

IN THE COURT OF HAQ NAWAZ,
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 23/3 OF 2025
DATE OF INSTITUTION : 07.04.2024
DATE OF TRANSFER-IN : 29.05.2025
DATE OF DECISION : 16.09.2025

STATE THROUGH MUHAMMAD ISHAQ SHO, POLICE STATION
DABORI

.....(COMPLAINANT)

-VERSUS-

1. NOOR KAMAL S/O NOROZ KHAN, AGED ABOUT 20 YEARS, R/O ADAM KHEL, DISTRICT KHYBER
2. LAIQ SHAH S/O MOMIN SHAH, R/O SHEEN TALAB, BORKA, DISTRICT KOHAT
3. MUSA KHAN S/O KHAN ZARIN, R/O LAL GARHI, SHAH POOR, DISTRICT KOHAT

..... (ACCUSED)

Present : Abul Qasim, Senior Public Prosecutor for State.
: Irfan Khattak and Fida Muhammad Advocates for accused.

FIR No. 21 **Dated: 27.11.2024** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Dabori


JUDGEMENT
16.09.2025

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

This case was registered against the accused, Noor Kamal s/o Noroz Khan, aged about 20 years, r/o Adam Khel, District Khyber; Laiq Shah s/o Momin Shah, r/o Sheen Talab, Borka, District Kohat; Musa Khan s/o Khan Zarin, r/o Lal Garhi, Shah Poor, District Kohat, vide FIR No. 21, Dated 27.11.2024 at Police Station Dabori u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019.

2. According to averments of the FIR, the SHO Police Station Dabori along with other police contingents were on

surveillance duty in the area on 27.11.2024 when he received information regarding smuggling of *Bhang Ghoza (dried green parts of Cannabis plant)* to District Khyber via Datsun bearing No. 5703/RME. The complainant, while responding to the information, laid a picket on the spot. The above-mentioned Datsun arrived there at 2245 hours. The vehicle was stopped through a torch. The driver revealed his identity as Noor Kamal. The persons seated beside the driver disclosed their identities as Musa Khan and Laiq Shah. The vehicle was searched and the complainant recovered 22 bags containing Bhang Ghoza. He separated 10 grams each as sample from the bags and sealed it into parcels No. 1 and 22. The remaining bags were sealed and marked as parcels No. 23 to 44. The bags were sealed with the monogram of "DB". It was dark night; therefore, no videography was carried out. The Murasila and other documents were sent to police station; hence, the FIR was registered.



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3. After completion of investigation, complete challan was put in court. The accused were summoned and copies were provided to them under section 265-C CrPC. They pleaded not guilty and claimed trial. The prosecution produced a total of 05 witnesses. A brief resume of the depositions of the prosecution witnesses is as under;

I. Constable Muhammad Tahir stood in the witness box as PW-1. He stated that he took the parcels


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No. 1 to 22 to the FSL for chemical analysis on 02.12.2024. He handed over the receipt of the parcels to Abdullah MASI upon his return from FSL.

II. Investigating Officer Gul Asghar was examined as PW-2. He stated that after entrustment of the investigation to him in the instant case, he proceeded to the spot and prepared the site plan Ex. PB on pointation of the complainant. He recorded the statements of witnesses on the spot. The PW produced the accused before the court of Judicial Magistrate vide application Ex. PW 2/1. He also sent the test samples to FSL along with applications and route permit certificates on 02.12.2024. He drafted an application for verification of the vehicle from FSL and Excise & Taxation Office. The FSL results were placed on file by him as Ex. PK and Ex. PK/1. He submitted the case file to SHO for onward proceedings after completion of investigation.


III. Abdullah MASI appeared in the witness box as PW-3. He stated that he incorporated the contents of Murasila into FIR Ex. PW 3/1 and received the case property from the complainant in duly packed and sealed condition which was kept by



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him in mal khana in safe custody after making its entry in Register No. 19 Ex. PW 3/2. He also made entries in the daily diaries Ex. PW 3/3 and Ex. PW 3/4 and handed over the test samples to IO for transmitting the same to FSL.

IV. The complainant, Ishaq SHO, appeared before the court as PW-4. He stated that he along with constables Shahid Gul and Ajmal Khan were on surveillance duty in the area on 27.11.2024 when he received information regarding smuggling of Ghang Ghoza to District Khyber via Datsun bearing No. 5703/RNE. The complainant laid a picket on metal road leading from Dabori to Arhanga. He stopped the above-mentioned Datsun at 2245 hours and deboarded the driver who disclosed his name as Noor Kamal s/o Noroz Khan. Two other persons were also present in the vehicle on the front seat. The complainant deboarded them. He recovered 22 bags of Bhang Ghoza from the vehicle which was searched through a torch light. The accused/driver disclosed that the contraband belongs to accused Musa Khan while accused Laiq Shah is working with him who intended to peddle it to District Khyber for producing chars. The complainant



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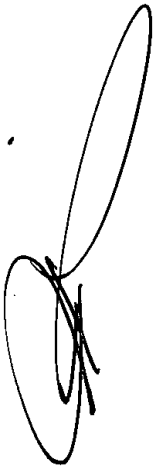
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separated 10 grams from each bag for FSL examination which were packed and sealed into parcels No. 1 and 22. The remaining bags were sewed with thread and sealed as parcels No. 23 to 44. The complainant affixed monogram of "DB" on the bags. The recovery was affected through recovery memo Ex. PC. The complainant issued card of arrest of the accused which is Ex. PW 4/1. He prepared the Murasila Ex. PW 4/2 and sent it along with other documents to police station through Constable Shahid Gul for registration of FIR. He pointed out the place of occurrence to the IO on his arrival to the spot and shown the case property to him in sealed condition along with the accused. Thereafter, he took the case property and the accused to police station and handed over to Moharrir. He later on submitted complete challan Ex. PW 4/3 against the accused after completion of investigation. He verified the contents of all the documents prepared by him and submitted that his signatures are correctly affixed on the same.



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- V. The Constable Shahid Gul is PW-5. He is marginal witness to the recovery memo Ex. PC vide which the complainant took into possession the recovered contraband. He verified the

contents of recovery memo and submitted it correctly bears his signature. He further stated that he took the Murasila to police station for registration of FIR.


4. After completion of prosecution evidence, statements of the accused were recorded u/s 342 Cr.P.C. They claimed innocence; however, they neither wished to be examined on oath nor opted to produce any evidence in defence. I have heard learned Sr. PP and counsel for the accused.

5. The learned Sr. PP argued that the accused were apprehended with huge quantity of narcotics in their possession. The prosecution remained successful to establish safe transmission of the case property from the spot to police station and sending samples to FSL from police station through sufficient evidence. The FSL report is in positive. There is no material contradiction in the statements of PWs inspite of sufficient cross examination by the defence counsel. He, therefore, requested for conviction of the accused.

6. On the other hand, the learned counsel for the defence submitted that the prosecution has failed miserably to prove the case through cogent evidence due to major and material contradictions in the statements of PWs. He, therefore, requested for acquittal of the accused from the charges levelled against them.


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7. After hearing both the parties and perusal of the record it was found that the occurrence was taken place on 27.11.2024 at 2245 hours at metalled road from Dabori to Arhanga. The test samples were separated on the spot and sealed in parcels No. 1 to 22 from the recovered 22 sacks having dried green parts of Cannabis plant. However, the samples were handed over by the IO to PW-1 on 02.12.2024 who took it to FSL Peshawar on the same day, much beyond the mandatory period of 72 hours of the seizure in violation of Rule 4 (2) of the Control of Narcotics Substances Act (Government Analysts) Rules, 2001, for which no plausible explanation had been offered by the prosecution. Reliance is made on **2024 SCMR 1408**.


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- Secondly, the Seizing Officer submitted in his cross examination as PW-4 that the weighment of the recovered sacks was made through a scale hanged with a Mulberry tree (توت درخت), whereas according to the marginal witness of the recovery memo, who appeared before the Court as PW-5, it was Walnut tree (اخروت درخت) through which the scale was hanged for weighment. Needless to mention that the site plan Ex. PB has no mention of any tree through which the weighment was made.
9. Furthermore, the Seizing Officer has admitted overwriting in the date on the recovery memo Ex. PC, whereas the marginal witness has deposed that he signed it after the arrival of the

IO to the spot and recording his statement under Section 161 of the Criminal Procedure Code, 1898. The complainant further submitted that two different pens were used for drafting the Murasila and recovery memo as ink in one of the pens was run out. However, the perusal of both the documents does not show the sign of running out ink in one of the pens. Similarly, the Seizing Officer as well as the marginal witness to the recovery memo have contradictions in their statements with regard to sequence of the documents prepared on the spot by the complainant. In a similar situation, when the complainant and the marginal witness to the recovery memo had similar contradictions in their statements, the Hon'ble Peshawar High Court, Peshawar, extended the benefit of doubt in favour of the accused in the case titled as "*Shabbir Jan Afridi VS The State*" reported in *2020 PCrLJ Note 72*.

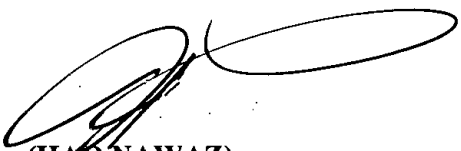


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10. In view of above facts and circumstances, it is concluded that the prosecution case is full of doubts. The preparation of all the relevant documents on the spot has become doubtful and the marginal witness did not sign the recovery memo at the relevant time. Above all, the samples were not sent to FSL within the specified period of time in violation of the relevant Rule. Therefore, the accused Noor Kamal s/o Noroz Khan, aged about 20 years, r/o Adam Khel, District Khyber; Laiq Shah s/o Momin Shah, r/o Sheen Talab, Borka, District

Kohat; Musa Khan s/o Khan Zarin, r/o Lal Garhi, Shah Poor, District Kohat are acquitted of the charges levelled against them by extending the benefit of doubt in their favour. The accused are in custody. They be released forthwith, if not required in other case. The case property in the shape of narcotics be destroyed after the expiry of period of appeal/revision and the vehicle in question be returned to the lawful owner after the said period. File of this Court be consigned to record room after its necessary completion and compilation.

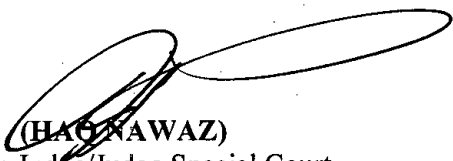
Announced:
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(HAQ NAWAZ)
Sessions Judge/Judge Special Court,
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CERTIFICATE

Certified that this judgement consists of nine (09) pages.
Each page has been read, corrected wherever necessary and signed by me.

Dated: 16.09.2025


(HAQ NAWAZ)
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela