

IN THE COURT OF BAKHT ZADA
ADDITIONAL SESSIONS JUDGE-I/JUDGE SPECIAL
COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 16/CNSA OF 2023
DATE OF ORIGINAL INSTITUTION : 11.12.2023
DATE OF PRESENT INSTITUTION : 22.10.2024
DATE OF DECISION : 08.11.2024

STATE THROUGH MUHAMMAD YOUNAS SHO, PS KUREZ BOYA.

.....(COMPLAINANT)

-VERSUS-

AQID ALI S/O NOOR MUHAMMAD, QAUM BAR MUHAMMAD KHEL, TAPPA MIRAZI KHEL, LOWER ORAKZAI.

..... (ACCUSED FACING TRIAL)

JUDGEMENT
08.11.2024

Accused Aqid Ali S/O Noor Muhammad, Caste Bar Muhammad Khel, District Orakzai is facing trial in case FIR No. 46, dated 15.11.2023, registered U/S 11 (B) CNSA/15AA of PS Kurez Boya, District Orakzai.

- (2). Facts of the prosecution case as reported in Murasila by the complainant Muhammad Younas Khan SHO, PS Kurez Boya are that he along with Constables Syed Abbas Ali Shah No. 550, Junaid Ali No. 1607 and Driver Inshad Ali No. 663 were on patrolling in the official vehicle on 15.11.2023 at 1230 hours neary Daolai Chowk, Kurez and in the meanwhile a person walking in suspicious condition was stopped and apprehended and during his body search, one 30 bore pistol along with a fixed charger containing 04 live rounds of the same bore in the leather cover tied around his waist was recovered.

Sakeri
8.11.24
BAKHT ZADA
Addl: District & Sessions Judge-1,
Orakzai at Hangu

(54)

STATE VS AQID ALI

Case no. 16/CNSA, FIR No. 46 | Dated: 15.11.2023 | U/S 11-B CNSA, | Police Station: Kurez Boya

Similarly, another 30-bore pistol was recovered from the fold of the Shalwar along with a fixed magazine having 05 live rounds of 30 bore were recovered. The accused could not produce any permit or license in respect of the said arms and ammunition. During further search, one white colour plastic bag was recovered from the side pocket of his wearing clothes containing ICE which was weighed through digital scale and came out to be 200 grams. One gram ICE was separated and sealed in parcel No. 1 for sending the same to FSL for chemical analysis, while the remaining 199 grams ICE were packed and sealed into parcel No. 2. Two 30 bore pistols along with magazines and 09 live rounds of the same bore and leather cover of the pistols were sealed into parcel No. 3. Constable Syed Abbas Ali Shah No. 550 prepared video through his mobile phone which was converted into USB and the said USB is sealed into parcel No. 4. 1/1 monograms of "MY" is sealed in all the parcels, while 3/3 seals of the same monograms were affixed on all the parcels. The parcels were taken into possession vide recovery memo. The accused disclosed his name as Aqid Ali S/O Noor Muhammad, Caste Bar Muhammad Khel, District Orakzai who was found to be involved in the commission of offense and his card of arrest was issued. Murasila along with card of arrest and recovery memo for the purpose of registration of FIR were handed over to

Bakht Zada
15/11/23
BAKHT ZADA
Addl: District & Sessions Judge-1,
Orakzai at Hangu.

Constable Syed Abbas Ali Shah. No 550 for taking the same to the PS and hence, the instant FIR.

(3). After registration of FIR No. 46, dated 15.11.2023, registered U/S 11 (B) CNSA/15AA of PS Kurez Boya, District Orakzai, the same was handed over to Investigating Officer who visited the spot, prepared site plan Ex. PW-5/1 on pointation of the complainant/SHO. After completion of investigation, he returned the case file to SHO for submission of complete challan.

(4). Complete challan in the instant case was submitted against the accused facing trial. The accused was summoned through Zamima Bay and on 16.12.2023 provisions of 265-C of the Code of Criminal Procedure, 1898 was complied with and copies of documents supplied to the accused free of cost. Formal charge against the accused was framed on 22.12.2023 to which he pleaded not guilty and claimed trial where after, the prosecution witnesses were summoned.

(5). The prosecution recorded the statements of as many as five (05) PWs, the gist of their evidence is as under;

(6). The gist of the evidence is as follow;

- I. PW-01 Khiyal Hassan FC: On 17.11.2023, the IO Hashim Khan handed over to him parcel No. 1 & parcel No. 3 along with application for FSL,

Saver
2.11.24
BAKHT ZADA
District & Sessions Judge-1
Orakzai at Hangu

copy of FIR and transit receipt which he took to the FSL, Peshawar and delivered the same to the concerned official. He returned parcel No. 3 and handed over to Moharrir of the PS. On 28.11.2023, the IO handed over parcel No. 3 along with application for FSL, copy of FIR and transit receipt which he took to the FSL, Peshawar and delivered it to the concerned official and obtained the acknowledgment in respect of parcel No. 3 and returned the said acknowledgment to the IO. His statement was recorded U/S 161 of the Code of Criminal Procedure, 1898. He was cross examined by the defense counsel.

- II. PW-02, Intekhab Ali, Moharrir. On the day of occurrence, he received Murasila, recovery memo and card of arrest from Muhammad Younas SHO, PS Kurez Boya through Constable Syed Abbas Ali Shah No. 550. PW-02 incorporated the contents of Murasila into FIR Ex. PW-2/1. The SHO handed over parcel No. 1 to 4 in sealed condition to him which was entered in register-19, the copy of which is Ex. PW-2/2. On 17.11.2023, he handed over parcel No. 1 to 3 to IO for sending the same to FSL and entry regarding the same was made in register-19. DD

Sakel
8.11.24
BAKHT ZADA
Addl. District & Sessions Judge-1,
Orakzai at Hangu

regarding the arrival and departure of complainant and DD regarding proceedings were prepared by him and placed on file which is Ex. PW-2/3 consisted of 03 pages. Parcel No. 3 was brought back by Constable Khiyal Hussain which was handed over to him and he kept the same in Mall Khana. On 28.11.2023, he again handed over parcel No. 3 to IO which were duly entered in the DD. His statement was recorded U/S 161 of the Code of Criminal Procedure, 1898 and was cross examined by the defense counsel.

III. PW-03, Syed Abbas Ali Shah. He was present with the complainant/SHO. He is eye-witness and was present with the SHO at the time of occurrence. He is also marginal witness of recovery memo Ex. PW-3/1. He has taken the card of arrest and Murasila to the PS and handed over the same to Moharrir of PS for registration of FIR. He was thoroughly cross examined by the defense counsel.

IV. PW-04, Muhammad Younas Khan SHO, PS Kurez Boya. He stated that on 15.11.2023 at about 1230 hours at Daolai Chowk, Kurez, he apprehended a person in suspicious condition and during search he recovered one 30 bore pistol

Zaker
8.11.23
BAKHT ZADA
Addl. District & Sessions Judge-1,
Orakzai at Hangu

along with a fixed charger containing 04 live rounds of the same bore tied around his waist in leather cover (Kash Charmi). Similarly, another 30-bore pistol along with a fixed charger and 05 live rounds were recovered from the fold of his Shalwar. On further search, 200 grams ICE was recovered from his side pocket closed in white plastic shopper. Out of the said ICE, one gram was separated for the purpose of FSL and sealed in parcel No. 1, while the remaining 199 grams ICE were sealed into parcel No. 2 Ex. P-1. Two pistols along with fixed charger and 09 live rounds and leather cover were sealed into parcel No. 3 already Ex. P-2. The parcels were duly stamped with the monogram of "MY". Videography of the proceedings was made through mobile and converted into USB. The USB is sealed into parcel No. 4 Ex. P-3. He prepared the recovery memo Ex. PW-3/1 in presence of marginal witnesses which correctly bears his signatures. He prepared the card of arrest Ex. PW-4/1. The Murasila is drafted which is Ex. PW-4/2. He also prepared complete challan against the accused which is Ex. PW-4/3. His statement is also subjected to lengthy cross examination by the defense counsel.

Jalil
8.11.23
BAKHT ZADA
Addl. District & Sessions Judge-1,
Orakzai at Hangu

V. PW-05, Awid Gul: He has conducted investigation in the case. During spot visit, he prepared site plan Ex. PW-5/1 at the pointation of complainant. He recorded statements of the PWs U/S 161 Cr. PC. He also printed and placed on file photos of the occurrence which are Ex. PW-5/2 (04 photos). He produced the accused before the Ilaqa Judicial Magistrate for obtaining his physical custody vide his application Ex. PW-5/3. Statement of accused was recorded U/S 161 Cr. PC. He sent parcel No. 1 containing ICE and parcel No. 3 containing two 30 bore pistols vide his applications Ex. PW-5/4 & Ex. PW-5/5 respectively along with road permit certificates Ex. PW-5/6 & Ex. PW-5/7 respectively to FSL through Constable Khiyal Hussain. Parcel No. 3 was not received by the FSL which was returned. He recorded statement of Constable Khiyal Hussain and Moharrir Intekhab Ali U/S 161 Cr. PC. On 28.11.2023, he again sent parcel No. 3 to FSL vide road permit certificate Ex. PW-5/8. He recorded statement of Hashim Khan OII and Intekhab Ali U/S 161 Cr. PC. On receipt of FSL report regarding ICE and pistols, the same was placed on file which are Ex. PK and PK/1. He produced original register pertaining to DD and

Saqeer
8.11.24
BAKHT ZADA
Addl: District & Sessions Judge-1,
Orakzai at Hangu

register-19 the copies of DD dated 17.11.2023 are Ex. PW-5/9. He was also cross examined by the counsel for the defense at length.

(7). 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.

(8). Counsel for the accused facing trial submitted an application for opening and checking the sealed case property which was accepted by the court and after requisitioning the case property from District Mal Khan the same was de-sealed in the open court. The observation of the court regarding the case property are recorded in order sheet no. 25 dated 04.11.2024.

(9). Arguments:

Learned DyPP for the state argued that 200 grams of ICE and two 30-bore pistols along with nine live-rounds and leather cover of the pistols have been recovered from the possession of accused facing trial and he was arrested by the complainant SHO PS Kurez at the spot. He argued that the recovery memo Ex. PW 3/1 is duly signed by the marginal witnesses and there is no contradiction in the statements of the prosecution witnesses relating to the process of recovery. That after arrest of the accused Murasila Ex. PW 4/2 was drafted

Qadeer
BAKHT ZADA 8.11.24
Addl. District & Sessions Judge-1,
Orakzai at Hangu

which was taken by constable Syed Abbas Ali Shah no. 550 to PS and the Moharrir of the PS incorporated the same in FIR no. 46, dated 15.11.2023, Ex. PW 2/1. That the case property was safely transmitted by the complainant SHO and handed over parcels no. 1 to 4 containing one gram ICE, 199 grams ICE along with plastic sack, two 30-bore pistols along with two chargers, nine live rounds and leather cover and USB respectively which were duly entered in the relevant register no. 19, copy of which Ex. PW 2/2 of the police station. The specimen separated for FSL sealed in parcel no. 1 and pistols along with leather cover and live rounds sealed in parcel no. 3 were handed over to Investigation officer Hashim Khan, who handed over the same to PW-2 along with transit receipt and the parcels were safely transmitted to FSL. He argued that there is no contradiction regarding safe custody and transmission of the case property to FSL and Mal Khana. He further argued that there is no contradiction of the statements of PWs and the prosecution has fully proved its case against the accused facing trial. He prayed for conviction of the accused.

Bakht Zada
8.11.24
BAKHT ZADA
Addl. District & Sessions Judge-1,
Orakzai at Hangu

- (10). On the other hand, learned counsel for the accused facing trial during arguments diverted the attention of the court towards order sheet no. 25, dated 04.11.2024 and argued that all the statements of the prosecution

witnesses are based on lie and the same cannot be used against the accused on the ground that when parcel no. 2 containing allegedly ICE was de-sealed in open court in presence of prosecution, incharge Mal Khana and other court staff, the contents of parcel no. 2 were found to be food salt instead of ICE (methamphetamine) as observed by the court in same order sheet. He further argued that while watching the video recorded in the USB, sealed in parcel no. 4, it has been observed that the alleged pistols recovered in the video at the spot were black in colour and its cover (کاش) was made of parachute cloth but the pistols produced before the court in parcel no. 3 were found to be white (steel colour). He requested that after the said observations of the court there is nothing to prove that the story of prosecution is based on fact. He argued that the case against the accused facing trial is concocted and based on malafide and the case has been registered only in order to show the fake progress of the police before their high-ups. He prayed for acquittal of the accused of facing trail in the instant case.

(11). Findings:

Available record perused with the help of the assistance put forward by the learned DyPP for the state and counsel for the accused, which shows that on 15.11.2023 Muhammad Younas SHO PS Kurez Boya

Zameer
BAKHT ZADA 15.11.23
Addl: District & Sessions Judge-1,
Orakzai at Hangu

sent Murasila through constable Syed Abbas Ali Shah no. 550, wherein it is alleged that on the day of occurrence at 1230 hours, near Dawli chowk a suspicious person was stopped and his body search was carried out during which two 30-bore pistols, one from his fold of Shalwar and other from leather cover tied around his waist were recovered along with nine live rounds and on further search, one plastic sack containing 200 grams ICE were recovered from possession of accused which were weighed through digital scale at the spot and sealed in separate parcels and after preparing recovery memo, card of arrest and Murasila the instant FIR was registered.

- (12). During the course of evidence, although almost all the PWs recorded their statements in line the prosecution evidence and after closing of prosecution evidence when counsel for the accused submitted application for de-sealing the case property in the open court. His application being genuine and accepted by the court vide its order dated 04.11.2024 order sheet no. 25. The case property was requisitioned from Mal Khana which was brought by incharge District Mal Khana and de-sealed by the court in presence of DyPP, incharge Mal Khana and counsel for the accused and other staff members, this court conducted a sample test of the contents of parcel no. 2 (alleged ICE). This court exposed the contents of parcel no. 2 to bare flame by putting the contents of

Baker
8.11.24
BAKHT ZADA
Distt. District & Sessions Judge-1,
Orakzai at Hangu

parcel no. 2 into aluminium foil, but the same despite of getting enough heat neither melted into liquid form nor the same converted into smoke which is admitted chemical property of methamphetamine ICE. The contents of parcel no. 2 after getting heat became brackish and hardened and when this court got confirmed that the contents of parcel no. 2 is not methamphetamine and thereafter in order to further verify the contents of parcel no. 2 the same was tasted through tongue by the learned DyPP and counsel for the accused facing trial as well as this court and it was confirmed by all the people that the contents of parcel no. 2 are food salt and not (methamphetamine) ICE. Similarly, it was also observed while watching video that the pistols shown in the video were black in colour while the pistols in sealed in parcel no. 3 when de-sealed were found to be white in colour (steel colour) which clearly indicate that the recovery of ICE as well as pistols is fake and concocted. It is further noticed that in the recovery memo the cover of the pistol (کاش) is mentioned as leather cover (کاش چرمی) but when the cover laying inside parcel no. 3 was checked the same was found to be made of parachute cloth. All the parcels were again sealed in the court and sent back to District Mal Khana.

- (13). All the above observations clearly indicates that the alleged recovery of ICE and pistols shown against the

Zarri
15.11.23
BAKHT ZADA
Addl: District & Sessions Judge-1,
Orakzai at Hangu

accused facing trial is not based on facts and the case has been made against the accused facing trial by the police only to show progress before their high-ups. The evidence produced by the prosecution in the respect of the recovery, FSL etc are not based on facts and the same cannot be taken into consideration for the conviction of the accused. I, therefore acquit the accused facing trial from the charges levelled against him. He is on bail, his sureties are discharged from the liabilities of the their bail bonds. Case property be kept intact till the expiry of period provided for appeal/ revision in the instant case. Case file of this court be consigned to record room within the stipulated period.

- (14). Copy of this order/judgment be sent to DPO, Orakzai for perusal.

Bakht Zada
8.11.24

BAKHT ZADA
Sessions Judge-I/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment consists of thirteen (13) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 08.11.2024

Bakht Zada
8.11.24

BAKHT ZADA
Sessions Judge-I/Judge Special Court,
Orakzai at Baber Mela