

**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL
JUDGE/JM, DISTRICT ORAKZAI**

Case No.....02/CNSA of 2023.
Date of Institution.....16.10.2023.
Date of Transfer In.....21.05.2024.
Date of Decision.....27.09.2024.

State through:

Altaf Ali, ASHO, PS Kurez Boya, District Lower Orakzai

.....**Complainant**

VERSES

1. Zulqif Khan s/o Haji Badshah
2. Amshed Khan s/o Zyarat Khan

Both R/O Qoum Mishti, Tappa Darwi Khel, District Orakzai

.....**Accused Facing Trial**

JUDGEMENT

27.09.2024

Through this judgement, I am going to dispose of the instant case registered against accused facing trial Zulqif Khan s/o Haji Badshah and Amshed Khan s/o Zyarat Khan, vide FIR, No. 35, Dated:11.09.2023, U/S: 11(A) CNSA of PS Kurez Boya, L/Orakzai.

Brief facts as per contents of FIR are that complainant Altaf Ali, ASHO of PS Kurez Boya sent a written Murasila, recovery memo and card of arrest to the PS through constable Yasin Ullah. According to Murasila, the complainant along with constable Yasin Ullah 41, Afsar Ali Shah 505 in the official vehicle in the custody of driver Inshad Ali 663 were on routine gasht in the area. Meanwhile, the informer informed him that few persons are busy in taking and

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selling ice drugs. On information, they reached to the place of occurrence and found 02 persons busy in taking ice drug. Both the persons were apprehended. They disclosed their names as Zulqif Khan s/o Haji Badshah and Amshed s/o Zyarat Khan R/O Mishti, Tappa Darwi Khel. During body search of Zulqif Khan, one plastic envelope consisted of Ice was recovered and on weighing, it was found 100 grams Ice. Similarly, during body search of Amshed, one plastic envelope was recovered from his side pocket consisted of Ice which was found to be 45 grams on weighing. The Ice were sealed in separate parcels after separating 01 gram each from both the parcels for the purpose of FSL. Card of arrest of the accused was prepared and sent to PS along with Murasila for registration of FIR.

2. Complete challan against the accused was submitted
3. Accused were summoned and legal formalities under Section 241-A Cr.P.C were complied with on 23.10.2023. Formal charge against the accused was framed on 30.10.2023, to which they pleaded not guilty and claimed trial, whereafter prosecution was directed to produce its evidence.
4. Prosecution produced as many as six (06) witnesses to prove its case against the accused. The gist of prosecution evidence is as follows;
5. **PW-01** is the statement of Altaf Ali, ASHO, PS Kurez Boya. He arrested the accused on spot and allegedly recovered 100 grams of Ice from the possession of accused Zulqif Khan and 45 grams of Ice from the possession of accused Amshed Khan. He separated 1/1 gms of Ice for FSL examination and sealed into parcel No. 01 & parcel

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No. 02. He sealed remaining 99 gms of Ice into parcel No. 03 Ex. P-1 and 44 gms of Ice into parcel No. 04 Ex. P-2 which were stamped with the monogram of MV. He also prepared the recovery memo, card of arrest of the accused and Murasila which are Ex.PW-1/1 to Ex.PW-1/3 and sent the same to Muharrir of the PS for registration of FIR through constable Yasin Ullah. That the site plan was prepared by the IO on his pointation. His statement was recorded by the IO u/s 161 Cr.P.C after spot inspection and he went back to the PS and handed over the recovered contrabands along with accused to Muharrir of the PS for safe custody.

6. PW-02 is the statement of Syed Murtaza, PS Kurez Boya. That on 13.09.2023, the IO Mohsin Ali handed over the parcel No. 01 & 02 for onward submission to FSL Peshawar. Road permit certificate is prepared by the IO which is Ex.PW-2/1.

7. PW-03 is the statement of Ibad Ul Hassan, Muharrir, PS Kurez Boya. He incorporated the contents of Murasila into FIR which is Ex.PW-3/1. He entered the recovered narcotics in register-19. Copy of the relevant page is Ex. PW-3/2. Daily Diary regarding the arrival and departure of SHO is placed on file which is Ex.PW-3/3 (02 pages). On 13.09.2023, he handed over the parcel No. 01 and 02 to the IO for onward submission to FSL. His statement was recorded by the IO u/s 161 Cr.P.C.

8. PW-04 is the statement of Afsar Ali, constable, PS Kurez Boya. He is the marginal witness to recovery memo Ex.PW-1/1 vide which the ASHO took into possession 100 gms of Ice from the possession of

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accused Zulqif Khan and 1/1 gms ice was separated for FSL which was sealed into parcel No. 01 while the remaining 99 gms of Ice were sealed into parcel No. 03 while 45 gms of Ice were recovered from the possession of accused Amshed Khan out of which 01 gm of Ice was separated from FSL which was sealed into parcel No. 02 while the remaining 44 gms were sealed into parcel No. 04 duly stamped with the monogram of MV. His statement was recorded by the IO u/s 161 Cr.P.C.

9. PW-05 is the statement of Muhammad Yonus Khan SHO, PS Kurez Boya. He submitted complete challan Ex.PW-5/1 against the accused on 15.09.2023.

10. PW-06 is the statement of Mohsin Ali, IO, PS Kurez Boya. After registration of FIR, all the relevant documents were handed over to him for investigation on 11.09.2023. He prepared the site plan on the pointation of complainant which is Ex.PW-6/1. He recorded statements of the marginal witnesses. On 12.06.2023, he produced the accused along with case property before the court of judicial magistrate vide application Ex.PW-6/2. The accused was sent to judicial lock-up. He sent the parcel No. 01 and parcel No. 02 to FSL for examination. FSL application is Ex.PW-6/3 while the road certificate is already Ex.PW-6/4. After completion of investigation, he handed over the case file to SHO for submission of challan.

11. After closing of prosecution evidence, statements of accused U/S 342 Cr. PC were recorded wherein they pleaded not guilty and also did

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(64) not wish to be examined on oath. They opted not to produce evidence in defense.

12. Arguments heard and available record perused.

13. Allegation against accused facing trial are that the complainant ASHO PS Kurez Boya has alleged that he received information during gasht that few persons are busy in taking ICE drug and selling at the place of occurrence. When he reached the place of occurrence, he found the accused facing trial busy in taking ICE drug and they were apprehended at the spot and recovery was affected.

14. In order to prove the above allegations, the prosecution was duty bound to produce evidence in line with their allegations, but in the present case *firstly*, the complainant has neither disclosed his source of information, nor he has recovered any instrument of taking ICE in shape of Hookah, aluminum foil and lighter/match etc which makes the allegations doubtful as the same have not been taken into possession vide recovery memo.

15. *Secondly*, the name of one Syed Murtaza is mentioned in the "Rahdari" receipt No. 172/21KB Ex. PW-2/1 as carrier of parcel No. 1 & 2 to FSL, Peshawar, but letter to FSL prepared by the IO shows the name of one Khiyal Hussain No. 843. There is no clarification regarding any changes in the "Rahdari" receipt and some confusion has been made by doing this regarding the carrier who took the parcels to the FSL which further creates doubts about the carrier and mode and manner in which the parcels were dispatched. PW-04, has stated in his cross examination that when they got information after

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one hour of the said information, they reached to the spot and made out nakabandi, meaning thereby that either the accused were arrested during nakabandi or during gasht on the road then the allegations regarding taking ICE drug seems to be fabricated not only on the ground that they were arrested during nakabandi or on road during gasht, but also that no medical examination of the accused has been conducted to prove the allegation. No medical report regarding taking ICE is available on the case file.

16. *Thirdly*, counsel for the accused facing trial submitted application for de-sealing the parcel in the open court and to examine the contents of the parcel. This court accepted the application. The parcel was requisitioned and de-sealed by this court in presence of the learned DPP for the state. The contents of the parcel were given heat through lighter by putting it in the aluminum foil, but the same became blackish and harder instead of melting and producing smoke which is the chemical property of Methamphetamine/ICE. Later on, tongue test was made by tasting the same and it was confirmed by the court as well as learned DPP in the open court that the contents inside the parcel is salt instead of ICE.

17. All the above-mentioned facts and circumstance makes the case of prosecution one full of doubts and according to the judgements of superior courts, benefit of doubt always goes into the favour of the accused.

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18. It is to assert that the rule of criminal jurisprudence to give benefit of doubt to accused is much more than a mere rule of law. It is a rule of prudence which cannot be ignored (**PLD 1999 Lahore 56**) (**1999 SCMR 1220**).

19. The prosecution has failed to substantiate its case against the *accused* beyond reasonable doubts. Failure of prosecution to comply the mandatory provision of law created doubts in prosecution version and it is settled principle of criminal law that benefit of doubt always goes in favor of accused.

20. *A single dent having created in the case of prosecution makes the accused entitled to benefit of doubt. It is to assort that the rule of criminal jurisprudence to give benefit of doubt to accused much more than a mere rule of law. It is a rule of prudence which cannot be ignored (PLD 1999 Lahore 56) (1999 SCMR 1220).*

21. *Supreme Court in case of Tariq Parvez Vs the State (1995SCMR 1345) has observed that the concept of benefit of doubt to an accused person is deep rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is only circumstance which creates reasonable doubt in prudent mind about the occurrence of the accused, so the same be extended to him not as concession but as a matter of right.*

22. Keeping in view the above, I therefore, acquit the accused facing trail from the charges leveled against them by extending them benefits of

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doubts. They are on bail. Their sureties are discharged from the liability of the bail bonds. Case property if any be kept intact till the expiry of period provided for appeal/revision. Copy of this judgement be sent to DPO, Orakzai for initiating proceedings against the concerned delinquent officials. The parcel is resealed and handed over to Incharge Mall Khana for safe custody.

23. Case file be consigned to Record room after its completion and necessary compilation.

Announced
27.09.2024

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CERTIFICATE

It is certified that this judgment consists of 08 pages. Each page has been dictated, read, corrected and signed by me.

Dated: 27.09.2024

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