

50

STATE VS SALMAN ALI
FIR No. 21 | Dated: 31.03.2024 | U/S: 9 (d) CNSA
| Police Station: Kalaya

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

SPECIAL CASE NO. : 14/3 OF 2024
DATE OF INSTITUTION : 02.05.2024
DATE OF DECISION : 14.01.2025

STATE THROUGH SHAL MUHAMMAD SHO POLICE STATION
KALAYA.

.....(COMPLAINANT)

-VERSUS-

SALMAN ALI S/O ALI AMEEN, AGED ABOUT 42/43 YEARS,
R/O CASTE MANI KHEL, TAPA ISA KHEL, AHMAD KHEL, PO
KALAYA, TEHSIL LOWER, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

Present : Umar Niaz, District Public Prosecutor for State.
: Sana Ullah Khan Advocate, the counsel for accused
facing trial.

FIR No. 21 **Dated: 31.03.2024** **U/S: 9 (d)** of the
Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kalaya

JUDGEMENT
14.01.2025

The above-named accused faced trial for the
offence u/s 9 (d) of the Khyber Pakhtunkhwa CNSA,
2019 vide FIR No. 21, dated 31.03.2024 of Police Station
Kalaya.

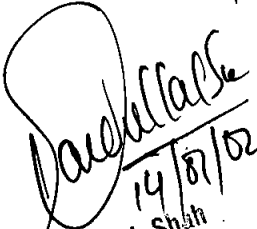
(2). The case of the prosecution as outlined in the
Murasila based FIR is as follows: that on 31.03.2024 at
1530 hours, the complainant Shal Muhammad SHO along
with Alam Jan HC and Constable Wajid Ullah during
patrolling of the area in official vehicle, stopped a
suspicious person at pukhta road leading from Sanghra to
Headquarter chowk who was walking on foot from

14/1/25

Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

Sanghra side. The person was carrying a white colour plastic sack on his shoulder which was searched and the complainant recovered chars weighing 5000 grams from the said sack. The complainant separated 10 grams of chars from total quantity for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 4990 grams was sealed in parcel no. 2 while the USB containing the videography of recovery proceedings was sealed into parcel no. 3 by affixing/placing a monogram of "SH" on all the parcels. The accused disclosed his name as **Salman Ali** s/o Ali Ameen who was accordingly arrested on the spot by issuing his card of arrest. The complainant took into possession the recovered chars vide recovery memo. Murasila was drafted and sent to Police Station through Head Constable Alam Jan which was converted into FIR by Muhammad Jameel Moharrir.

- (3). After registration of FIR, it was handed over to Investigating Officer Aftab Hassan OII for investigation. Accordingly, after receipt of FIR, he reached the spot and prepared site plan Ex. PB on pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 02.04.2024, the IO sent the sample of chars for chemical analysis to FSL through constable Nazid Khan against road permit certificate, the result whereof


14/8/25
Syed Saaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

(52)

STATE VS SALMAN ALI
FIR No. 21 | Dated: 31.03.2024 | U/S: 9 (d) CNSA
| Police Station: Kalaya

was placed on file by him as Ex. PK. After completion of investigation, the case file was handed over to the SHO for submission of challan against the accused facing trial.

(4). Upon receipt of the case file for the purpose of trial, the accused was summoned, copies of the record were provided to him in line with section 265-C CrPC and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

I. Constable Nazid Khan was examined as PW-1. He has taken the sample of chars in parcel no. 1 and the USB in parcel no. 3 for chemical analysis on 02.04.2024 and upon his return to the police station, he has handed over the receipt and parcel no. 3 to the IO.

II. Muhammad Jameel MHC appeared in the witness box as PW-2. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has received the case property from the complainant duly packed and sealed which he had kept in mal khana in safe custody and put the accused behind the lock-up. The witness further deposed that he has recorded entry of the case


14/07/25
Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

53


STATE VS SALMAN ALI
FIR No. 21 | Dated: 31.03.2024 | U/S: 9 (d) CNSA
| Police Station: Kalaya

property in Register No. 19 Ex. PW 2/1 and has handed over the sample to the IO for sending the same to FSL on 02.04.2024. He has also scribed the DDs.

III. Shal Muhammad SHO is the complainant of the case. He as PW-3 repeated the same story as narrated in the FIR. He has also submitted complete challan Ex. PW 3/2 against the accused facing trial in the instant case.

IV. Constable Alam Jan appeared as PW-4. He besides being eyewitness of the occurrence is marginal witness of recovery memo Ex. PA/1 as well vide which the complainant has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.

V. Investigation Officer Aftab Hassan OII was examined as PW-5 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared site plan Ex. PB on pointation of the complainant, recorded the statements of witnesses on the spot, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/1 & Ex. PW 5/6, sent the representative sample of


Syed Ovais Shah
District & Sessions Judge
Mela

chars to FSL along with application addressed to the incharge FSL Ex. PW 5/2 and road permit certificate Ex. PW 5/3, and result of the same Ex. PK was received and placed on file by him. He also placed on file attested copy of register no. 19 Ex. PW 2/1, copies of DDs regarding departure and arrival of police officials/officers from and to the Police Station and submitted the case file to SHO for submission of challan against the accused.

(5). 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. Accordingly, arguments of the learned DPP for the State and learned counsel for the accused facing trial heard and case file perused.


(6). Learned DPP for the State submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars garda has been recovered from possession of the accused facing trial, the recovered chars were sealed and sampled on the spot by the complainant, the OII conducted investigation on the spot, the sample for chemical analysis was transmitted to the FSL and it has been found positive for chars vide report of FSL Ex. PK.


Syed Obaidullah
District & Sessions Judge
Orakzai at Baher Mela
4/5/25

The complainant, the witnesses of the recovery, the official transmitted the sample to the FSL and the OII has been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

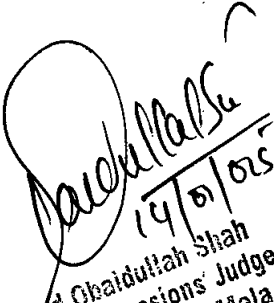
- (7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR and the report of FSL supports the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the OII on the spot, as detailed by the prosecution on the case file. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

- (8). Viewing the arguments advanced by learned counsel for parties and record available before the court, it is concluded that it is bounden duty of prosecution to prove its case against the accused beyond shadow of a reasonable doubt from the moment of presence of all


14/01/2025
Syed Waidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

police officials on the spot, interception of accused facing trial on the spot, transportation of chars by him, taking of sample from recovered chars, preparation of recovery memo, drafting of the Murasila, witnessing of whole proceedings by marginal witnesses, registration of case, safe custody of recovered articles, investigation of the case and laboratory reports etc. To prove this, prosecution has led the evidence of many witnesses and court has to see the mode and manner of the recovery of contraband, mode and manner of the investigation conducted by the IO, chain of safe transmission of the contraband from spot to the police station and then FSL and consistency of the witnesses in their depositions, which are the most important aspects of the case.

The prosecution in order to prove its case in the mode and manner as alleged, has examined Shal Muhammad SHO, the complainant of the case, as PW-3 who reiterated the contents of Murasila Ex. PA/1 and Alam Jan HC, the eyewitness witness of the occurrence as well as marginal witness of recovery memos Ex. PC respectively as PW-4 who besides repeating the same story as narrated in the FIR, has stated to have taken the documents to the police station for registration of FIR Ex. PA and handed over the documents to Muhammad Jameel MHC/PW-2 who has registered the FIR.


14/01/25
Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

As per available record and the statement of complainant/PW-3, the accused was intercepted on the spot at 15:30 hours, followed by recovery of contraband from his possession and preparation of recovery memo Ex. PC, card of arrest Ex. PW 3/1 and Murasila Ex. PA/1 by the complainant/PW-3 in presence of marginal witnesses who signed the recovery memo on the spot; however, the marginal witness in his statement as PW-4 stated to have signed one of the documents in the Police station – which definitely be the recovery memo as only this document has been signed by the marginal witnesses. The relevant portion of his statement is;

“I signed one document among the three in the PS.”

The case of prosecution is further shattered by the marginal witness's statement in the manner that the IO/PW-5 recorded his statement u/s 161 CrPC at about 16:30; however, according to the IO/PW-5 he has arrived on the spot at 05:10 pm (1710 hours). This implants a doubt in a mind that how can it be possible for recording the statement of marginal witness at the time when even the IO was not available on the spot. Reliance is placed on

2020 P Cr. LJ Note 72.

Besides above, this witness also contradicted the prosecution's version in respect of signing the recovery

Syed Ghaidullah Shah
14/07/2025
District & Sessions Judge
Orakzai at Baber Mela

memo by deposing that he has signed it in English, but astonishingly the recovery memo bears his signature in Urdu. In addition, the time of arrival of the IO/PW-5 has been mentioned by this PW as 16:30 hours; however, in his next breath, coinciding this time, he said that the IO/PW-5 left the spot at 16:30 hours.

As discussed above, the accused was intercepted on the spot, the recovery of contraband have been effected from his possession and the spot proceedings were filmed through a cellular phone, but to my surprise the name of the police personnel who made videography has neither been mentioned in the Murasila nor in the statement of complainant as PW-3 nor his statement u/s 161 CrPC has been recorded or he has been produced before the court, which not only creates serious doubt about the mode and manner about the commission of offence but also presence of complainant at the crime scene at given time as well. Additionally, the site plan prepared by the Investigation Officer/PW-5 shows that the place of occurrence is a straight road; thus, a question arises that why the accused facing trial, despite being in possession of a huge quantity of narcotics, would straightaway move towards the police party especially in the circumstances where the police officials were visible to them.

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14/07/25
Syed Omerullah Shah
District & Sessions Judge
Orakzai at Baher Mela

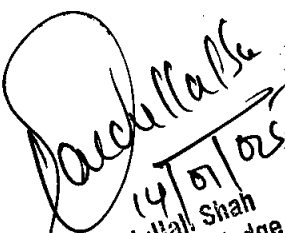
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STATE VS SALMAN ALI
FIR No. 21 | Dated: 31.03.2024 | U/S: 9 (d) CNSA
| Police Station: Kalaya

It is evident from early discussion that the complainant/PW-3, after effecting recovery of contraband from possession of the accused facing trial, prepared different parcels which, as per register no. 19 Ex. PW 2/1, were handed over to the Moharrir/PW-2. There is, however, no name has been in register no. 19 that as to when and by whom those parcels were delivered to the Moharrir/PW-2. Besides that, the Moharrir/PW-2 also denied handing over the parcel no. 3 to the IO for transmitting it to the FSL. This not only creates serious doubt in the case of prosecution but also breaks the chain of safe custody of case property; thus, forensic laboratory report cannot be believed.

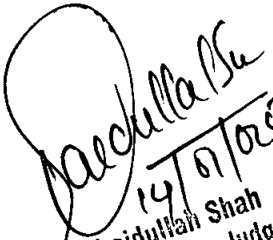
Though, there is no mandatory provision in CNSA cases to associate private witnesses; however, their association is also not expressly barred, where there is availability of the public on the spot. In the instant case, record shows that the recovery has allegedly been made from public place i.e. on road during daylight and absence of public is not expected at the spot at the relevant time;

therefore, the local police was supposed to associate private witnesses but they did not. Since, the mode and manner of the occurrence has been doubted due to differences in the statements of prosecution witnesses; therefore, the most reliable and helping evidence in such


14/07/2024
Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

scenario could have been the call data record of the complainant, accused and investigation officer, which could have led their presence on the spot, movement of the Murasila Carrier from police station back to the spot either in person or with the Investigation Officer and also the movement of Investigation Officer from police station to the spot, however, the investigation officer has not collected any CDR data of the accused and police officials present on the spot at the time of occurrence.

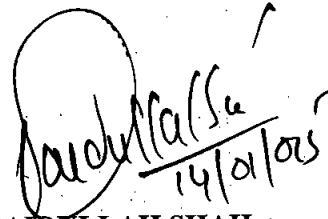
From above appreciation of evidence and lacunae noted above, it is evident that the prosecution has badly failed to prove the mode and manner of making arrest and seizure of narcotics from accused, which has become doubtful. Moreover, there are many discrepancies and contradictions in prosecution case, which have been discussed in detail above. In view of above facts, it is held that admittedly a huge quantity of chars has been shown to be recovered by police but the accumulative effect of lacunae noted above makes the prosecution case doubtful and this is the cardinal principle of law that benefit of the slightest doubt in criminal case would be extended to the accused being favourite child of law. It is, therefore, held that prosecution has failed to bring home the guilt against accused facing trial beyond shadow of doubt; hence, accused **Salman Ali** is acquitted of the charges levelled


14/07/2025
Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baher Mela

against him. He is on bail; thus, his sureties are discharged from the liability of the bail bonds. Case property i.e., chargs be destroyed after the period provided for appeal/revision.

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

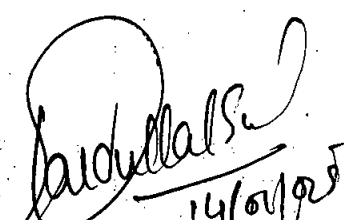
Dated: 14.01.2025


SYED OBAIDULLAH SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment consists of twelve (12) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 14.01.2025


SYED OBAIDULLAH SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

