

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

SPECIAL CASE NO. : 04/CNSA OF 2024  
DATE OF ORIGINAL INSTITUTION : 18.09.2024  
DATE OF PRESENT INSTITUTION : 11.10.2024  
DATE OF DECISION : 12.12.2024

STATE THROUGH MUHAMMAD YOUNAS SHO, PS MISHTI  
MELA.

.....(COMPLAINANT)

-VERSUS-

AURANGZEB S/O ROMAN GUL, R/O QAUM MISHTI, TAPPA  
DARVI KHEL, VILLAGE KAR MELA, DISTRICT ORAKZAI.

..... (ACCUSED FACING TRIAL)

JUDGEMENT

12.12.2024

Accused Aurangzeb S/O Roman Gul, Qaum  
Mishti, Tappa Darvi Khel, Village Kar Mela, District  
Orakzai is facing trial in case FIR No. 40, dated  
20.06.2024, registered U/S 9 (d) CNSA of PS Mishti  
Mela, District Orakzai.

- (2). Facts of the prosecution case as reported in  
Murasila by the complainant Muhammad Younas Khan  
SHO, PS Mishti Mela are that on 20.06.2024 at 1500  
hours, he along with Constables Saleem Khan No. 1242,  
Muhammad Umar No. 252 and driver Mikael Khan were  
present at barricade on the main Mishti Mela to Sampog  
road situated at Essa Khel, in the meanwhile a motorcycle  
coming from Mishti Mela side was found in suspicious  
condition and stopped for checking. The person was  
deboarded from motorcycle and during his body search,  
nothing incriminating was recovered, however, one blue

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colour plastic bag lying on the oil tank of the motorcycle was checked and Chars was recovered which were weighed through digital scale and came out to be 3000 grams. 10 grams chars were separated for FSL for chemical analysis and packed and sealed into parcel No. 1, while the remaining 2990 grams chars along with plastic bag packed and sealed into parcel No. 2. Video of the occurrence through mobile phone was prepared which was converted into USB and the said USB is sealed into parcel No. 3. 1/1 seal of monograms "MY" is sealed in all the parcels, while 3/3 seals of the same monograms were affixed on it. The parcels along with motorcycle Honda 125cc, white colour bearing registration No. CHK-1223/Punjab, engine No. 334720, chassis No. U339647 were taken into possession vide recovery memo. The accused disclosed his name as Aurangzeb S/O Roman Gul, R/O Qaum Mishti, Tappa Darvi Khel, Village Kar Mela, 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 were handed over to constable Muhammad Umar No. 252 for taking the same to PS for registration of FIR.

- (3). After registration of FIR No. 40, dated 20.06.2024, registered U/S 9 (d) CNSA of PS Mishti Mela, District Orakzai, the same was handed over to Investigating Officer, who visited the spot, prepared site plan Ex. PB on

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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 on bail and was summoned, who appeared before the court on 30.09.2024 provisions of 265-C of the Code of Criminal Procedure, 1898, was complied with and copies of documents were supplied to the accused free of cost. Formal charge against the accused was framed on 11.10.2024 to which he pleaded not guilty and claimed trial whereafter, 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, Ihsan Ullah Moharrir: On 20.06.2024, he received Murasila, recovery memo and card of arrest through constable Muhammad Umar from Muhammad Younas SHO. He incorporated the contents of Murasila into FIR Ex. PW-1/1. On the same day the SHO handed over to him parcel no. 1 containing 10 grams of Chars for FSL, parcel no. 2 containing 2990 grams of Chars and

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parcel no. 3 containing USB. The SHO also handed over to him one Honda motorcycle 125-CC, white colour which was parked in the PS and entered in column no. 4 of register no. 19. He handed over the case property to the investigation officer Muhammad Hanif for producing the same before the Illaqa Magistrate regarding which his signatures were obtained on Ex. PW 1/2. He handed over parcels to investigation officer for sending the same to FSL on 24.06.2024. DD no. 16 to 24 dated 20.06.2024 and DD No. 11 dated 21.06.2024 regarding the proceeding of the case and DD no. 4 dated 24.06.2024 regarding handing over of parcels to the investigation officer consisted of four (4) pages are Ex. PW 1/3. His statement u/s 161 Cr, PC was recorded by the investigation officer.

II. PW-02, Muhammad Younas SHO

(complainant). On 20.06.2024 he along with constable Saleem Khan no. 1242, Muhammad Umar no. 252 along with driver Maked Khan no. 1211 laid barricade near Sampok Essa Khel road. at 1500 hours a white colour, CD -125, Honda motorcycle, came from Mishti Mela side was stopped. The rider was deboarded. During his body search nothing incriminating was

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recovered; however, a blue colour plastic bag laying on the oil tank of the motorcycle was searched and chars was recovered from the same which were weighed through digital scale and same came to be 3000 grams. He separated 10 grams from the same for purpose of chemical analysis through FSL and sealed the same in parcel no. 1, while the remaining chars 2990 grams along with blue plastic bag were sealed into parcel no. 2. The video of the proceedings was prepared through mobile which was converted into USB and the said USB sealed into parcel no. 3. One monogram of "MY" was packed/sealed in each parcel and three seals of monogram "MY" were affixed on each parcel. He took into possession the case property i.e. 3000 grams of chars (including 10 grams in parcel no. 1), motorcycle white colour Honda-125 and USB vide recovery memo dated 20.06.2024 Ex. PW 2/1. Parcel no. 2 containing 2990 grams (Ex. P1) and parcel no. 3 containing USB (Ex.P2) and motorcycle (Ex. P3). He arrested the accused and prepared his card of arrest Ex. PW-2/2. Similarly, he drafted the Murasila Ex. PW-2/3. The Murasila, card of arrest and recovery memo were sent through

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constable Muhammad Umar to PS. The investigation officer reached to the place of occurrence, who prepared the site plan of the place of occurrence at his pointation. After completion of investigation, he prepared complete challan Ex. PW-2/4 against the accused. He was also cross examined by the defence counsel.

III. PW-03, Constable Muhammad Umar. He is marginal witness to the recovery memo Ex. PW-2/1. He was present with SHO/complainant and he repeated the same story as deposed by PW-02. He was thoroughly cross examined by the defence counsel.

IV. PW-04, Muhammad Khalil. He stated that on 24.06.2024, the IO handed over to him parcel No. 1 containing 10 grams chars along with road permit certificate Ex. PW-4/1 and application addressed to FSL for taking the same to FSL, Peshawar which he took accordingly and after depositing the parcel in the FSL, Peshawar, receiving stamp was obtained on the road certificate. On his return to the PS, he handed over the road permit certificate to the IO. His statement U/S 161 Cr. PC was recorded by the

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IO. He was also cross examined by the defence counsel.

V. PW-05, Muhammad Hanif OII: After registration of the instant case copy of FIR along with relevant documents were handed over to him for investigation. He along with investigation staff proceeded to the spot. After reaching the spot, the SHO along with police officials and accused were present at the spot. The SHO shown to him case property in sealed condition having the stamps of "MY". The motorcycle Honda 125 CC bearing registration No. CHK-1223/Punjab, white colour was also present there. The SHO pointed out the place of occurrence to me and he prepared site plan at the instance of SHO. Site plan is Ex. PB which is correct with all its footnotes. He recorded the statements of PWs namely Constables Saleem Khan and Muhammad Umar. After spot inspection, he along with investigation staff returned to the PS where in PS he recorded the statement of Moharrir Ihsan Ullah regarding the registration of FIR and safe custody of case property. Thereafter, he interrogated the accused. On 21.06.2024, he vide application Ex. PW-5/1 produced the accused before Ilaqa Magistrate for obtaining physical

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custody of accused along with case property which was allowed and one day police custody was granted. He interrogated the accused. During interrogation accused confessed his guilt before me and he recorded his statement U/S 161 Cr. PC and on 22.06.2024, he vide application Ex. PW-5/2 produced the accused before Ilaqa Magistrate for recording his confessional statement, but he refused his guilt before the court and was sent to the Judicial Lock-up. On 24.06.2024, he handed over the parcel No. 1 containing 10 grams Chars with the monogram of "MY" to constable Khalil Khan along with application addressed to FSL authorities Ex. PW-5/3 and road certificate already exhibited as Ex. PW-4/1. After return of the constable Khalil Khan from FSL, Peshawar, he handed over to him the road certificate. He recorded the statement of Khalil Khan and Moharrir Ihsan U/S 161 Cr. PC regarding handing over the case property to him as well as its onward transmission to FSL through constable Khalil Khan. On receipt of FSL report, he placed the same on file which is Ex. PK. On 30.06.2024, he also submitted applications Ex. PW-5/4 & Ex. PW-5/5 to SP, Investigation for further correspondence with the Excise and Taxation and

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FSL. The DDs No. 14 and 21 dated 20.06.2024 regarding the arrival and departure of the SHO from the PS and DDs No. 18 & 22 regarding his departure and arrival are available on file which are already exhibited as Ex. PW-1/3 consist upon 04 pages. After completion of investigation, he handed over the case file to the SHO for submission of complete challan. He recorded the statements of PWs U/S 161 Cr. PC. He was thoroughly cross examined by the defence counsel.

- (7). Prosecution abandoned PW Constable Saleem being witness of the same facts as deposed by PW-03 and closed its evidence whereafter the statement of accused was recorded u/s 342 Cr.PC but the accused neither wished to be examined on oath nor opted to produce any evidence in defence.

(8). Arguments:

Learned DyPP for the state argued that 3000 grams chars have been recovered from the possession of the accused facing trial. He stated that there are no contradictions in the statements of the PWs. The FSL report and the statements of the marginal witnesses fully supports the version of prosecution. He requested for

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conviction of the accused in the above-mentioned charges.

- (9). On the other hand, learned counsel for the accused facing trial argued that there are glaring contradictions in the statements of the PWs which are of fatal nature for the case of prosecution and the PWs failed to even present the correct narration of the occurrence before the court. It is argued that even the challan has been wrongly prepared and instead of Chars 10 grams ICE is mentioned. The number of motorcycle is also wrongly mentioned. PW-1 Moharrir stated that he does not know that when parcel no.1 was sent to FSL by the investigation officer. The occurrence has taken place on 20.06.2024 and the parcel has been sent for chemical examination to FSL after 72 hours. He argued that the prosecution badly failed to prove the case against the accused facing trial beyond shadow of any doubt and requested for his acquittal in the instant case.

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After hearing arguments of the learned Sr. PP and leaned defence counsel, available record thoroughly perused which shows that according to prosecution story the complainant after receiving spy information laid barricade on the main road Mishti Mela to Sampok and when the accused facing trial while coming from Mishti side on motorcycle was stopped and during search a blue

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colour plastic bag laying on the fuel tank of the motorcycle was checked and Chars was recovered which were weighed through digital scale and found to be 3000 grams. After registration of FIR, the investigation officer reached to the spot and prepared site plan Ex. PB at the pointation of complainant which shows that the occurrence has taken place on the main straight road Mishti Mela to Sampok and the barricade is visible from quite a considerable distance then it is against the natural conduct of a person having contrabands Chars in his possession that he will not dare to cross the police barricaded rather he will prefer to either throw the contrabands or will take U-turn and decamp from the spot. Complainant during his cross examination as PW-2 has categorically admitted that the place of occurrence is visible from very far distance on the road. (MM) Moharrir Ihsan Ullah recorded his statement as PW-1, during which he has authenticated that SHO handed over to him parcel no. 1 containing 10 grams Chars for FSL, parcel no. 2 containing 2990 grams and parcel no. 3 containing USB, furthermore, SHO also handed over to him the motorcycle in question and he has entered all the above case property in column no. 4 of register no. 19. According to him he also has handed over the case property i.e., parcels no. 1, and 2 to investigation officer Muhammad Hanif for producing the same before the Illaqa Judicial Magistrate

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and on 24.06.2024 he again handed over parcel no. 1 for sending the same to FSL, but during cross examination his statement was badly shattered by the defence counsel when he admitted that *"it is correct that all the proceedings made in register no. 19 are in my handwriting and conducted by me personally, however, the same was not signed by me rather the same was signed by Muhammad Saeed Moharrir inadvertently.* But it is not appealing to prudent mind that a person who has not conducted any proceedings and he is going to sign a document inadvertently. The said act of PW-1 Ihsan Ullah and Moharrir Saeed Khan has not been rectified by the investigation officer by mentioning the same in any *"Zimnis"* or in the challan, but astonishingly despite of the signatures of Muhammad Saeed on the register no. 19, his name has neither been cited as PW in the challan nor he has appeared as PW. Such conduct of the PW-1 has exposed the claim of prosecution regarding the safe custody of the case property and it is clear evidence of interference by the Muhammad Saeed with the affair relating to safe custody of the case property. The last and not the least is that PW-1 has stated during cross examination that he does not know that when the investigation officer sent the case property to FSL. The record shows that occurrence has taken place on 20.06.2024 and the same has been sent to FSL on

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24.06.2024 in violation of the statute, but no explanation has been put forward by the investigation officer for such delay in sending the sample to FSL which is fatal ground for the case of prosecution and cast doubts not only about the case property, but also about its safe custody. *A single dent having created in the case of prosecution makes the accused entitled to benefit of doubt. It is to assert that the rule of criminal jurisprudence to give benefit of doubt to accused is much more than a mere rule of law. It is a rule of prudence which cannot be ignored (PLD 1999 Lahore 56) (1999 SCMR 1220)*

(11) In view of the above, fact and circumstances the prosecution badly failed to prove its case against the accused facing trial beyond shadow of any doubt. I therefore, acquit I, therefore acquit the accused facing trial from the charges levelled against him by extending benefit of doubt. He is in custody. He be released forthwith if not cited in any other case. Case property be kept intact till the expiry of period provided for appeal/revision under the law.

(12). Case file be consigned to the record room after its necessary completion and compilation.

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**CERTIFICATE**

Certified that this judgment consists of fourteen (14) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 12.12.2024

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