IN THE COURT OF SYED OBAIDULLAH SHAH,
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

CRIMINAL APPEAL NO.	:	1/10 OF 2024
DATE OF INSTITUTION	:	03.12.2024
DATE OF DECISION	:	11.12.2024

SHAKEEL AHMED S/O GUL BAT SHER, R/O CASTE MISHTI, TAPA DARWI KHEL, SHALZARA, DISTRICT ORAKZAI

..... (APPELLANT/CONVICT)

-VERSUS-

STATE THROUGH MUNIR KHAN ASHO, POLICE STATION MISHTI MELA

..... (RESPONDENT)

Present : Abid Ali Advocate, the counsel for appellant/convict.
: DPP, Umar Niaz for the State.

JUDGMENT
11.12.2024

Impugned herein is the judgment/order dated 31.07.2024 of learned Judicial Magistrate-I, Tehsil Kalaya, District Orakzai vide which the appellant/convict has been was convicted and sentenced for offense u/s 15AA with simple imprisonment of 06 months.

(2). Brief summary of the case is, that on 11.08.2023 the complainant, Akhtar Munir ASHO along with other police personnel were present on a picket where at about 1040 hours a suspicious person on way from Sangra towards the picket, was stopped and a 30-bore pistol with a fixed charger containing 07 live rounds were recovered from his trouser-fold for which he could not produce any valid license or permit and a white colour plastic shopper containing 30 grams of ice was also recovered from his side pocket.

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The instant case against the appellant/convict was submitted for trial and formal charge was framed against him on 27.10.2023 whereafter he has gone through the agonies of a long-protracted trial for a period of about almost one year where the prosecution has examined as many as 06 witnesses. The statement of the appellant/convict has been recorded u/s 342 CrPC wherein he has not admitted his guilt. Arguments were heard by learned trial court and the appellant/convict was convicted and sentenced through the impugned judgment of 31.07.2024. The appellant/convict, feeling himself aggrieved of the impugned judgment, filed the instant appeal.

(3). Perusal of the case file reveals that the appellant/convict has been intercepted by the police on 11.08.2023 at about 10:40 am, the report has been made at 11:00 am and the FIR has been chalked out at 11:20 am. According to the statement of Muhammad Ayyub Investigation Officer/PW-1, he received the copy of FIR along with other documents at 11:30 am whereafter he proceeded to the spot; however, the complainant/PW-3 contradicted the prosecution's version during cross examination, stating that the IO arrived on the spot at about 11:10 am, casting a serious doubt in the case of prosecution. The complainant made his proceedings further doubtful in

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the words that the Murasila Carrier returned from the police station to the spot at 11:15 am, which was before the FIR had even been registered. Upon closer examination of the record, it is revealed that the Murasila Carrier in his cross examination as PW-5 mentioned the name of the Investigation Officer as Shal Muhammad while the prosecution produced Muhammad Ayyub as an investigation officer. The chain of custody from the spot to the police station and from the police station to the FSL, has been compromised in the prosecution case as no Daily Diary has been placed on file or exhibited by the prosecution showing the departure or arrival of Constable Raheem Ullah/PW-2 from the police station for transportation of the sample of ice or the pistol to the FSL for chemical examination.

(4). Thus, keeping in view these contradictions in the case of prosecution regarding the mode and manner of the occurrence and safe custody of the case property and keeping in view that the accused/convict is a first-time offender with no prior history of involvement in similar cases and he has not made any confession regarding the charges, and there is no evidence to suggest any acknowledgment of guilt and keeping in view the fact that the appellant/convict has already gone through the agonies of a long-protracted trial, the appeal is partially accepted to

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the extent of quantum of sentence awarded to the convict/accused which is reduced from six-months to four months. The accused/convict **Shakeel Ahmed** be dealt with in accordance with law.

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

Dated: 11.12.2024

SYED OBAIDULLAH SHAH
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CERTIFICATE

Certified that this judgment consists of four (04) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 11.12.2024

SYED OBAIDULLAH SHAH
Sessions Judge/Judge Special Court,
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