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In the court of Abdul Basit  
Addl. Sessions Judge-II, Orakzai

The State versus Khyber Gul

Order...02

Accused Khyber Gul is on bail but not summoned.

04.11.2024

Sr.PP for the State is present.

Through this order I shall decide the application filed by prosecution for permission to withdraw from the prosecution of case against accused Khyber Gul s/o Memla Khan resident of district Khyber u/s 4 C (II) read with 5 (B) of The Prosecution Act, 2005 r/with section 494 of CrPC as he was charged vide case FIR no. 39 dated 10.10.2023 u/s 9-D CNSA, 324/353/186 PPC registered in Kurez Boya police station, District Orakzai.

Muhammad Younis, complainant, along with police officials during patrolling received information that Khyber Gul son of Memla Khan, Younis son of Abdul Badshah and Hameed duly armed with firearms were carrying plastic bags of chars on their shoulders for smuggling the same to District Khyber; that acting upon the information, they rushed towards the spot and found above named persons armed with firearms carrying plastic bags on their shoulders; that complainant asked them to stop but they had dropped their plastic bags and opened fires at police party with intention to kill and started to escape towards the hilly area; that police party had also opened fires at them in self-defense as a result of which Khyber Gul got hit and got slightly injured; that all the three persons getting advantage of hilly area escaped from the spot and left three white color plastic bags; that plastic bags left by Khyber Gul contained 35 packets of charas, the plastic bag left by accused Younis contained 35 packets of charas and the plastic bag left by accused Hameed contained 30 packets of charas; that test samples from each packet were separated and videography of the recovery was made; hence, the FIR.

Arguments heard and record perused.

Perusal of record reveals that accused Khyber Gul and two others have been allegedly charged for smuggling a huge quantity of charas but as per available record there is no evidence on record that could connect him with the commission of offence. More so, recovery is not effected

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*04-11-2024*  
**Abdul Basit**  
Addl. Sessions Judge-II  
Orakzai at Baber Mela,  
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**Contd. 02**

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from the direct possession of accused nor even the accused Khyber despite being injured in the alleged police encounter could have been arrested by the police on the spot, which not only questions the performance of the police but also creates serious doubt about the commission of offence by him despite he was possessing sophisticated weapon. Likewise, neither he had been arrested on the spot nor did anything recover from his direct possession. More so, during investigation, local police has not recorded statement of independent person in respect of allegations leveled against him. It is abundantly clear from the record that besides the bald allegations leveled by complainant in his report, no direct, indirect or circumstantial evidence is available on file against accused Khyber Gul regarding his involvement in the commission of offence.

Besides, application for discharge of accused Khyber Gul has also been submitted by The District Public Prosecutor, Orakzai and the reasons mentioned therein are sufficient to discharge/acquit him from the charges leveled against him.

In view of the above facts, the application filed by prosecution under section 4 Sub-Clause (c) of clause-II read with 5 (B) of Prosecution Act, 2005, for withdrawal of prosecution of the case against accused Khyber Gul is allowed and prosecution is permitted to withdraw from the case; therefore, accused Khyber Gul stands discharged u/s 494 (a) CrPC in absentia. Accused Khyber Gul is on bail, his bail bonds stand cancelled and sureties thereof stand absolved from the liability of his production.

Case property be destroyed in accordance with law.

File consigned to district record room after its necessary completion & compilation.



**Announced**  
04.11.2024

**(Abdul Basit)**  
Addl. Sessions Judge-II/JSC, Orakzai