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STATE VS KHAN ZADA ETC

FIR No. 07 | Dated: 22.02.2022 | U/S: 9 (d) CNSA, 11 (c) CNSA, | Police Station: Mishti Mela

**IN THE COURT OF BAKHT ZADA**

ADDITIONAL SESSIONS JUDGE-I/JUDGE SPECIAL COURT, ORAKZAI  
(AT BABER MELA)

SPECIAL CASE NO. : 17/CNSA  
DATE OF ORIGINAL INSTITUTION : 18.05.2022  
DATE OF PRESENT INSTITUTION : 17.10.2024  
DATE OF DECISION : 26.11.2024

STATE THROUGH NASEEB KHAN SHO POLICE STATION  
MISHTI MELA

.....(COMPLAINANT)

**-VERSUS-**

1. KHAN ZADA S/O ASHRAF KHAN,
2. AQIB KHAN S/O AMIN KHAN BOTH RESIDENTS OF  
QAUM STORI KHEL, ANJANI, DISTRICT ORAKZAI
3. KAMAL HUSSAIN S/O SARDAR HUSSAIN, R/O KARA  
KHELA, PARACHINAR, DISTRICT KURRAM

..... (ACCUSED FACING TRIAL)

4. MUHAMMAD YOUNAS S/O SHER DIL, R/O QAUM STORI  
KHEL

..... (ABSCONDING ACCUSED)

JUDGEMENT

26.11.2024

Accused (1). Khan Zada S/O Ashraf, (2). Aqib Khan S/O Amin Khan and (3). Kamal Hussain S/O Sardar Hussain are facing trial in case FIR No. 07, dated 22.02.2022, registered U/S 11 (c) CNSA, 9-D CNSA, 420, 468, 471 PPC of PS Mishti Mela, District Orakzai.

- (2). Facts of the prosecution case as reported in Murasila by the complainant Naseeb Khan, SHO are that he along with Constables Murad Gul No. 1264, Muhammad Umar No. 252 and Khyber Khan No. 170 were on patrolling in the official vehicle and in the meanwhile the complainant received spy information that today ICE and Chars would be smuggled in huge quantity

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through pick-up vehicle. The complainant on receiving the said information along with other police contingent laid barricade for the purpose of checking at Serhi Mord main road Sangrah. At about 1330 hours, one white colour pick-up bearing registration No. W-7481/Peshawar came from Mishti side which was stopped by the complainant for the purpose of checking. The driver of the vehicle disclosed his name as Khan Zada, while two other persons present in the front seat of the vehicle disclosed their names as Aqib and Kamal Hussain. The rear portion/body of the vehicle was found in suspicious condition which was searched by opening the same through screw driver, screw wrench and plier. On opening the body, fourteen (14) white colour plastic boxes wrapped with white colour scotch tape and twenty (20) packets of Chars wrapped in yellow colour scotch tape were recovered from the secret cavities of the vehicle. The plastic boxes were checked and high quality ICE was recovered. Each box was found to be 1770/1770 grams on weighing through digital scale and the total was found to be 24780 grams. One gram ICE from each box was separated and sealed the same in parcel No. 1 to 14 for sending the same to FSL for chemical analysis. Remaining ICE were sealed into parcel No. 15 to 28. Similarly, each packet of Chars was found to be 1250/1250 grams and total was found to be 25000 grams

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by weighing through digital scale. 10/10 grams from each packet were separated and sealed the same into parcel No. 29 to 48 for sending the same to FSL for chemical analysis, while remaining Chars 24800 grams was sealed into parcel No. 49. One monogram seal of "AR" was placed in each parcel, while three "AR" monogram seals were affixed on each parcel. Body search of the accused was conducted, but nothing incriminating was recovered. National ID cards presented by all the three accused facing trial and during initial interrogation, the pick-up driver disclosed that the vehicle and recovered narcotics including ICE and Chars are the ownership of one Younas S/O Sherdil, caste Stori Khel. All the recovered case property i.e., ICE, Chars, registration book of the vehicle, three CNICs of the accused were separately taken into possession and sealed in parcel No. 50. The pick-up bearing registration No. W-7481/Peshawar along with keys was taken into possession through memorandum of recovery. All the three accused were arrested. Their card of arrest was prepared. Accused Younas is at large, while Murasila, card of arrest and recovery memo were sent to PS through constable Khyber Khan No. 170 for registration of FIR.

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- (3). Later on, the IO sent the vehicle to FSL for chemical analysis of its chassis through application dated 26.02.2022. Similarly, vide application of the even date,

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the registration book of the vehicle was also sent to Excise & Taxation Officer for verification and determination of ownership of the vehicle. The Excise & Taxation Officer vide letter No. 7481/ETO-V/Peshawar, reported that the registration certificate is fake/ bogus and not issued by their office. FSL report of the vehicle also received, wherein it was opined that :-**A forged chassis plate bears No. "YN80-0002095" has been pasted with adhesive material was removed and the original chassis No. became visible after chemical treatment which is "YN86-1009504".** After receiving the FSL and report of the concerned Excise & Taxation officer, the investigation officer issued parwana dated 13.04.2022 for addition of Section 471, 468, 420 PPC in the FIR.

- (4). After registration of FIR No. 07, dated 22.02.2022, registered U/S 11 (C) CNSA, 9-D CNSA, 420, 468, 471 PPC of PS Mishti Mela, District Orakzai, the same was handed over to Investigating Officer, who visited the spot, prepared site plan Ex. PW-6/1 on pointation of complainant and recorded his statement U/S 161 Cr. PC. He also recorded statements of PWs U/S 161 Cr. PC. On 24.02.2022, he sent parcel No. 1 to 14 (ICE) and 29 to 48 (Chars) for chemical analysis vide his application Ex. PW-6/5 through constable Saeed Khan No. 167(PW-01), vide road permit certificate Ex. PW-6/6, the FSL report whereof is placed on file as Ex. PW-6/21. The ETO report

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in respect of the vehicle was sought through application dated 26.02.2022 Ex. PW-6/12, similarly, permission for FSL/chemical analysis of chassis number of the vehicle was sought through another application Ex. PW-6/17 of the even date 26.02.2022. The report of ETO is Ex. PW-6/14 and FSL report of the vehicle is Ex. PW-6/18. After completion of investigation, the case file was handed over to SHO Naseeb Khan, who submitted complete challan Ex. PW-7/2 against the accused.

(5). Accused Khan Zada, Aqib and Kamal Hussain being in custody were summoned through Zamima Bay, while accused Muhammad Younas being absconder and his search witness was summoned.

(6). 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 31.05.2022 where after, the prosecution witnesses were summoned and statements of PWs (1). Jamshed Ullah Constable, (2). Koko Rehman, (3). Muhammad Ayub, ASI, (4). Naseeb Khan, Inspector/SHO PS Mishti Mela were recorded as PW-01 to PW-04 respectively.

My learned predecessor in the court vide his order dated 25.11.2023 realized after perusal of the case file that the accused have been charged under special and general

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laws in the same set of challan, therefore he directed the prosecution to submit separate challans under special law (9-D KP CNSA and 11-A CNSA) and general law (420, 468, 471 PPC) which was submitted. The accused Muhammad Younas being absconder, therefore statement of SW Muhammad Shahid was recorded as SW-01, who stated that the accused is avoiding his lawful arrest and that there is no prospect of his arrest in the near future, therefore, the prosecution was allowed to produce its evidence against him in absentia within the meaning of Section 512 of the Code of Criminal Procedure, 1898.

(8). Fresh formal charge was framed against the accused on 01.02.2024, to which they pleaded not guilty and claimed trial. Where after, the prosecution produced and recorded the statements of as many as eight (08) PWs. The gist of the evidence is as follow;

- I. PW-01 Saeed Khan FC: He has taken parcel No. 1 to parcel No. 14 and parcel No. 29 to parcel No. 48 containing alleged ICE and Chars to FSL on 24.02.2022 along with application and transit receipt to FSL and delivered the same to the concerned official and obtained acknowledgment receipt in respect of the same. He is also marginal witness to the pointation memo Ex. PW-1/1 vide which accused Khan Zada, Aqib and Kamal Hussain made pointation to the investigation

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officer. 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, Koko Rehman. On 22.02.2022, he received Murasila, recovery memo and card of arrest from Naseeb Khan SHO, PS Mishti Mela and one, Muhammad Saeed incorporated the contents of Murasila into FIR Ex. PA at his dictation. 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, Muhammad Ayub ASI, PS Mishti Mela.

He was posted as AMHC of the PS Mishti Mela. SHO, Naseeb Khan on 22.02.2022 brought the case property consisted of parcel No. 1 to 50 duly packed and sealed having monogram of "AR" and handed over the same to him. Vehicle No. W-7481/ Peshawar was also handed over to him. He made entry of the above-mentioned case property in register-19. The attested copy of the relevant page of register-19 is Ex. PW-3/1. He kept the case property in Mall Khana and put the accused in the Lock-up of the PS. The vehicle was parked in the premises of the PS. He also received parcel No. 51 from the Incharge Investigation and kept the same in Mall Khana.

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He handed over the case property to investigation officer on 23.02.2022 for producing the same before the Ilaqa Judicial Magistrate and thereafter, depositing the same in District Mall Khana. DD No. 5 to 12 dated 23.02.2022 consisted of 03 pages Ex. PW-3/2 were entered in this regard. On 24.02.2022, he handed over parcel No. 1 to 14 each containing 1/1-gram ICE duly packed and sealed and parcel No. 29 to 48 each containing 10/10-grams Chars, to the IO for sending the same to FSL, Peshawar for chemical analysis. His statement was recorded by the IO U/S 161 of the Code of Criminal Procedure, 1898. He was thoroughly cross examined by the defense counsel.

IV. PW-04, Constable Jamshed Ullah. He stated that on 22.02.2022, he along with constable Abdullah were present with Muhammad Riyaz OII in the PS and in the meanwhile, Naseeb Khan SHO handed over a plier, screw driver and screw wrench to the IO which were sealed into parcel No. 51. The recovery memo was signed by him and his co-marginal witness Constable Abdullah. His statement was recorded U/S 161 of the Code of Criminal Procedure, 1898. He was cross examined by the defense counsel.

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V. PW-05, Constable Khyber Khan: He took the Murasila, handed over to him by the SHO at the place of occurrence, to PS and he handed over the same to Moharrir, Muhammad Ayub and returned to the spot. His statement was also recorded U/S 161 of the Code of Criminal Procedure, 1898. He was also cross examined by the defense counsel at length.

VI. PW-06, Muhammad Riaz SI/OII: He was posted as OII at PS Mishti Mela. After receiving copy of FIR, Murasila, card of arrest and recovery memo, he proceeded to the spot and prepared the site plan at the pointation of the complainant Naseeb Khan SHO. The site plan is Ex. PW-6/1. The SHO shown to him the recovered contrabands in sealed condition, the recovered vehicle/pick-up bearing registration No. W-7481/Peshawar and the arrested accused. He recorded the statements of PWs U/S 161 of the Code of Criminal Procedure, 1898, on the spot. On return to PS, he took into possession the plier, screw driver and screw wrench vide recovery memo from the SHO and sealed the same into parcel No. 51 Ex. P1, the recovery memo is Ex. PW-6/2. He recorded the statements of the marginal witnesses 161 Cr. PC. The accused along with case property was

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produced before the Ilaqa Judicial Magistrate with application for grant of physical custody and three days custody was granted. The application is Ex. PW-6/3. Vide application Ex. PW-6/4, warrant U/S 204 Cr. PC was issued against accused Muhammad Younas. He recorded the statement u/s 161 Cr. PC of the DFC concerned regarding service of the warrant. PW-6 sent samples parcels no. 1 to 14 and 29 to 48 for chemical analysis to FSL vide application and road certificate Ex. PW 6/5 and Ex. PW 6/6 respectively through constable Saeed Khan (PW-01). Statements of Saeed Khan and Constable Muhammad Ayyub Moharrir were recorded u/s 161 Cr. PC. He obtained CDR data of all the accused vide his application Ex. PW 6/7 and the CDR consisted of 17 pages is Ex. PW 6/8. He went to the spot where the accused made pointation of the place of occurrence. The pointation memo is already exhibited PW 1/1. Search memo of the Hujra of accused Muhammad Younas was prepared which is Ex. PW 6/9. Sketch of the Hujra is Ex. PW 6/10. The accused were produced before the Illaqa Judicial Magistrate for their confessional statements but the accused refused to confess their guilt. The

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application for recording confessional statement of accused is Ex. PW 6/11. Application for verification of vehicle addressed to ETO Peshawar is Ex. PW 6/ 12. The Excise report regarding the vehicle is Ex.PW 6/14. In the light of ETO report, the IO issued Parwana for insertion of section of law i.e., 420/468/471 PPC, which is Ex. PW 6/15 and Ex. PW 6/16. Application for conducting FSL for the vehicle is Ex. PW 6/17. The FSL report is Ex. PW 6/18. The statement of DFC was recorded u/s 164 Cr.PC by the Judicial Magistrate vide application Ex. PW 6/19. Proclamation notice u/s 87 Cr. PC is Ex. PW 6/20. Report overleaf the same is Ex. SW 1/4. The FSL report regarding narcotics is Ex. PW 6/21. After completion of investigation he handed over the case file to SHO for submission of challan.

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VII. PW-07, Naseeb Khan (Complainant), SHO, PS

Mishti Mela: On the day of occurrence i.e., on 22.02.2022, he along with constable Murad Gul No. 1264, Muhammad Umar No. 252 and Khyber Khan No. 170 were on patrol duty, meanwhile the complainant received spy information that ICE and Chars would be smuggled in huge quantity through pick-up. He

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laid barricade for the purpose of checking at Serhi Morr, main road Sangrha. At 1330 hours, one pick-up bearing registration No. 7481/Peshawar, white colour came from Mishti Mela bazar side was stopped by the complainant for the purpose of checking. The driver of the vehicle disclosed his name as Khan Zada, while two other persons present in the front seat disclosed their names as Aqib and Kamal Hussain. Being in suspicious condition, he deboarded all the three persons named above from the vehicle. The rear portion of the vehicle (body) was checked due to suspicion by opening the body of the vehicle through screw driver, screw wrench and plier. He recovered, 14 plastic boxes of white colour wrapped with white colour scotch tape and twenty packets of Chars wrapped in yellow colour scotch tape, from the secret cavities of the vehicle. The plastic boxes were consisted of ICE. He weighed each plastic box containing ICE which came out to be 1770/1770 grams each and total came out to be 24780 grams. He separated 1/1 gram from each box for FSL and packed and sealed the same into parcel No. 1 to 14. He packed and sealed the remaining quantity of ICE along with plastic boxes in parcel

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No. 15 to 28. He also weighed each packet of chars through digital scale, which came out to be 1250/1250 grams each and total chars were found to be 25000 grams. He separated 10/10 grams from each packet and packed and sealed the same into parcels No. 29 to 48. He packed and sealed the remaining quantity of Chars i.e., 24800 grams into parcel No. 49. He put one monogram seal in each parcel and affixed 03 monogram seals of "AR" on each parcel. He also took into possession ID cards of all the three accused and packed and sealed the same into parcel No. 50. Accused Khan Zada disclosed during interrogation that the Chars and ICE are the ownership of one Younas S/O Sher Dil, Tribe Stori Khel. He took into possession the ICE and Chars mentioned above in the parcels, along with vehicle, ID cards, keys of the vehicle and registration documents. He prepared recovery memo Ex. PC on the spot. Joint card of arrest of all the three accused is Ex. PW-7/1. Murasila is Ex. PA-1. The Murasila along with card of arrest and recovery memo were sent to PS for registration of FIR through constable Khyber Khan. After registration of FIR, the IO proceeded to the spot and the case property was shown to

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him in sealed condition along with vehicle of the accused. The IO prepared site plan on pointation of the complainant. He handed over the case property to Moharrir of the PS along with accused. He handed over screw driver, screw wrench and plier to the IO, who packed and sealed the same into parcel No. 51 and took the same into possession vide recovery memo in presence of marginal witnesses. After completion of investigation, he submitted complete challan in the instant case which is Ex. PW-7/2. Today, he produced the case property before the court i.e., parcel No. 15 to 28 which are Ex. P1 to Ex. P14. Parcel No. 49 is Ex. P15. Three ID cards of the accused sealed in parcel No. 50 is Ex. P16. Vehicle bearing registration No. 7481/Peshawar along with keys is Ex. P17. He was thoroughly cross examined.

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PW-08, Murad Gul Constable, PS Mishti Mela:

He is marginal witness to the recovery memo Ex. PC vide which the complainant recovered the narcotics mentioned therein. He was present with the SHO (complainant) at the time of occurrence and has narrated all the story as alleged in the Murasila word by word. His statement is

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subjected to lengthy cross examination by the defense counsel.

(9). Learned DyPP for the state abandoned Constable Abdullah No. 143 and Muhammad Umar No. 252 being witnesses of the same facts as deposed by Constable Murad Gul No.1264 and Jamshed No.151. He closed the prosecution evidence.

(10). Statements of accused were 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.

**ARGUMENTS:**

(11). Learned Sr. PP for the state contended that the statements of concerned prosecution witnesses are consistent in respect of all material aspects of the occurrence such as; day, time and place of occurrence and the mood and manner of arrest of the accused and recovery of narcotics from the secret cavities of the vehicle. The FSL report in respect of recovered contraband ICE and Chars is positive. The chain of safe custody of the narcotics from the place of occurrence to the PS and to the FSL has been proved through cogent evidence. The Moharrir has made entry in register-19 in respect of the handing over and depositing of the recovered contraband ICE and Chars. It is further argued that there is no fatal ground to disprove the case of

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prosecution. A huge quantity of narcotics has been recovered from the possession of the accused facing trial, the value of which is in millions of rupees and the accused facing trial being involved in the transportation/smuggling of the same deserve no leniency by the court.

(12). On the other hand, learned defense counsel argued that the accused facing trial have been falsely charged in the instant case and the story of prosecution is full of doubts and contradictions. The statements of PWs are not supporting the version of prosecution and have been shattered during cross examination. He contended that PW-05 during cross examination has not even supported the stance of prosecution relating to the place of occurrence in his statement. The whole statement of PW-05 relating to proceedings at the spot and handing over of Murasila is contradictory to the stance of prosecution and even he failed to state that whether OII Muhammad Riaz (PW-06) or Asif Wazir visited the spot soon after the occurrence. PW-04, Jamshed Ullah has denied that he never visited the place of occurrence with OII Muhammad Riaz, while PW-06, Muhammad Riaz has stated that he visited the place of occurrence along with two constables namely Jamshed Ullah and Muhammad Amin. He argued that PW-02 Koko Rehman has stated in his examination in chief that Muhammad Saeed wrote FIR at his dictation, but statement of Muhammad Saeed has not been recorded

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in the instant case as PW and therefore, the case of prosecution is hit by Article 129 (g) of the Qanoon-E-Shahadat Order, 1984. That the recovery witnesses are fake and their presence in the PS at the relevant time is not supported by documentary evidence available on the case file in shape of Ex. PW-3/2. He further contended that the safe custody and transit of the recovered contraband ICE and Chars is not proved by the prosecution in accordance with the principles settled by the superior courts in their various judgements. The packing and sealing of the narcotics by the seizing officer at spot is contradicted by other PWs, who were allegedly present at the spot at the time of occurrence. That the presence of driver Sami Ul Haq is not mentioned by the SHO (PW-07) & marginal witness Murad Gul (PW-08) in their examination in chief, while PW-06 has stated that when he reached the spot, three police constables along with driver were present at the spot. That the seizing officer Naseeb Khan has not affixed the stamp/monogram of his name on the parcels and even he is not in the knowledge that to whom monogram "AR" belongs. He argued that the prosecution badly failed to prove their case against the accused facing trial, therefore, they may be acquitted from the charges levelled against them.

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- (13). After hearing arguments of the learned counsel for the parties, available record perused.

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(14). It is the case of prosecution that complainant Naseeb Khan SHO received spy information about transportation/smuggling of huge quantity of contraband i.e., ICE and Chars through white colour pick-up. He along with other police officials laid barricade at Serhi Morr, main road Sangrha and at 1330 hours, they noticed a white colour pick-up bearing registration No. W-7481/Peshawar coming from Mishti side towards them. The vehicle was stopped and the driver disclosed his name as Khan Zada, while the other two persons present with him in the front seat of the vehicle introduced them as Aqib and Kamal Hussain. On suspicion, the rear body of the vehicle was opened through screw driver, screw wrench and plier and 14 white colour boxes containing 24780 grams ICE (each box 1770/1770 grams) and twenty packets of Chars weighing 25000 grams (each packet 1250/1250 grams) were recovered from the secret cavities of the vehicle. All the three accused were arrested at the spot. Complainant Naseeb Khan SHO deposed as PW-07, who repeated the story of whole proceedings conducted by him at the spot, during his examination in chief, which is in line with the report without any deviation. He was subjected to lengthy cross examination by the defense counsel and tried his best to make the recovery of contrabands i.e., ICE and Chars controversial, but nothing favourable was extracted to the accused facing trial. He

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asked frequent questions about the sealing of registration book in parcel No. 50 and monogram "AR", but it is mentioned in the recovery memo Ex. PC that parcel No. 50 was consisted of three CNICs of the accused facing trial. He answered during cross examination that at the time of offence, monogram of his name was not prepared and that is why he affixed the available stamp of monogram "AR". PW-08, Murad Gul Constable, who was present with the complainant at the time of occurrence and is also marginal witness to the recovery memo vide which the complainant/SHO took into possession the contrabands i.e., ICE and Chars and sealed the same into parcels. His statement is consistent with the statement of complainant/PW-07 in respect of the date, time and place of occurrence as well as the mode and manner of recovery of the contrabands from the secret cavities of the vehicle. He has correctly disclosed each and every fact in respect of the recovery at the spot and stated that after opening the rear body of the pick-up vehicle through screw driver, screw wrench and plier, the SHO found 14 plastic boxes consisted of 24780 grams ICE (each box on weighing was found 1770/1770 grams) wrapped with white colour scotch tape and 01/01 gram from each box was separated, packed and sealed into parcel No. 1 to 14 for the purpose of FSL, while the remaining quantity of ICE along with plastic boxes were sealed into parcel No. 15 to 28.

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Similarly, 20 packets of Chars (each packet weighing 1250/1250 grams) total 25000 grams of Chars were recovered and 10/10 grams from each packet was separated, packed and sealed into parcel No. 29 to 48 for the purpose of sending the same to FSL, while the remaining quantity of 24800 grams of Chars were sealed into parcel No. 49. ID cards of all the three accused were sealed into parcel No. 50 and in total the above-mentioned ICE, Chars along with vehicle, ID cards, keys of the vehicle and registration documents were taken into possession by the SHO vide recovery memo Ex. PC which is correctly signed by the marginal witness Murad Gul, PW-08. Murad Gul, PW-08 being eye witness and marginal witness of the recovery memo has fully supported the statement of complainant/SHO (PW-07). He during cross examination rightly stated that he has doubt about the presence of constable Raheem with the OII (Muhammad Riaz PW-06) at the time of spot inspection, due to passage of enough time. It is worth mentioning here that 2 ½ years have been lapsed between the lodging of FIR and recording statement of PW-08 and the said factor ultimately fade some events from his memory.

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PW-05, Khyber Khan has taken Murasila to the PS and has handed over the same to Moharrir Ayub, whereafter he came back to the spot and his statement was recorded U/S 161 Cr. PC by the IO. Before going into

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details of his cross examination, it is worth mentioning here that PW-05, Khyber Khan is an illiterate Ex-levi official, who was inducted into police department after merging of the Erst-while FATA and having no experience of facing court proceedings and cross examination. During cross examination he stated that place of occurrence is Goen Jungle, but being an illiterate person his this answer was natural because Goen Jungle area is spread over about more than one kilometre area adjacent to the place of occurrence i.e. Serhi Morr, which is also clear from his statement recorded U/S 161 Cr. PC, wherein he has categorically named the place of occurrence as Serhi Morr, main road Sangrha. His statement relating to the visit of OII, Asif Wazir instead of OII Muhammad Riaz is also due to passage of long time between the FIR and recording of his statement as PW-05, furthermore, Asif Wazir has also remained posted as OII in the PS and he has also conducted some proceedings in the instant case, therefore, his statement shall not be taken fatal to the case of prosecution keeping in mind the recovery of huge quantity of contrabands i.e. dangerous ICE and Chars which worth millions in rupees in the market. After receiving Murasila, recovery memo and card of arrest etc. from Khyber Khan by Moharrir Ayub (PW-03) the same was received by Koko Rehman (PW-02) as mentioned in his examination in chief and he

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dictated the same to Moharrir Muhammad Saeed and the same was reduced into FIR Ex. PA. He categorically stated during his cross examination that he chalked out FIR from the Murasila and handed over the same along with card of arrest of the accused, Murasila and recovery memo to OII, Muhammad Riaz (PW-06). Nothing contradictory to the case of prosecution is brought on record during his cross examination by the defense counsel. OII, Muhammad Riaz (PW-06) after receiving the copy of FIR etc proceeded to the place of occurrence, where he prepared site plan Ex. PW-6/1 at the pointation of complainant Naseeb Khan SHO. The complainant shown him the recovered contrabands in sealed condition along with recovered pick-up bearing registration No. W-7481/Peshawar and the accused arrested at the spot. On return to PS, he took into possession from the SHO the plier, screw driver and screw wrench vide recovery memo Ex. PW-6/2 and sealed the same into parcel No. 51 Ex. P-1, which is signed by Constable Jamshed Ullah No. 151 and Constable Abdullah No. 143. Learned counsel for the defense, while cross examining PW-03, Muhammad Ayub confronted him with DD No. 02, dated 22.02.2022 Ex. PW-3/2 according to which, marginal witness of recovery memo Ex. PW-6/2 Constable Abdullah No. 143 is shown on leave, but the same will not vitiate the recovery proceedings taken place at the spot. It is also clear that the

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said recovery memo is prepared by the OII Muhammad Riaz (PW-06) in the PS after return from the place of occurrence and has no adverse effect on the recovery proceedings made at the spot by the seizing officer (PW-07), furthermore, statement U/S 161 Cr. PC of Abdullah No. 143 is available on the police file, who has admitted his presence in the PS at the time of preparation of recovery memo Ex. PW-6/2, furthermore, the co-marginal witness Jamshed Ullah (PW-04) during his cross examination, has admitted the presence of Abdullah No. 143 in the PS at the time of handing over of the said articles to the IO by the SHO. On return to PS, Muhammad Riaz OII (PW-06) sent samples/parcel No. 1 to 14 and parcel No. 29 to 48 for chemical analysis to FSL vide his application and road certificate Ex. PW-6/5 & Ex. PW-6/6 through Constable Saeed Khan. His examination in chief is in line with the prosecution case. Learned counsel for the defense has tried to make the statement of OII controversial about the place of occurrence during his cross examination where he has stated that no "Abadi" exists near the place of occurrence, the same question was asked from Saeed Khan (PW-01), who stated in cross examination that the alleged spot is populated area and there are some houses also situated, but the statement of Saeed Khan is about the village of absconding accused Muhammad Younas regarding which accused facing trial

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made pointation to the OII and Saeed Khan (PW-01) has never visited the place of occurrence, rather he is marginal witness to the pointation memo Ex. PW-1/1.

- (16). PW-01 Saeed Khan has also confirmed during his examination in chief that he received parcel No. 1 to 14 and parcel No. 29 to 48 along with application for FSL, transit receipt and copy of FIR and he took the same to FSL and delivered it to the concerned official and obtained acknowledgment receipt in respect of the same and handed over the said receipt to the IO on his return. This statement of PW-01 about taking the parcels to FSL is fully in line with the statement of OII (PW-06) in respect of safe transit of the parcels from the PS to FSL. Similarly, PW-07 seizing officer in his examination in chief has stated that after return to PS, he handed over the case property to Moharrir of the PS along with accused. This statement is endorsed by Muhammad Ayub Moharrir/AMHC of the PS and stated that he was present in the PS when complainant/SHO (PW-07) brought the case property including parcel No. 1 to 50 duly packed and sealed having monogram of "AR" and handed over the same to him (PW-03). PW-03 has made entry of the case property mentioned above in register-19 of the PS. The attested copy of register-19 is Ex. PW-3/1. The said parcels were kept in Mall Khana of the PS and the vehicle was parked in the PS. The learned counsel for the accused

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during cross examination made an attempt to intermingle the designations of Moharrir, Additional Moharrir and Madad Moharrir with each other in order to make confusion about the safe custody of the case property, but the same holds no ground as PW-03 has categorically stated that he has received the case property from the complainant/SHO and has made relevant entry in the register-19 Ex. PW-3/1. So, the question regarding the safe custody of case property is ruled out.

(17). The defense objected that private witnesses were not associated by the complainant at the time of recovery of alleged contrabands i.e. ICE and Chars. However, non-association of the private witnesses at the time of recovery of contraband from the possession of accused does not vitiate recovery proceedings, because it is settled law that the police officials are as good witnesses as the private witnesses. On the other side, the private witnesses also avoid becoming witnesses in criminal cases due to fear of enmity. Importantly, Section 31 of the Khyber Pakhtunkhwa Control of Narcotics Substances Act, 2019 provides that provision of Section 103 Cr. PC in the narcotics cases are mandatory only when the search of a dwelling house is being made, whereas in the rest of the cases, the local police may follow it in appropriate cases with necessary changes, if any required. The relevant provision of law is reproduced below for ready reference;

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*Section 31: Modes of making searches and arrest-the provision of the code, except those of Section 103, shall, mutatis mutandis apply to all searches and arrest.*

*Provided that Section 103 of code shall, in case of search of dwelling house, be strictly observed.*

(18). In the present case, the accused facing trial were arrested at the spot. All the three accused facing trial i.e. driver Khan Zada and passengers Aqib and Kamal Hussain were sitting in the front seat of the vehicle with the driver and the recovery has been made from the secret cavities of the vehicle and not from any dwelling house. Joint card of arrest of all the three accused is prepared which is Ex. PW-7/1 which shows that accused facing trial Khan Zada S/O Ashraf Khan and Aqib S/O Amin Khan belongs to the same caste and village, while accused Kamal Hussain belongs to District Kurram. All the three accused were sitting together in a vehicle, from the secret cavities of which a huge quantity of contrabands i.e. ICE and Chars were recovered. Furthermore, the CDR report in respect of the mobile calls data is brought and placed on file by the IO which is Ex. PW-6/8 which shows that all the three accused were in contact with each other. Being in control and possession of the vehicle, from which the recovery has been made, the plea of the accused facing trial that they were not in the knowledge about the contraband is not sustainable in the

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eyes of law. Parcel No. 1 to 14 (ICE) and 29 to 48 (Chars) were sent to FSL in accordance with the law within the stipulated period. The report of FSL Ex. PW-6/21 was received wherein it is clearly mentioned that parcel No. 1 to 14 and parcel No. 29 to 48 were duly examined and "IT WAS METH AMPHETAMINE (ICE) IN PARCEL NO. 1 TO 14 AND CHARS IN PARCEL NO. 29 TO 48". Therefore, this can safely be concluded that contrabands so recovered from the secret cavities of the vehicle, driven by accused Khan Zada with accused Aqib and Kamal Hussain in front seat of the vehicle, were nothing, but the dangerous articles ICE and Chars. The mandatory provision of Section 33 of the Control of Narcotics Substances Act, 2019 is complied with by the OII, who has produced the case property before the Ilaqa Judicial Magistrate at the time of obtaining physical custody of the accused facing trial which is clearly mentioned in examination in chief of PW-06 without any objection from the opposite side. This fact is also confirmed by the concerned Ilaqa Judicial Magistrate in his order for physical custody dated 23.02.2022.

(19).

Nutshell of the above discussion is that the recovery of the huge quantity of contrabands i.e. ICE and Chars has been made from the secret cavities of the vehicle under the control and possession of the accused facing trial. The statements of the eye-witnesses/recovery witnesses are consistent with each other in terms of the date, time, and

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place of occurrence. The mode and manner of recovery and arrest of the accused as mentioned in the record is supported by the PWs. The safe transmission of the recovered contrabands i.e. ICE and Chars is proved from the statement of complainant Naseeb Khan SHO (PW-07) and his statement is endorsed by Muhammad Ayub Moharrir of the PS (PW-03) during his statement. He has exhibited the relevant register-19 and DDs in this respect which are part of record and discussed by me above in detail. The safe transit of samples/parcels to FSL from the PS is proved on record in view of the statements of OII (PW-06) and PW-01. The report of FSL has received in positive in respect of the recovered ICE and Chars. The FSL report of the vehicle is received which is Ex. PW-6/18 and according to which "A FORGED CHASSIS PLATE BEARS NO. 'YN80-00002095' HAS BEEN PASTED WITH ADHESIVE MATERIAL WAS REMOVED AND THE ORIGINAL CHASSIS NUMBER WAS VISIBLE AFTER CHEMICAL TREATMENT IS FOLLOWING.

'YN86-1009504''

Accused Khan Zada and accused Aqib are co-villagers and belonging to the same caste, while accused Kamal Hussain was also in contact with them as per CDR report Ex. PW-6/8 and they were traveling in the same vehicle, from the secret cavities of which the huge quantity of ICE and Chars was recovered which shows that they were in conscious

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knowledge about the presence of narcotics in their vehicle. No enmity or malafide with the police has been brought on record. Such a huge quantity of contraband cannot be planted by the prosecution against the accused particularly. Owing to the value of contraband which worths millions of rupees. Accused facing trial failed to substantiate their plea raised by them, regarding their false involvement, in their statement U/S 342 Cr. PC.

(20). In view of above, it is held that prosecution has proved its case against accused facing trial beyond shadow of reasonable doubt and successfully established the recovery and transportation of contraband 24780 grams of ICE and 25000 grams of Chars by the accused facing trial while executing their joint venture. I hold all the accused facing trial namely Khan Zada S/O Ashraf, Aqib S/O Amin Khan and Kamal Hussain S/O Sardar Hussain guilty for transportation of the above-mentioned huge quantity of ICE and Chars in the secret cavities of the vehicle they were traveling in. The accused facing trial are previous non-convict, therefore, I convict and sentence the accused facing trial as follows;

1. I convict all the three accused for life imprisonment and impose fine of Rs. 05 lacs against each convict in offense U/S 9(d) KP CNSA. The amount of fine shall be deposited in the government ex-chequer against the proper receipt, in default of which each

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accused has to undergo further simple imprisonment for 06 months. Benefit of Section 382-B is extended to the accused/convicts.

2. I convict all the three accused for life imprisonment and impose fine of Rs. One million against each convict in offense U/S 11 (c) KP CNSA. The amount of fine shall be deposited in the government ex-chequer against the proper receipt, in default of which each accused has to undergo further simple imprisonment for one year. Benefit of Section 382-B is extended to the accused/convicts. All the sentences shall run concurrently.

(21). Accused/convict Kamal Hussain is not before the court due to prevailing law and order situation at District Kurram. Several non-bailable warrants against him and his sureties were issued, but of no avail, therefore, conviction warrant of accused/convict Kamal Hussain be sent to DPO, Orakzai along with copy of this judgement with the direction to arrest him and deposit him in the jail in accordance with law.

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(22). Accused Muhammad Younas is absconder and

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statement of SW-01 has already been recorded wherein he has stated that he is avoiding his lawful arrest, therefore, he is declared as proclaimed offender. Perpetual warrant of arrest be issued against him. His name be entered in the relevant register of POs in accordance with law.

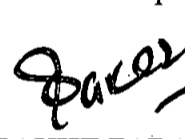
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(23). Attested copy of this judgement is furnished to both the present accused/convicts namely Khan Zada and Aqib free of cost and to this effect, their thumb impression is obtained on margin of order sheet as acknowledgment receipt with further direction that they can prefer appeal against this judgement and order before August, Peshawar High Court, Peshawar as per law. Another copy be sent to the learned DPP, Orakzai within the meaning of Section 373 of the Criminal Procedure Code, 1898. Case property i.e. ICE and Chars be destroyed, whereas, the vehicle in question is confiscated to the state and be dealt within accordance with law after both expiry of period provided for appeal/revision.

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

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Additional Sessions Judge-I/Judge Special Court,  
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Certified that this judgment consists of thirty-one (31) pages. Each page has been read, corrected wherever necessary and signed by me.

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