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IN THE COURT OF IJAZ MAHSOOD, SCJ/JM,
ORAKZAI AT BABER MELA, HANGU

CASE NO. : 07/16AA OF 2025

DATE OF INSTITUTION: 19.02.2025

DATE OF DECISION: 13.06.2025

STATE THROUGH: Islam Ali, ASHO, PS Kurez Boya,
District Orakzai.

-----(*Complainant*)

VS

1. Jawad Hussain s/o Syed Muhammad Jalal
2. Syed Wajid Hussain s/o Syed Saidan Khan

Both R/O Qoum Bar Muhammad Khel, District Orakzai.

-----(*Accused Facing Trial*)

JUDGMENT

13.06.2025

This judgement is to decide a criminal case based on an FIR lodged under section 16AA/34 of the PPC by Mr. Islam Ali ASHO, the complainant, against Mr. Jawad Hussain and Mr. Wajid Hussain, the accused.

Report/Complaint:

Mr. Islam Ali, the complainant reports that police was on patrol on the date and time recorded in FIR when at Sepoy Naka a flying coach, registration no C-1068, was stopped for checking. The driver Mr. Wajid Hussain, and his first seat fellow passenger, Mr. Jawad Hussain were frisked for contraband but

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nothing was found on their persons. Thereafter, on searching the vehicle, 30 boxes of ammunition of 12.7 bore were recovered with an aggregate of 2523 bullets. The accused persons could not show any permit or license for possessing or transporting such a large cache of ammo. Accordingly, the accused were arrested and charged under relevant provisions of law.

The FIR ran its legal course and concluded in the form of a police report in the court. The court proceeded to frame charges on 11.03.2025

Charge(s):

After compliance with section 241 Cr.PC, the accused persons were charged with the commission of offence for possession and transportation of ammunition containing 2523 live rounds of 12.7 bore without any valid license/permit as defined by section 16AA read with 34 PPC.

The accused pleaded not guilty and claimed trial. Thereafter, the court allowed/invited the prosecution to produce its evidence in proof of the charge.

Witnesses/Exhibits:

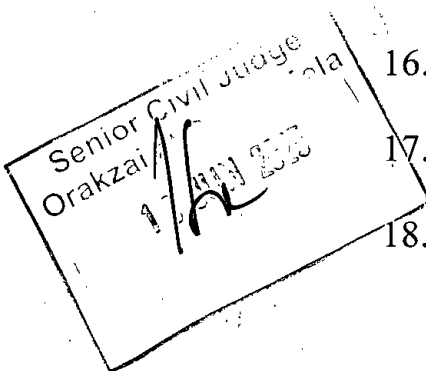
Mr. Arif Gul appeared as PW-01, Mr. Syed Ibn-ul-Hassan, Moharrir as PW-02, Mr. Islam Ali, ASHO as PW-03 Mr. Baqir Ali, constable as PW-04, Mr. Hashim Khan, IO as PW-05,

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and Mr. Amir Khan, SI as PW-06 They have exhibited the following documents;

1. Extract of register for safe custody of case property as Ex.PW-2/1.
2. Copy of DD as Ex.PW-2/2
3. Parcels containing rounds as Ex.P-1 to Ex.P-30.
4. Parcel containing USB as Ex.P-31.
5. Flying Coach as Ex.P-32.
6. Recovery memo as Ex.PW-3/1.
7. Card if arrest as Ex.PW-3/2.
8. Murasila as Ex.PW-3/3.
9. Site Plan as Ex.PB.
10. Application regarding physical custody of the accused as Ex.PW-5/1.
11. Application for confessional statement as Ex.PW-5/2.
12. Parwana regarding correction of chassis number of flying coach as ex.PW-5/3.
13. Parcels containing rounds and road permit certificate to FSL as Ex.PW-5/4.
14. Application to FSL as Ex.PW-5/5.
15. FSL report as Ex.PW-5/6.
16. Letter to ETO Dir as Ex.PW-5/7.
17. Report of ETO as Ex.PW-5/8.
18. Challan form as Ex.PW-6/1.



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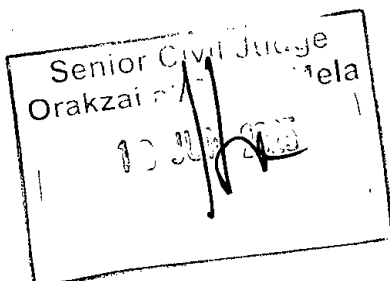
Reasoning:

The accused persons are charged with possession and transportation of ammunition, which, unless permitted by licensing authority, is an offence under section 16AA of the Arms Act 2013. He has pleaded not guilty to the charges.

Prosecution has recorded its evidence, and the accused persons have already availed himself of the opportunity of recording his statement under section 342. Below, the court shall examine the quality of the evidence, and assess the merits or otherwise of the prosecution's case.

- i. In a case about possession of contrabands, items declared illegal by law in absence of license, the entire prosecution hinges on the soundness of the recovery and onward transmission of the items seized. Plainly put, the prosecution must establish without a shadow of doubt that the contraband before the court are the same items recovered from the accused persons on the day, time, and manner in which it is reported.

- ii. During the course of trial, in the statement of the ASHO Mr. Islam Ali specifically, the court was informed about videography of the proceedings of arrest. Defence counsel requested the court to allow the viewing of the alleged video claimed by police to have been recorded

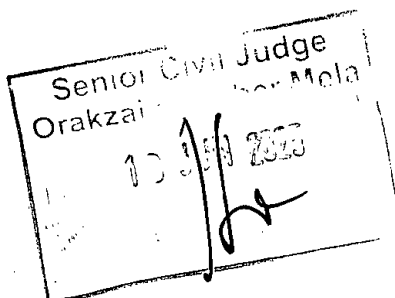


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on site of the occurrence. Request was granted, and the parcel was accordingly opened and its contents were executed, but it would not run. From the size of the file, 0kb, it could be inferred that the broken file was anything but a video recording. Motion pictures, it is commonplace, occupies more space than docs or photographs. Clearly, a 0 kb file, evidently is empty of any meaningful content.

iii. The prosecution, only after the contents of the flash drive were challenged and found incorrect, attempted to explain it away as a '*technical fault*'. The law recommends the presumption that the video was functional when it was sealed, and it expects it to be so when opened. How did it come to pass that a working video suffered a '*technical fault*' while being sealed, is a mystery the prosecution has not attempted to explain.

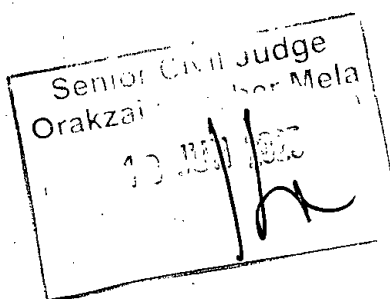
iv. Next significant flaw pointed out in the prosecution case is about the safe custody and transit of the seized ammunition. Image of the relevant page of Register 19 available on file as Ex-Pw 2/1 shows that the seized items were handed over to the OII for presentation before the magistrate on 30/12/24. However, the record is silent about its custody after the court visit. The next



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entry is of 13/01/24 when the contraband was handed over for dispatch to FSL laboratories at Peshawar.

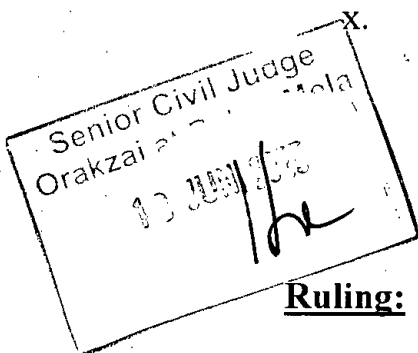
- v. The law is quite sensitive about custody of incriminating material seized or recovered from an accused person. When possession of an item is an offence under the law, the item recovered, its identity and uniqueness assume paramount significance.
- vi. The law rightly mandates that a fully connected trail must be preserved during investigation of the recovery of a contraband from the accused and its submission to the FSL. Further, that it must be satisfactorily established before the court during trial. If the chain of custody is obscure or unaccounted for, the entire prosecution is affected adversely. What was recovered, by who, from whom, and who ensured its safe custody and transit to the FSL, are matters of immense importance in the cases of contrabands.
- vii. In case in hand, the seized ammunition remained unaccounted for 13 days, from 30th December to 13th of January. Who had it, under what conditions, and why did it took the police almost two weeks to deposit it with the FSL, remains unexplained on record.



viii. Another fatal blow to the narrative of the prosecution is contained in the FSL report. The prosecution version reports recovery of 2523 bullets of 12.7 bore. The FSL report mentions the presence of 47 seven live cartridges of 14.5 mm in the parcels submitted by police. This discrepancy could have been attributed to regular human oversight, had the police not claimed to have spent hours on counting every single bullet.

ix. To sum up, the court did not find any video content in the flash drive contrary to as claimed by the prosecution. The seized ammo was submitted to FSL with a delay of 13 days which remains unexplained. Such inordinate delay in submission of the seized ammo when unaccounted for seriously compromises the custody of the contraband, and consequently, the prosecution case. Finally, the FSL found bullets of 14.5 mm which the police never reported to have recovered.

x. The observations above read cumulatively engenders serious doubts about the narrative of the prosecution for any reasonable person to believe in.



Ruling:


In view of the discussion above, prosecution could not establish the charges to the satisfaction of the court. Accused

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stand acquitted of the charges; their sureties are discharged of their liability under the bond. Seized ammo stand confiscated for state while flying coach be dealt in accordance with law.

File be consigned to the record room after its completion and compilation.

Announced
13.06.2025



(Ijaz Mahsood)
SCJ/JM,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this order consists of eight (08) pages.

Each page has been read, corrected where-ever necessary and signed by me.

Dated:13.06.2025


(Ijaz Mahsood)
SCJ/JM,
Orakzai (at Baber Mela)