

(4)

In the court of Abdul Basit
Addl. Sessions Judge-II, Orakzai
The State versus Muhammad Hussain

Order...02

Accused Muhammad Hussain on bail but not summoned.

04.11.2024

Sr.PP for the State present.

Through this order I shall decide the application filed by prosecution for permission to withdraw from the prosecution of case against accused Muhammad Hussain son of Raees Khan r/o Qaum Zakha Khel, District Khyber u/s 4 C (II) read with 5 (B) of Prosecution Act, 2005, read with section 494 Cr.PC charged vide case FIR no. 32 dated: 29.05.2024 u/s 9-D CNSA registered in Mishti Mela police station, District Orakzai.

Arguments heard and record perused.

Concise facts of the case are that complainant got spy information about smuggling of charas by Muhammad Hassan on motorcycle from District Khyber through Dara Hassan Zai; that on this information, complainant along with police official arranged a barricade on the spot, where, Muhammad Hussain riding on motorcycle approached from Dara Hassan Zai side, who had fastened a yellow color sack on back seat of motorcycle; that police signaled him to stop but he instead accelerated the speed of motorcycle and broke the barricade; that he was chased in official vehicle and after covering some distance, he left his motorcycle, escaped towards hilly area and disappeared in the forest; that the motorcycle was searched and a bag was recovered, which led the police to the recovery of 10000 grams of charas garda; that 10 grams of charas was separated for FSL and packed in parcels no. 1 and the balance charas 9990 grams along with sack was packed into parcel no. 2; that videography of recovery proceedings made through Mobile phone was saved into USB which was sealed into parcel no. 3; that the motorcycle 125 bearing no. KPK/4351 was taken into possession and the case was registered; hence, the FIR.

Perusal of record reveals that accused Muhammad Hussain has been allegedly charged for smuggling of charas but as per available record there is no evidence on record that could connect him with commission of offence. Importantly, except the name of accused, the police had no other

Abdul Basit
04-11-2024
Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

B
In the court of Abdul Basit
Addl. Sessions Judge-II, Orakzai
The State versus Muhammad Hussain

Contd. 02

04.11.2024

information about the features or particulars the smuggler; therefore, this creates serious doubt that as to how the police had come to know that the person riding on motorcycle was the accused and had made his escape good. Likewise, no identification parade of the accused was done by the police so as to determine that it was the accused, who made his escape good from the spot. Neither he has been arrested on the spot nor did anything recover from his direct possession. More so, during investigation the local police have not recorded statement of an 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 regarding his involvement in the commission of offence.

Besides, application for discharge of accused has also been filed by District Public Prosecutor, Orakzai and the reasons mentioned there 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 is allowed and prosecution is permitted to withdraw from the case; therefore, accused Muhammad Hussain stands discharged u/s 494 (a) CrPC in absentia. Accused is on bail, his bail bonds stand cancelled and sureties thereof stand absolved from the liability of his production.

Case property be disposed of in accordance with law.

File consigned to District Record Room after necessary completion and compilation.

Announced
04.11.2024


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