

STATE VS KHAL AMEEN

Case No. 22/3, FIR No. 102 | Dated: 10.10.2024 | U/S 9 (d) KP CNSA/468/471 PPC, | Police Station: Kalaya

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

SPECIAL CASE NO.	:	22/3 OF 2024
DATE OF INSTITUTION	:	09.12.2024
DATE OF DECISION	:	19.03.2025

STATE THROUGH NASIR AHMAD SHO, PS KALAYA
.....(COMPLAINANT)**-VERSUS-**KHAL AMEEN S/O SABEEL KHAN, R/O QAUM ZAKHA
KHEL, TIRAH MAIDAN, DISTRICT KHYBER
..... (ACCUSED FACING TRIAL)PRESENT: Sr. PP, ABUL Qasim for the state
Mr. Sana ullah khan advocate for the accused facing trialJUDGEMENT

19.03.2025

Accused Khial Ameen S/O Sabeer Khan, Caste Zakha Khel, R/O Tirah, Maidan, District Khyber is facing trial in case FIR No. 102, dated 10.10.2024, registered U/S 9 (d) KP CNSA/468/471 PPC of PS Kalaya, District Orakzai.

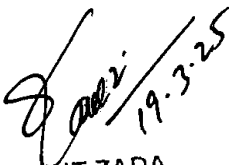
- (2). Facts of the case are that complainant Nasir Ahmad SHO sent Murasila through constable Saleem Khan No. 1242 for registration of FIR, wherein it is alleged that he along with constable Saleem Khan No. 1242, Gul Hayat No. 432 duly armed were on patrolling in the official vehicle being driven by Inshad Ali No. 663. Meanwhile, the informer informed him that huge quantity of Chars will be smuggled from Tirah, Maidan District Khyber via Orakzai to Bara, District Khyber, through motorcar bearing registration No. YS-377, wherein secret cavity has been made for the said purpose. On the said

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information he laid barricade at Shiraz Ghari Check-Post and was busy in checking, in the meanwhile, the above-mentioned car came which was stopped and the driver was deboarded. The driver disclosed his name as Khial Ameen S/O Sabeel Khan. Noting incriminating was recovered during his body search. The seizing officer according to spy information searched the secret cavity made beneath the rear seat of the car, which was opened through screw-driver and 22 packets of Chars, wrapped in yellow scotch tape were recovered. Each packet was found 1000/1000 grams on weighing through digital scale. 10/10 grams were separated from each packet through sharp object for sending the same to FSL for chemical analysis, which were sealed into parcels No. 1 to 22, while the remaining 21780 grams of Chars were sealed into parcel No. 23. Videography of the spot was prepared by driver Inshad Ali No. 663 through cell phone, which was sealed into parcel No. 24. One stamp of monogram "NA" was put inside each parcel, while 03/03 stamp of monogram "NA" were affixed for sealing each parcel. Motorcar bearing registration No. YS-377, engine No. 2NZ-FE-1299, Chassis No. NZE140-2157899, golden colour GLI was taken into possession through recovery memo. The accused was arrested and his card of arrest was issued. Murasila along with recovery memo and card of arrest were sent to the PS for registration of FIR through constable Saleem Khan No. 1242.


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(3). After registration of above-mentioned, the same was handed over to Investigating Officer, who visited the spot, prepared site plan Ex. PW 3/1 at the pointation of the complainant/SHO. He recorded statements of the PWs u/s 161 Cr. PC at the spot and 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 being in custody, was summoned through "Zamima Bay" from the Judicial Lock-up Orakzai. On 14.12.2024, the accused was brought before the court and provisions of 265-C of the Code of Criminal Procedure, 1898, was complied with. Formal charge against the accused was framed on 21.12.2024, 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 six (06) PWs, the gist of their evidence is as under.

I. **PW-01, Iftikhar Hussain Constable belt No.**

541: He posted at PS Kalaya in the relevant days. On 14.10.2024 the Investigation Officer handed over to him parcels No. 1 to 22 containing 10/10 grams Chars and parcel No. 24 containing USB alone with road certificate and

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application addressed to the FSL authorities. He accordingly took the same to FSL, Peshawar and deposited the samples there by obtaining receiving stamp on the road certificate. Parcel No. 24 was returned due to non-availability of Forensic facility. He handed over the road certificate along with parcel No. 24 to the IO on his return to the PS. His statement was recorded u/s 161 Cr. PC.

- II. **PW-02, Moharrir Muhammad Jamil.** He was posted at PS Kalaya in the relevant days. He received Murasila sent by Nasir Ahamd SHO through constable Saleem Khan No. 1242. He incorporated the contents of Murasila into FIR Ex. PW 2/1. On return of the SHO, he received parcels No. 1 to 22, which were kept by him in the Mall-Khana for safe custody. The motorcar was parked in the premise of the PS and the accused was locked in the lock-up of the PS. Entries in respect of receiving the case property etc were made in register No. 19, the extract of which is Ex. PW 2/2 (original seen and returned). On 11.10.2024 he handed over the case property i.e. parcels No. 1 to 24 to the IO for producing the same before the Area Magistrate. The case property was returned to him, which was again

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kept in safe custody. On 12.10.2024 he handed over parcels No. 1 to 22 and 24 containing samples of 10/10 grams Chars for FSL and USB respectively to the IO for its onward transmission to the FSL, but the same was returned by the IO as the carrier of the case property could not proceed to FLS Peshawar due to non-availability of transport. On 14.10.2024 the case property was again handed over to the IO. His statement was recorded u/s 161 Cr. PC by the IO.

III. PW-03, Minhaz Hussain, Investigation Officer.

He was posted as Incharge Investigation at PS Kalaya. He along with Investigation Staff visited the spot, where the SHO along with police officials and accused were already present. The SHO shown to him case property in sealed condition having stamps of monograms "NA". the motorcar bearing registration No. YS 377 of the accused was present at the spot. He prepared site plan Ex. PW 3/1 at the pointation of the SHO in the light of the headlights of the vehicle. He recorded statements of PWs u/s 161 Cr. PC. On retune he recorded statement of Moharrir Muhammad Jameel regarding the registration of FIR and safe custody of the case property. He interrogated the accused. On 11.10.2024 the


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accused along with case property was produced before the Area Magistrate vide his application Ex. PW 3/2 for obtaining his physical custody. After obtaining one day physical custody of the accused, he was interrogated and on 12.10.2024 vide application Ex. PW 3/3, he was again produced before the Area Magistrate for further custody, which was refused and the accused was committed to Judicial Lock-up. He recorded the statement of accused on the same date. On 12.10.2024, he handed over the parcel No. 1 to 22 containing 10 grams Chars and parcel No. 24 containing USB to constable Iftikhar Hussain along with application addressed to FSL authorities Ex. PW-3/4 and road certificates Ex. PW-3/5 & Ex. PW-3/6 for taking the same to FSL for chemical analysis, but the Constable Iftikhar Hussain could not proceed to FSL, Peshawar due to non-availability of public transport and on 14.10.2024, he again handed over parcel no. 1 to 22 containing 10-grams chars and parcel no. 24 containing USB along with road certificates Ex. PW-3/7 & Ex. PW-3/8 and applications addressed to FSL Authorities Ex. PW-3/9 & Ex. PW-3/10. Parcel No. 1 to 22 were deposited in the FSL while parcel No. 24 was returned. After return of the constable Iftikhar Hussain


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from FSL, Peshawar, he handed over to me the road certificate. He recorded the statement of Iftikhar Hussain and Moharrir Muhammad Jamil U/S 161 Cr. PC regarding handing over the case property to me and constable Iftikhar Hussain to. On receipt of FSL report regarding Chars, the same was placed on file which is Ex. PW-3/11. He also submitted application Ex. PW-3/12 to SP, Investigation for further correspondence with the Excise and Taxation and FSL. He also placed on file the naqalmads regarding the arrival and departure of the SHO from the PS as well as of himself which are Ex. PW-3/13 consist upon 04 pages. He also placed on file the FSL report of Motorcar which is Ex. PW-3/14. The Chassis number of Motorcar was found deciphered as per FSL report. After completion of investigation, the case file was handed over to the SHO for submission of complete challan. His successor in office Aftab Hassan also added Section of 468 & 471 in the instant case. He has recorded the statements of PWs U/S 161 Cr. PC. The above referred documents are correct and correctly bear his signatures.


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IV. PW-04, Driver Inshad Ali No. 663. On the relevant day, he was present with the seizing

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officer SHO Nasir Ahmad at the spot at the time of occurrence. He prepared video of the occurrence at the order of SHO with the help of mobile phone which was saved in USB. The said USB was handed over to SHO and sealed the same in parcel No. 24. The SHO affixed seals of monogram of "NA" on parcels No. 1 to 24. All the parcels and motorcar bearing No. Y-377, engine number 2NZ-FE-1299, chassis number NZE-140-2157899, golden colour along with keys were taken into possession by the SHO. Accused was arrested. His statement was recorded by the IO U/S 161 Cr. PC.

- V. PW-05, Constable Muhammad Saleem. He was also accompanied with the seizing officer SHO Nasir Ahmad on the day of occurrence. After recovery of the Chars the accused was arrested. The seizing officer scribed Murasila, card of arrest and recovery memo, which were handed over to him for taking the same to the police station. After taking the Murasila, recovery memo and card of arrest to the PS the same was handed over to Moharrir, who incorporated the same into FIR. His statement was recorded by the IO u/s 161 Cr. PC.



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VI. PW-06, Nasir Ahmad SHO (complainant).

Stated on oath that on 10.10.2024, he along with police contingents consisted of constable, Saleem Khan, Gul Hayat and Inshad Ali were on gasht in the locality in the official vehicle driven by driver Inshad Ali. During gasht, he received information that today at any time huge quantity of Chars would be smuggled to Bara, District Khyber from Tirah Maidan through Orakzai in a motorcar, having secret cavities, bearing registration No. YS-377. Upon the said information, barricade was made near check post of Sheraz Garhi. In the meanwhile, at 1930 hours, the motorcar mentioned above came and stopped. The driver was boarded, who disclosed his his name as Khial Ameen S/O Sabeel Khan, Qaum Zakha Khel, R/O Tirah Maidan, District Khyber. Nothing incriminating was recovered during his body search. During search of reported, secret cavity made under the rear seat of the vehicle, 22 packets of chars wrapped in yellow scotch tape were recovered, after opening the same through screw driver. Each packet was found 1000 grams after weighing through digital scale and the total came out to be 22000 grams. 10/10 grams from each packet were separated through sharp object for FSL which were sealed into parcel No. 1 to

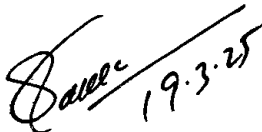
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22, while the remaining contraband (21780 grams chars) was sealed into parcel no. 23 already exhibited as Ex. P-1. The video of the occurrence was prepared by driver Inshad Ali through cell phone which was converted into USB and sealed the same into parcel No. 24 already exhibited as Ex. P-2. All the parcels were affixed with the monogram "NA" while one monogram was put inside each parcel. The above-mentioned contraband, USB and motorcar mentioned above are Ex. P1 to Ex. P3, which were taken into possession vide recovery memo already exhibited as Ex. PW-5/1. Accused was arrested in the instant case and his card of arrest Ex. PW-6/1 was issued. Murasila Ex. PW-6/2 was drafted and was sent to PS through constable Saleem Khan No. 1242 along with recovery memo and card of arrest. On arrival of the IO to the spot, he pointed out the place of occurrence to the IO and he prepared site plan at his instance. He also shown the case property and motorcar to the IO. On return to the PS, he handed over all the parcels, motorcar and accused to the Moharrir. He also submitted complete challan Ex. PW-6/3 against the accused.



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(6). The Prosecution abandoned PW Gul Hayat No.

432 marginal witness to the recovery memo and instead of him statement of the co-marginal witness Saleem Khan No. 1242 was recorded being witness of the same facts. The prosecution closed its evidence whereafter the statement of accused was recorded u/s 342 Cr. PC. The accused neither wished to be examined on oath, nor opted to produce any evidence in defence.

(7). Arguments:

Learned Sr. PP for the State argued that 22000 grams have been recovered from the secret cavity of the motorcar of the accused facing trial. The FSL report, the eyewitnesses/marginal witnesses of the recovery memo fully support the version of the prosecution. That there is no ill will of the police against the accused facing trial.

Huge quantity has been recovered and the chances of false implication of the accused are not there. He requested that the prosecution has proved its case beyond shadow of doubt and prayed for conviction of the accused in the instant case.

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(8). On the other hand, learned counsel for the accused facing trial argued that there are contradictions in the statements of PWs about the mode and manner of the occurrence. That the witnesses failed to state the correct account of the occurrence during their statements and

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the same were badly shattered during cross examination

Hethe pointed out that the case of prosecution is full of doubt and has not feet to stand with. That in view of the judgments of the Superior Courts benefit of doubt shall be extended in favour of the accused not as a matter of grace, but as of right. He prayed that the prosecution badly failed to prove its case against the accused facing trial, therefore, he requested that the accused facing trial may be acquitted from the charges levelled against him.

- (9). In the light of available record, arguments advanced by the learned Sr. PP for the State and arguments of the learned defence counsel, the following are the points of determination of charge against the accused facing trial;

- I. Whether the occurrence has taken place in the mode and manner as alleged by the prosecution?
- II. Whether the investigation has been carried in the mode and manner as alleged by the Prosecution?
- III. Whether the recovered substance proved through report of FSL as Chars?

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(10). **Findings:**

The case of prosecution as per contents of Murasila Ex. PW 6/2, court statements of seizing officer

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Nasir Ahmad SHO/PW-6, Muhammad Saleem/PW-5, is that complainant Nasir Ahmad SHO/PW-6 along with constables Saleem No. 1242, Gul Hayat No. 432 and driver Inshad Ali No. 663 in the official vehicle, acting on information laid barricade at Shiraz Ghari Check-Post, where at about 1930 hours motorcar bearing registration No. YS 377 came, which was stopped, the driver was boarded, who disclosed his name as Khial Ameen s/o Sabeel Khan r/o Zakha Khel, Tirah, Maidan, District Khyber. Nothing incriminating was recovered during body search of the accused. The seizing officer recovered 22 packets of Chars, wrapped in yellow scotch tape from the secret cavity made under the rear seat of the vehicle, which was opened through screw-driver. Each packet was found 1000/1000 gram by weighing through digital scale. 10 grams from each packet were separated through sharp object and sealed into parcels no. 1 to 22 for sending to FSL. The remaining 21780 grams Chars were sealed into parcel no. 23. Videography of the occurrence was done by driver Inshad Ali through cell phone, which was converted into USB and the same is sealed into parcel no. 24. The Chars along with USB and motorcar were taken into possession through recovery memo Ex. PW 5/1.

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(11).

The prosecution, in order to prove their case

has produced constable Muhammad Saleem as PW-5, who has taken the Murasila Ex. PW 6/2, recovery memo Ex. PW 5/1 and card of arrest Ex. PW 6/1 to the PS and handed over the same to the Moharrir. He during his cross examination has stated that no other police official except Inshad Ali, Gul Hayat and SHO besides him were present at the time of occurrence, while according to cross examination of PW-4/ASHO Muqadar Khan was also present with the SHO. This fact is also admitted by the SHO Nasir Ahamd/PW-6 that Muqadar Khan ASHO was present with him at the time of occurrence and gasht, but astonishingly neither his name is cited in the Challan as PW, nor the investigation officer has recorded his statement u/s 161 Cr. PC. The exclusion of such an important witness from the Challan and not producing him as PW makes the case of prosecution falling under article 129 (g) of the Qanoon-E-Shahadat order 1984.

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PW-5 during cross examination also stated that police official of check post was present with us, but SHO/PW-6 stated that no official of Shiraz Ghari Check post were present with us, but contrary to his statement PW-3/investigation officer/Minhaz Hussain has stated that "*it is correct that one or two officials of Shiraz Ghari check post were present.* In spite of admission of their presence at the spot the investigation officer has not recorded the statement of any official of Shiraz Ghari Check Post u/s

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161 Cr. PC. The most devastating and damaging

statement of PW-5 was that he sated during cross

examination that *"while I was taking Murasila to the PS,*

when I reached to the main gate of the PS, the IO met me

at the gate, who was on his way to the spot". I might

hardly have spent 10 minutes in the PS, whereafter I

followed the IO to the spot. This statement of PW-5 being

Murasila carrier suggests that the IO proceeded to the

spot prior to the lodging of FIR and that he was in the

knowledge of the occurrence. The occurrence has taken

place at 1930 hours which is usually dark in the month of

October, but the Murasila is silent about the use of source

of light for conducting the recovery proceedings. The

investigation officer also admitted that he has not

mentioned during his investigation the source of light

through which the SHO has carried out the seizing

proceedings. The time of report in Murasila Ex. PW 6/2

is mentioned as 2050 hours, while the Murasila

carrier/PW-5 has stated that the Murasila was handed

over to him by the seizing officer at 2010 hours (08:10

pm)/2015 hours (08:10 pm), which are creating heavy

doubts about the case of prosecution. PW-5 stated during

cross examination that *"the motorcar of the accused was*

taken to PS by the SHO. But PW-3/Minhaz Hussain/

Investigation officer has stated during his cross

examination that *"the vehicle of the accused was taken to*

PS by ASHO/Muqadar Khan from the spot, but he has not

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recorded statement of Muqadar Khan/ASHO u/s 161 Cr.

PC. Investigation Officer/PW-3 has stated that constable Hayat Gul and Saleem were present at the spot, when he reached there and he recorded their statements u/s 161 Cr. PC. PW-5 has stated that the case property was taken to PS by the SHO, but the SHO/PW-6 stated that the case property was taken to PS by ASHO/Muqadar Khan in the official vehicle. From these contradictory statements of the spot witnesses only an adverse inference, contrary to the one alleged by the prosecution, can be drawn and nothing else. The story of prosecution relating to the spot proceedings is further shattered, when PW-5 stated that he has mentioned the registration number of the vehicle in his statement u/s 161 Cr. PC, but when he was confronted with the record the same was not found in his statement, furthermore he failed to state the name of the constables, who were accompanied with the investigation officer at the spot, which is also adversely affecting the story of prosecution relating to the spot proceedings and stance of the IO relating to recording statement of the PWs at the spot. PW-6/seizing officer in reply to the very first question during his cross examination stated that constables Saleem Khan and Hayat Gul were present with him at the time of occurrence and both are visible in the video prepared at the time of spot proceedings. At the request of the learned defense counsel the video of the occurrence was watched through official computer and

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this court recorded its observations during the cross examination of PW-6, wherein it is observed that neither the official vehicle, check post, mosque, shops, nor the constables/marginal witnesses of the case namely Saleem Khan and Gul Hayat are visible in the video, which is in contradiction of the statement of PW-6 and is setback to the prosecution evidence. The SHO/PW-6 has stated that Murasila carrier Saleem Khan left the spot for the PS at 08:50 pm, while according to PW-5, the Murasila was handed over to him at 08:10/ 08:15 pm and he reached to the PS by 2100 hours. PW-6 stated that the investigation officer reached to the spot at 2100 hours, meaning thereby that at the time the Murasila carrier reached to the PS, the IO reached to the spot at the same time, but the perusal of FIR shows that the FIR has been registered at 2140 hours, meaning thereby that according to SHO/PW-6 the IO reached to the place of occurrence before the registration of FIR. Another glaring contradiction, which cannot be ignored at any stretch of imagination is that PW-4 Inshad Ali stated that vehicle of the accused was taken by SHO Nasir Ahmad to the PS, but the investigation officer/PW-3 has stated that the vehicle of the accused was taken by Muqadar Khan/ASHO to the PS. PW-5/Saleem Khan has produced another stance during his cross examination and stated that he returned to the PS along with SHO, Gul Hayat and Inshad Ali besides the accused in the official vehicle.

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The statements of all three PWs i.e., PW-4, PW-5 and PW-6 are at variance with each other and creating strong doubts about the proceedings at the spot. Another important factor is the observation of the court recorded after watching the video. The print of the properties of the said video secured by this court and placed on file, which shows that the video has been prepared on 10.10.2024, while the same has been converted to USB on 21.10.2024, which has falsified the stance of prosecution regarding sealing of the USB at the spot on the day of occurrence. All the above facts and circumstances mentioned by the PWs clearly suggests that the occurrence has not taken place in the mode and manner as alleged by the prosecution in Murasila Ex. PW 6/2.

- (12). Chain of safe custody of the case property is another important aspect in the Narcotic case. PW-3 Minhaz Hussian Investigation Officer visited the spot and he prepared site plan at the pointation of the complainant PW-6. He recorded the statement of Moharrir Muhammad Jameel regarding the registration of FIR and safe custody of the case property. He stated that on 12.10.2024 he handed over parcels no 1 to 22 each parcel containing 10 grams Chars and parcel no. 24 containing USB to constable Iftikhar Hussain along with application addressed to FSL authorities which is Ex. PW 3/4 and


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road certificates Ex. PW 3/5 and Ex. PW 3/6 for taking the same to FSL for chemical analysis, but there is no entry in the relevant register No. 19 regarding handing over of the case property to the IO and constable Iftikhar Hussian on 12.10.2024. The story produced by the Investigation Officer that due to non-availability of transport he could not proceed to FSL and that on 14.10.2024 he again handed over the said parcels along with road certificates and applications addressed to FSL. This statement of Investigation Officer is not finding any support from the relevant page of Register No. 19 Ex. PW 2/2 and there is neither any entry regarding handing over of the case property to IO on 12.10.2024 nor there is any entry of return of the case property on the same date, which give raise to the question that whether the case property was handed over to the IO off the record and which has exposed the claim of prosecution about safe chain of custody of the case property. The case property has been sent to FSL after 04 days i.e., about after 96 hours, which is against law and also creating doubts about the prosecution case. The explanation of the Learned Sr. PP regarding dispatch and return of the case property on 12.10.2024 due to non-availability of transport is finding no support from Register no. 19. Learned defense counsel during examination-in-chief of PW-2 raised objection on production of two different extracts of Register No. 19 i.e., Ex. PW 2/2 and Ex. PW-

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DX/1. The record shows that there two extracts of Register No. 19 on the case file. The one which was made part of the case file at the time of submission of complete Challan, which is exhibited by the learned defense counsel during cross examination as Ex. DX/1 and the other, which is produced by the Moharrir at the time of his statement as PW-2, which is Ex. PW 2/2. As both the documents i.e., Ex. PW 2/2 and Ex. PW-DX/1 have been produced by the prosecution, but the one annexed with the Challan i.e., Ex. PW-DX/1 is lacking entry about the depositing of motorcar in the PS, while the later i.e., Ex. PW 2/2, produced at the time of evidence, bears the entry about the depositing of the motorcar. Both these documents suggests that the motorcar has been deposited in the Mall-Khana at later stage and there was no entry of the same in the Register No. 19 at the time of depositing parcels No. 1 to 24 and at the time of submission of Challan and the said entry has been made at belated stage. While discussing aspect of chain of safe custody of the case property in the instant case, the cross examination of seizing officer as PW-6 cannot be overlooked as he stated "*I went to the PS in the motorcar of the accused from the spot. I do not remember that whether any constable accompanied me in the car of the accused or not. The constables namely Saleem, Gul Hayat, driver Inshad Ali as well as Muqadar Khan*

Saleem
19.3.25

BAKHIT ZADA

Addl: District & Sessions Judge-1,
Orakzai at Harigu

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ASHO returned to the PS in the official vehicle of the PS".

He further stated that *"the accused and the case property were shifted to the PS in the official vehicle of the PS.*

The above extracts of his statement as PW-6 clearly shows that the seizing officer has not shifted the parcels No. 1 to 24 to the PS himself. This finding of the court is also supported by the entry in the relevant extract of Register No. 19, where at column No. 04 of Ex. PW 2/2 and Ex. DX-1/1 someone else has put his signatures about depositing the case property with the Moharrir. PW-6 has also admitted this fact during cross examination by stating that *"it is correct that I have not taken the case property to the PS myself".* He also admitted that *"at the time of handing over the case property to Moharrir, I have not signed the relevant column of Register No. 19 rather I have asked the Moharrir to signed the same on my behalf. I do not know that who has signed the column No. 04 of Register No. 19.* From these extracts of his statement, it has become crystal clear that neither the case property is shifted by the seizing officer himself to the PS, nor he has deposited the same with the Moharrir and the SHO is even unaware of the fact that who has signed the Register No. 19 after depositing the case property. PW-2 Moharrir Muhammad

Samec 19.3.25
BAKHT ZADA
Addl. District & Sessions Judge-1,
Orakzai at Hangu

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Jameel also stated in his cross examination that "*I cannot tell that who signed Register No. 19 in column No. 04 on 10.10.2024. This means that the person who has alleging the depositing of case property and the person receiving the same are both unaware about the fact that who has signed the relevant column of Register No. 19. So, in such state of affairs the claim of prosecution about the safe custody of the case property is badly shattered and the same is not proved on record.*

- (13). Apart from the above, there are so many others discrepancies in the case of prosecution i.e., it is not mentioned in the Murasila Ex. PW 6/2 that whether the alleged recovered Chars was "*Pukhta*" or "*Gardah*" the Investigation Officer PW-3 has not re-weighed the case property. PW-5 stated that no amount, CNIC, driving license and mobile phone were recovered during the body search of the accused. Although, the FSL of the recovered motorcar has been conducted by the Investigation Officer, but neither an iota of evidence regarding its ownership, nor regarding the fact that who has tempered the Chassis number of the same, has been brought on record.

[Signature]
19.3.25

BAKHT ZADA
Addl: District & Sessions Judge-1,
Orakzai at Harigu

- (14). All the above findings regarding the failure of prosecution to prove the mode and manner of the occurrence and recovery process, coupled with the failure of the prosecution to prove the chain of safe custody of

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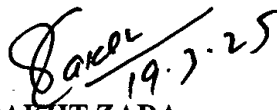
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the case property and non- transmission of the samples to FSL within the stipulated period in accordance with law are all fatal grounds to the case of prosecution. The prosecution badly failed to prove to bring home charges against the accused facing trial. I, therefore, acquit the accused facing trial **Khial Ameen** from the charges levelled against him. Accused is on bail. His sureties are discharge from the liability of their bail bonds. Case property i.e., Chars be destroyed after expiry of period provided for appeal/revision/ writ, while motorcar being tempered is confiscated to the State. The same be transmitted to the Warehouse of the Provincial Government in accordance with law with intimation to this court.

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

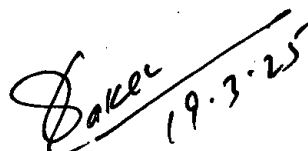
Announced:
19.03.2025


BAKHT ZADA
Sessions Judge-I/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment consists of twenty-three (23) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 19.03.2025


BAKHT ZADA
Sessions Judge-I/Judge Special Court,
Orakzai at Baber Mela