

STATE VS JAMSHID AFRIDI
Case No.: 08 CNSA || FIR No.: 16 || Dated: 11.02.2023 ||
U/S 9 (d) CNSA || Police Station: Kalaya.

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

SPECIAL CASE NO. : 08/CNSA OF 2024
DATE OF ORIGINAL INSTITUTION : 01.04.2024
DATE OF TRANSFER IN : 10.10.2024
DATE OF DECISION : 22.11.2024

STATE THROUGH MUJAHID KHAN SI, POLICE STATION KALAYA

.....(COMPLAINANT)

-VERSUS-

1. JAMSHID AFRIDI S/O SHARAB DIN, AGED ABOUT 27/28 YEARS,
R/O KAMAR KHEL, YOUSAF KHEL, P/O BARA, HISARA KHAWAR,
DISTRICT KHYBER

..... (ACCUSED FACING TRIAL IN CUSTODY)

Present: Sr. Public Prosecutor for State.

: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 16 **Dated: 11.02.2023** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019:
Police Station: Kalaya

JUDGEMENT

22.11.2024

The accused named above faced trial for the offence u/s 9

(d) of the Khyber Pakhtunkhwa Control of Narcotic Substances
Act, 2019 of the Khyber Pakhtunkhwa Arms Act, vide FIR no. 16,
dated 11.02.2023 of PS Kalaya.

The case of the prosecution as per contents of Murasila Ex.

PW 2/2 converted into FIR is that on 11.02.2023, the complainant,
Mujahid Khan SI (NET), along with other police officials namely
Rafi Ullah constable, Manzoor Ali constable and driver Abdul Haq
were present on the spot, where, at about 0830 hours a motorcycle
Honda-125 riding by two persons coming from Sultan Zai Dara
side, who upon seeing the police party turned their motorcycle

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towards Sultan Zai Dara side. They were chased by police in official vehicle and the persons threw away a yellow colour plastic sack and successfully escaped towards nearby populated area. The persons were identified by police as Jamshid Afridi and Muhammad Hussain. Upon search of the sack, police recovered 20 packets of chars wrapped in yellow scotch tape, weighing through digital scale, each packet came out be 1000/1000 grams while making a total of 20,000 grams of chars. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL and sealed the same in parcels no. 1 to 20, whereas the remaining packets of chars weighing 990 grams each were sealed in parcels no. 21 to 40, while empty sack was packed into parcel no. 41. Murasila was drafted and sent to the PS through constable Manzoor Ali which was converted into FIR.

3. After registration of FIR, it was handed over to Muhammad Haneef IO for investigation. Accordingly, after receipt of FIR, he reached on the spot, prepared site plan Ex. PB on the pointation of complainant, sent the samples for chemical analysis to FSL through constable Khaleel Rehman. Accused Jamshid Afridi was arrested on 28.10.2023 and complete challan was submitted against him, while accused Muhammad Hussain was declared proclaimed offender vide order dated 23.05.2023 passed by District & Sessions Judge, Orakzai.

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4. Upon the receipt of case file for the purpose of trial, the accused was summoned through addendum-B from sub-jail Orakzai, being in custody, copies of the record were provided to him u/s 265-C Cr.P.C 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 of prosecution is as follows;

- I. Hamayun AMHC is PW-1. He has incorporated the contents of Murasila into FIR Ex. PA/1 and he received the case property which was put by him in mal khana of the PS and made entries in the register no. 19 Ex. PW 1/1. He also made entries regarding the departure and arrival of complainant and investigation officer in DD Ex. PW 1/2. He further deposed that on 13.02.2023 he has handed over parcels no. 1 to 20 to the IO for its onward transmission to the FSL.
- II. Mujahid Khan SHO, the complainant, appeared in the witness box as PW-2 and repeated the story narrated in the FIR.
- III. Statement of Aftab Ahmed SHO was recorded as PW-3 who submitted challan u/s 512 Cr.PC Ex.PW 3/1 against both the accused before the court on 11.03.2023.
- IV. Constable Manzoor Ali appeared in the witness box as PW-4. He, besides eyewitness of the occurrence, is the marginal witness of recovery memo as well, vide which the complainant has taken into possession the recovered chars. He reiterated the contents of FIR in his statement. He has also taken recovery memo

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and Murasila to police station from the spot handed over to him by the complainant.

V. Constable Khaleel Rehman is PW-5. He has taken the samples of recovered chars in parcels no. 1 to 20 to the FSL along with application and road permit certificate for chemical analysis on 13.02.2023 and after submission of the same, he was given the receipt of the parcels which he handed over to the IO upon his return.

VI. Investigating Officer Muhammad Haneef IO was examined as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared the site plan Ex. PB on the pointation of complainant, recorded the statements of witnesses on the spot, sent the of samples to FSL vide his application Ex. PW 6/1 and road permit certificate Ex. PW 6/2 and results of the same Ex. PK was placed on file by him. As the accused were avoiding their lawful arrest, therefore, he submitted an application before the court of Judicial Magistrate for issuance of warrant u/s 204 Cr.PC Ex.PW 6/5 and application for issuance of proclamation notice u/s 87 Cr.PC Ex.PW 6/6. On completion of investigation, he submitted the case file to the SHO for onward proceedings.

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VII. Statement of Shal Muhammad was recorded as PW-7 who has prepared interim challan Ex.PW 7/1 against the accused.

5. Prosecution closed its evidence whereafter statements of the accused was recorded u/s 342 Cr.P.C but he neither wished to be examined on oath, nor opted to produce any evidence in defence. Accordingly, arguments of the learned Sr.PP for the State, arguments of counsel for the accused facing trial heard.

6. Learned Sr.PP for State argued that the prosecution has proved the case against accused beyond shadow of doubt; that the recovery of contraband chars is proved against the accused; that prosecution witnesses are consistent in their statements in respect of recovery of narcotics from accused; that FSL result in respect of the samples, separated from the contraband, is positive; that there is no malafide on part of the prosecution to falsely involve the accused in the case, therefore, he requested to award them maximum punishment.

7. Counsel for the accused facing trial argued that prosecution has failed to prove its case against accused facing trial beyond reasonable shadow of doubt; that prosecution evidence contradicts and suffers major inconsistencies; that prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that the statement of single private person regarding recovery has not been recorded; that recovery is not effected from immediate possession of accused facing trial; that the accused facing trial has not confessed his guilt; that the case against the accused facing trial is not proved and request is made for his acquittal.

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8. After hearing arguments available record perused which shows that the occurrence has taken place on 11.02.2023 while the accused facing trial got his ad-interim pre arrest bail from the court of Hon'ble District and Session Judge, Orakzai on 28.10.2023. His ad interim pre arrest bail was cancelled and the accused was arrested on 30.10.2023. On 01.11.2023 one day physical custody of accused was granted in favour of police and the accused was produced for recording his confessional statement u/s 364/164 Cr. PC on 02.11.2023 but the accused refused to confess his guilt. It is alleged by the complainant in the Murasila that the accused were identified by them during chase, but the police have neither explained in their report nor during the course of evidence that how they identified the accused facing trial while chasing from the back. This stance of the police is creating doubts about the identification of the accused facing trial. The chars has not been recovered from the immediate of the accused facing trial, furthermore, it is also not stated that which one of the accused was driving the motorcycle at the time of alleged occurrence and the ownership of contrabands chars is also not attributed to any one of the accused. The non recovery of contrabands chars from the direct possession of the accused is a fatal ground for the prosecution case and the accused is entitle for acquittal alone on this ground, but in the present case today during arguments learned Sr. Public Prosecutor submitted application for withdrawal of case/prosecution against the accused facing trial u/s 494 Cr. PC. The application is placed on file.

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9. In view of the above, there is no case against the accused facing trial, I therefore acquit the accused facing trial from the charges levelled against him. He is on bail, his bails bonds stand cancelled

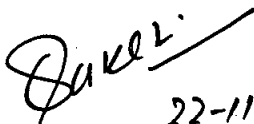
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and his sureties are absolved from the liabilities of bail bonds. Case property; the chars, shall be destroyed after expiry of period of appeal/revision.

10. File be consigned to District Record Room, Orakzai after its necessary completion and compilation within the span allowed for.

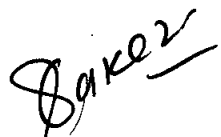
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(BAKHT ZADA)
Additional Sessions Judge-I, Orakzai
at Baber Mela.

CERTIFICATE

Certified that this judgement consists of seven (07) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 22.11.2024


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Additional Sessions Judge-I, Orakzai
at Baber Mela.