarly, he does not know how many other police officials were present with the IO. He does not know who is IO of the case? His statement was recorded by IO in PS. They returned to PS at about 13:30 pm after completion of spot proceedings. As mentioned above, the alleged occurrence took place at 13:30 hours and it was reported at 14:00 hours, FIR was registered at 14:25 hours whereas; PW-06 stated that they returned to PS at about 13:30 hours after completion of spot proceedings which means that the IO and PW-06 inspected the spot before registration of the case which is not possible.

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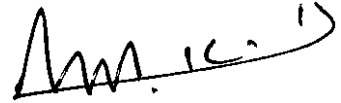
- 6. The prosecution version qua the recovery of 20 grams ICE from possession of the accused has not been substantiated through the statements of PWs. PWs are not consistent on salient aspect of the prosecution version. The chain of custody of the recovered ICE has not been established. Accused has not confessed his guilt before the court. There is no criminal history of accused facing trial. Case of prosecution is full of dents and doubts benefit of which goes to the

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accused as of right. Prosecution failed to prove its case against the accused facing trial.

7. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Ishaq Ali is hereby acquitted from the charges leveled against him. He is on bail. His bail bonds stand cancelled. Sureties are discharged from their liability. Case property be dealt with in accordance with law.
8. Case file be consigned to record room after its completion and necessary compilation.

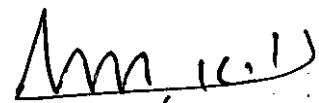
Announced
13.08.2024



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CERTIFICATE

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



Zahir Khan
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