

STATE VS MUZAMIL

FIR No. 01 | Dated: 02.01.2024 | U/S: 9 (d) of the Khyber Pakhtunkhwa  
CNSA 2019 | Police Station: Kalaya

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

SPECIAL CASE NO. : 12/3 OF 2024  
DATE OF ORIGINAL : 12.03.2024  
DATE OF DECISION : 07.10.2024

STATE THROUGH NASIR AHMED SHO, POLICE STATION  
KALAYA

.....(COMPLAINANT)

-VERSUS-

MUZAMIL S/O KASTIR ALI, AGED ABOUT 23/24 YEARS, R/O  
BAR MUHAMMAD KHEL, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

**Present:** Umar Niaz, District Public Prosecutor for State.  
: Khursheed Alam Advocate for accused facing trial.

**FIR No. 01**                      **Dated:** 02.01.2024      **U/S:** 9 (d) of the Khyber  
Pakhtunkhwa Control of Narcotic Substances Act, 2019  
**Police Station:** Kalaya

JUDGEMENT  
07.10.2024

The above-named accused faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR  
No. 01, Dated 02.01.2024 of Police Station Kalaya.

(2) The case of the prosecution as outlined in the  
Murasila based FIR is as follows; on 02.01.2024, the  
complainant, Nasir Ahmed SHO alongside Constables  
Muhammad Irshad and Manzoor Ali in official vehicle  
driven by Zeeshan Haider having laid a picket were present  
on the spot where at about 1400 hours a person holding a  
blue colour plastic shopper in his right hand on way from  
Kalaya Bazar towards the picket, was stopped. His person

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was searched but nothing incriminating was recovered from his personal search. The search of the shopper led the complainant to the recovery of 05 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 5000 grams. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 5 whereas the remaining quantity of chars weighing 4950 grams were sealed in parcel no. 6. The spot proceedings were captured in a cellular phone, converting it into USB which was sealed in parcel no. 7. Monograms of 'NA' were placed/affixed on all parcels. The accused disclosed his name as **Muzamil** s/o Kastir Ali who was accordingly arrested by issuing his card of arrest. The complainant took into possession the recovered chars vide recovery memo. Murasila was drafted and sent to Police Station through constable Manzoor which was converted into FIR by Muhammad Jameel MHC.

(3). After registration of FIR, it was handed over to Aftab Hassan OII for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan Ex. PB on pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 04.01.2024, the IO sent the samples of chars for chemical analysis to FSL vide application Ex. PW 5/2 through constable Abdul Shakoor and road permit certificate Ex. PW 5/3, it's result Ex. PK was received and

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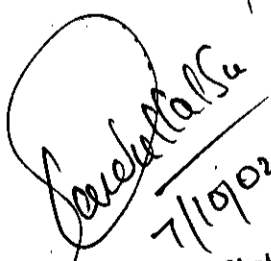
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placed on file by him. After completion of investigation, he handed over the case file to SHO who submitted complete challan against the accused facing trial.

- (4). Upon receipt of case file for the purpose of trial, the accused was summoned through addendum-B from Sub-Jail Orakzai, 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. Muhammad Jameel MHC appeared in the witness box as PW-1. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has also received the case property duly packed and sealed from the complainant which he had kept in Mal Khana in safe custody. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 1/1 and handed over the samples of the case property in parcels no. 1 to 5 to the IO for sending the same to FSL on 04.01.2024.

II. Constable Abdul Shakoor is PW-2. He has taken the samples of recovered chars in parcels no. 1 to 5 to the FSL for chemical analysis on

  
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04.01.2024 and after submission of the same, he has handed over the receipt of the parcel to the IO.

III. Nasir Ahmed SHO is the complainant of the instant case. He as PW-3 reiterated the same story as narrated in the FIR. He has also submitted complete challan Ex. PW 3/2 against the accused facing trial.

IV. Constable Manzoor Ali is PW-4. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.

V. Lastly, Investigating Officer Aftab Hassan 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 application Ex. PW 5/1, sent the representative samples to the FSL along with application addressed to the incharge


  
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FSL Ex. PW 5/2 and road permit certificate Ex. PW 5/3 and it's result Ex. PK was placed on file by him. He has also placed on file copy of Register No. 19 Ex. PW 1/1 and copies of daily diaries and submitted the case file to SHO for its onward submission.

(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 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 it has been found positive for chars vide report of FSL Ex. PK. 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, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing

  
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contradictory could be extracted from the mouth of any of the witness of the prosecution 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, the alleged chars have been shown recovered from his possession and the report of FSL support 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?

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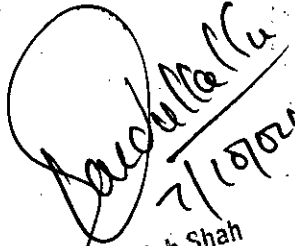
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(iii). Whether the case of prosecution is substantiated through report of FSL?

(9). The prosecution's case is built upon the testimonies of several police witnesses, including SHO Nasir Ahmad (PW-3), Constable Manzoor Ali (PW-4), and Investigation Officer Aftab Hassan (PW-5). Statements of all the aforementioned witnesses have been reproduced herein before, wherein they have unanimously supported the case of prosecution.

It is evident from the record that the presence of complainant/PW-3 along with constables Manzoor Ali/PW-4 and Muhammad Irshad with driver Zeeshan, is corroborated by Daily Diary (DD) No. 4 of 02.01.2024 which indicates that the complainant/PW-3 together with the aforementioned witnesses and driver had left the police station at 08:30 pm for patrolling of the area. This fact has also been confirmed by the complainant and eyewitness in their statements as PW-3 and PW-4 respectively. Moreover, the factum of the presence of the complainant party is also supported by the site plan Ex. PB which depicts the complainant/PW-3, the witnesses, the official vehicle, and the driver at the spot of occurrence.

With respect to recovery, weighing, packing and sealing of the chars, both the complainant/PW-3 and eyewitness/PW-4 are unanimous on the key facts: that the accused was holding a shopping bag in his right hand; that

  
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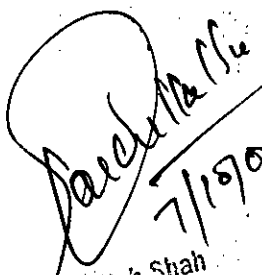
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nothing incriminating was found during personal search of the accused; that five (05) packets of chars wrapped in yellow colour scotch tape were recovered from a shopping bag which was weighed on the spot; that 10 grams of chars has been separated from each packet for representative samples, leading to the preparation of numerous parcels. Both the witnesses have been cross examined on different aspects but no contradictions were drawn from their statements except that the kind, colour and texture of chars were not mentioned in the Murasila. In his cross examination, however, the complainant/PW-3 stated that the shape of chars was round. Similarly, while the complainant/PW-3 stated that the recovery memo was prepared first, the eyewitness/PW-4 testified that the Murasila was prepared first. However, all these contradictions on one hand are minor and negligible while on the other hand these have been occurred due to variation in personal observations of the things by the PWs.

After preparation of the relevant documents i.e., Murasila, card of arrest and recovery memo, these were handed over to PW-4 for transmission of the same to the police station who has taken it to the police station and handed over to PW-1/Moharrir of the police station for registration of FIR. In this respect, the complainant/PW-3 and the Murasila Carrier/PW-4 are unanimous on the point

  
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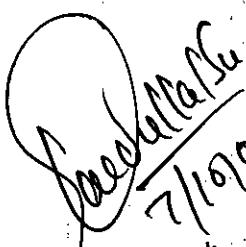
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that the documents have been handed over to PW-4 at 03:00 pm, he has travelled to the police station where, after handing over it to PW-1, FIR has been registered. Similarly, both the witnesses are also unanimous on the fact that constable Manzoor Ali/PW-4, after handing over the documents to PW-1, has returned to the spot at 03:30 pm.

With respect to making of investigation on the spot, the IO/PW-5 after receipt of the Murasila, has gone to the spot which is supported by DD No. 12 of 02.01.2024. The factum of arrival of the IO on the spot is substantiated by the complainant/PW-3 and the eyewitness as PW-4. The time of arrival of the IO/PW-5 to the spot is supported by the statement of the complainant/PW-3 and the DD of 02.01.2024 besides the said DD is line with the statement of IO/PW05 regarding the time of his return to the police station which is 1705 hours.

Regarding safe custody of the case property from the spot to the police station and its transmission to the FSL, the prosecution relied upon the testimonies of Muhammad Jameel/PW-1, Constable Abdul Shakoor/PW-2, Nasir Ahmed SHO/PW-3 and Aftab Hassan IO/PW-5. The complainant/PW-3 has corroborated the facts regarding recovery of different packets of chars from possession of the accused facing trial, extracting the samples for FSL, its transmission to the police station and handing it over to

  
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Muhammad Jameel/PW-2 who entered its details in register no. 19 Ex. PW 1/1. All these facts have been confirmed by PW-1 and PW-4 in their statements recorded before the court. The samples of chars in parcels no. 1 to 5 were transmitted to the FSL within the prescribed period of time through constable Abdul Shakoor on 04.01.2024 whose departure and arrival to the police station are established through DD No. 5 of 04.01.2024 and the statements of PW-1 and PW-5, leading to the positive result of FSL which is placed on file as Ex. PK which further strengthens the case of prosecution against the accused facing trial. The chain of transmission of the case property from the spot to the police station and then from the police station to the FSL, is supported by statement of complainant/PW-3, statement of Moharrir of the police station as PW-1 and statement of constable Abdul Shakoor as PW-2.

The testimonies of prosecution witnesses were consistent and detailed, and they were corroborated by the physical evidence, including the sealed parcels and the video recording. The recovery process was carried out according to standard procedures, and the chain of custody was maintained. The recovery of the chars was witnessed by two police officers namely Constable Manzoor Ali/PW-4 and Constable Muhammad Irshad, and the contraband was sealed in parcels, each bearing monograms. Although the defence

  
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raised minor discrepancies regarding the Murasila (such as the omission of the colour and texture of the chars), these are procedural details that do not significantly undermine the recovery process, particularly given the corroborative testimony of the police officers and the positive FSL report. The FSL report confirmed the nature of the contraband as chars, which supports the prosecution's case. The FSL report, which confirmed that the recovered substance was chars, is a key piece of evidence and the defence did not challenge its authenticity, and it remains a vital piece of evidence linking the recovered substance to the accused facing trial.

(10). Hence, in view of what is discussed above, it is held that the prosecution has successfully bring home the charge against the accused facing trial. Therefore, the accused namely, **Muzamil** is held guilty of the offence u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act. However, keeping in view the minor contradictions, which though do not go to the root of case of prosecution, but these cannot be ignored at all. Moreover, the accused is first offender and young and he must have a chance of repentance; therefore, instead of sentencing him at once, he is placed on probation for a period of two (02) years subject to the executing of bonds in the sum of Rs. 50,000/- with two sureties to the effect that the accused would commit no

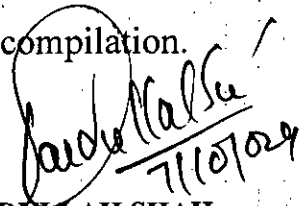
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offence and to keep the peace and be of good behavior during the period of bond and to appear and receive the sentence, if called upon to do so during that period to the satisfaction of Probation Officer concerned. Case property i.e., chas be destroyed in accordance with law after the period provided for appeal/revision.

Judgment announced. File of this court be consigned to record after its necessary completion and compilation.

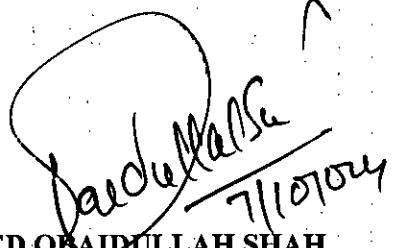
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**SYED OBAIDULLAH SHAH**  
Sessions Judge/Judge Special Court,  
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**CERTIFICATE**

Certified that this judgment consists of twelve (12) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 07.10.2024

  
7/10/2024  
**SYED OBAIDULLAH SHAH**  
Sessions Judge/Judge Special Court,  
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