

IN THE COURT OF MUHAMMAD JUNAID ALAM, JUDICIAL
MAGISTRATE -II TEHSIL KALAYA, DISTRICT ORAKZAI

Case No. 7/3 of 2023
Date of Institution: 01.11.2023
Date of Transfer in: 07.10.2024
Date of Decision: 01.12.2025

State through:

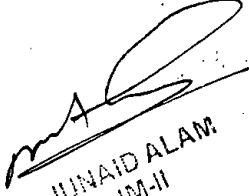
ASHO SHABBIR KHAN POLICE STATION MISHTI MELA,
 ORAKZAI.

.....**COMPLAINANT**

VERSES

ABDUL SALAM SON OF MAWEEZ GUL AGED ABOUT
 34/35 YEARS, RESIDENT OF QOM MISHTI, TAPPA DARVI
 KHEL, DISTRICT ORAKZAI.

....**ACCUSED FACING TRIAL**


 MUHAMMAD JUNAID ALAM
 Civil Judge / JM-II
 Orakzai at Kalaya

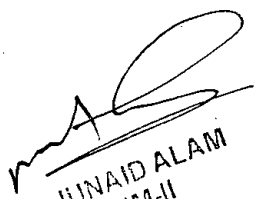
Present: MR. ARIF AKBER FOR THE STATE.
 SANA ULLAH KHAN ADVOCATE FOR
 ACCUSED FACING TRIAL.

Case FIR No. 36, dated 04.09.2023 under section 11-A CNSA & 15 of
Khyber Pakhtunkhwa Arms Act, police station Mishti Mela, Orakzai.

JUDGMENT *Order*
01.12.2025

Through this judgment the Court intends to dispose
 of the instant case registered against accused Abdul Salam
 vide FIR No. 36, dated 04.09.2023 under section 11-A CNSA
 & 15 of Khyber Pakhtunkhwa Arms Act, 2013, registered at
 Police Station Mishti Mela, Orakzai.


1. Brief facts as per contents of FIR are that, on 04.09.2023 at about 10:30 hours, the complainant alongwith constables Jawad Khan belt no. 45 and Wasim Khan belt no. 1243 were present on barricade laid down at main road, Mishti to Kalaya, Speen Begi, when a person coming from Mishti Mela side in suspicious condition and he was engaged. Upon his body search, an unlicensed 9MM pistol bearing no. 1102 alongwith a fixed charger and 02 live rounds of the same bore was recovered from his Badah Shalwar. The recovered stuff was packed and sealed into parcel no. 01. Upon further search a white plastic shopper was recovered from his right side pocket containing ice. On weighing through digital scale, it came out 50-grams ice. The police officials separated 01 gm ice from the packet and sealed the same in parcel no. 02 for chemical analysis of FSL, whereas, remaining 49-grams ice was packed and sealed in a separate parcel no. 03. The local police took into possession the recovered case property through recovery memo, which is Ex. PW-1/1. ASHO/complainant made videography of the occurrence and converted into USB, which was packed and sealed into parcel no. 04, vide recovery memo which is Ex. PW-1/2. Accused disclosed his name as Abdul Salam son of Maveez Khan, resident of Qom Mishti, Tappa Darvi Khel, Zawan District Orakzai. Accused was accordingly arrested vide card of arrest, which is Ex. PW-7/1. Murasila Ex.


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PA/1 was drafted and sent to the PS through constable Jawad Khan belt no. 45, which was converted into FIR which is Ex.PA. Hence, the case in hand.

2. Accused was summoned and legal formalities under Section 241-A Cr. PC was complied with. Accused was formally charged. He pleaded not guilty and claimed trial. Afterwards prosecution was directed to produce its evidence against the Abdul Salam facing trial.
3. Prosecution produced seven (07) witnesses to prove its case against the accused facing trial.
4. **PW-01** is the statement of constable Jawad Khan belt no. 45, which is reproduced as under;

He stated on oath that on the day of occurrence he was present with ASHO/complainant, SI Shabeer Khan of PS MM during nakabandi at main road, Mishti to Kalaya, Speen Begi. In his presence, complainant SI Shabeer Khan recovered and took into possession one pistol 9MM bore bearing No. 1102 with a fixed charger containing 02 live rounds of the same bore which was packed and sealed into parcel no. 1. On furtherer body search of the accused, a plastic envelope was recovered from his side pocket in his presence. On checking the same, it was containing 50 grams ICE out of which 01 gram was separated for FSL examination which was packed and sealed into parcel no. 2 while 49 grams ICE were packed and sealed into parcel



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no. 3 by affixing 1/1 seals with mark of AA. 01/01 seals were put inside the parcels. Murasila, card of arrest and recovery memo were handed over to him which he took to police station for registration of the case and handed over the same to Muharrir of the police station. Recovery memo is Ex.PW-1/1 which he has seen today, which correctly bears his signature. Videography was done with mobile phone and the video was transferred into USB which was packed and sealed into parcel No. 4. Recovery memo in respect of USB is Ex.PW-1/2 which he has seen today. The same correctly bears his signature.

5. **PW-02** is the statement of constable Khalil Khan police station Mishti Mela, which is reproduced as under;

He stated on oath on 06.09.2023, parcel no. 1 containing 01-pistol 09-MM along with 02 cartridges of the same bore and parcel No. 1 containing 01-gram ICE sample for FSL examination along with application and road certificate was handed over to him by IO. He took the same to FSL Peshawar and handed over the same to incharge FSL, Peshawar. Receiving signature and seal of incharge FSL Peshawar was obtained on road certificate which he handed over to IO on his return. His statement was recorded by IO U/S 161 Cr. PC.


6. **PW-03** is the statement of SI Aftab Ahmad, which is reproduced as under;


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He stated on oath that during the days of occurrence, he was posted as SHO PS Kalaya. After completion of investigation, he submitted complete challan against the accused. Today, he has seen the challan form which correctly bears his signature. Challan form is Ex. PW-3/1.

7. **PW-04**, is the statement constable Wasim Khan belt no. 1243 police station Mishti Mela, Orakzai, which is reproduced as under;

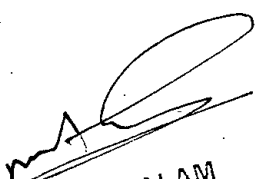
He stated on oath that, on the day of occurrence he was present with ASHO/complainant, SI Shabeer Khan of PS MM during nakabandi at main road, Mishti to Kalaya, Speen Begi. In his presence, complainant SI Shabeer Khan recovered and took into possession one pistol 9MM bore bearing No. 1102 with a fixed charger containing 02 live rounds of the same bore which was packed and sealed into parcel No. 1. On further body search of the accused, a plastic envelope was recovered from his side pocket in his presence. On checking the same, it was containing 50 grams ICE out of which 01 gram was separated for FSL examination which was packed and sealed into parcel no. 2 while 49 grams ICE were packed and sealed into parcel no. 3 by affixing 1/1 seals with mark of AA. 01/01 seals were put inside the parcels. Recovery memo is already exhibited as Ex.PW-1/1 which he has seen today, which correctly bears my signature. Videography was done with mobile phone and the


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video was transferred into USB which was packed and sealed into parcel no. 4. Recovery memo in respect of USB is already Ex.PW-1/2 which he has seen today. The same correctly bears his signature. His statement was recorded u/s 161 Cr.PC.

8. **PW-05**, is the statement of Khalil Ur Rehman, which is reproduced as under;

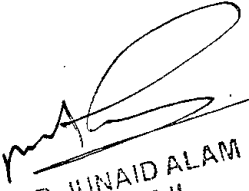
He stated on oath that, on the day of occurrence he was posted as MASI PS Mishti Mela. He was present in the office of DD that constable Jawad Khan Belt no. 45 brought Murasila, recovery memo and card of arrest sent by Shabir Khan ASHO PS Mishit Mela. On the strengthen of Murasila he chalked out FIR which is Ex. PA. ASHO Shabbir Khan handed over to him case property alongwith accused. He entered the detail of case property in sealed condition into register no. 19. Accused was locked up. Today he has seen the copy of FIR which is correct and correctly bears his signature. His statement was recorded by IO under section 161 Cr. PC.


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9. **PW-06**, statement of SI Shal Muhammad, which is reproduced as under;

He stated on oath that during the days of occurrence, he was posted as OII, PS Mishti Mela. After registration of the case, copy of FIR along with relevant documents were handed over to him for investigation. He proceeded to the spot and prepared site plan Ex. PB on the pointation of ASHO Shabeer

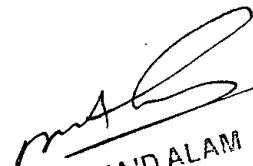
Khan. He recorded statements of PWs u/s 161 Cr.PC. Accused was handed over to him for interrogation/investigation. He produced the accused alongwith case property before the court for obtaining his physical remand vide my application Ex.PW-6/1. 01-day physical remand was granted. He cursory interrogated the accused and recorded his statement u/s 161 Cr.PC. On 06.09.2023, he produced accused before the court for recording his confessional statement vide his application Ex.PW-6/2. Accused refused to confess his guilt and was committed to judicial lock-up. Parcel no. 1 & 2 containing case property i.e one pistol 9mm and 01 gram ice in sealed condition were handed over to him and he sent the same to FSL vide my applications Ex.PW-6/3 & Ex. PW-6/4 and route certificates are Ex.PW-6/5 & Ex. PW-6/6 respectively. He annexed the extract of register no. 19 which is Ex. PW-6/7. FSL reports thereof, were received and placed on file which are Ex.PW-6/8 & Ex.PW-6/9. After completion of investigation, he handed over case file to SHO for submission of complete challan against accused. Today, he has seen the above referred documents which are correct and correctly bear his signatures


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10. PW-07, SI/complainant Shabbir Khan, which is reproduced as under;

He stated on oath that that during the days of occurrence, he was posted as ASHO, PS Mishti Mela. On 04.09.2023 at about 10:30 hours, he alongwith constables Jawad Khan and Wasim Khan were present at barricade laid down at main road Mishti to Kalaya. In the meantime, one person came from Mishti Mela side in suspicious condition was stopped for the purpose of checking. Upon his body search he recovered and took into possession one pistol 9MM bearing no. 1102 alongwith fixed charger containing 02 live rounds of the same bore from the badda shalwar, which was packed and sealed into parcel no. 01, which is produced before the Court and Ex.

P-1. On further search, he recovered and took into possession one plastic envelope from right side pocket containing ice. On weighting through digital scale it came out 50 grams. One gram was separated for the purpose of FSL and packed and sealed into parcel no. 02 while remaining stuff of ice i.e. 49-grams was packed and sealed into parcel no. 03, which is produced before the court as Ex. P-2, vide recovery memos which are already exhibited as Ex. PW-1/1 & Ex. PW-1/2. Accused disclosed his name as Abdul Salam son of Maveez Khan. He charged the accused for the commission of offence. He arrested the accused and issued his card of arrest which is Ex. PW-7/1. Murasila was drafted on the spot which is Ex. PA/1. He sent the Murasila, card of arrest and recovery memo


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through constable Jawad Khan to the PS for registration of the instant case. After registration of instant case copy of FIR alongwith relevant documents were handed over to investigation staff. Today, he has seen the above referred documents which are correct and correctly bear his signatures.


11. Afterwards, prosecution closed its evidence.

12. Statement of accused under section 342 Cr. PC was recorded wherein he pleaded not his guilt and also did not wish to be examined on oath. He even opted not to produce defense evidence.

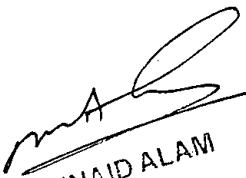
13. Thereafter, argument was heard on behalf of the counsel for accused and APP for the State.

14. Claim of the prosecution is that the accused was charged for possessing an unlicensed 9MM pistol bearing no. 1102 alongwith a fixed charger and 02 live rounds of the same bore and 50-grams ice.

15. Perusal of the statement of PWs, it was revealed that as for as the alleged occurrence is concerned, it is pertinent to mention here that Murasila reveal that the occurrence took place at about 10:30 hours, when marginal witness to the recovery memo in the instant case was appeared as PW-01, had deposed in his cross examination that Murasila handed over to him at about 10:30 am.


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As for as preparation of Murasila is concerned, it is noted that PW-01 stated in his cross examination that Murasila, card of arrest and recovery memo were prepared by ASHO/complainant Shabbir Khan, when complainant/ASHO appeared before the court and stated in his cross examination that he drafted Murasila on the spot. It is also worth mentioning here that counsel for accused put such question to PW which otherwise, admission, he replied as" *it is correct that first weighing the case property by seizing officer*". Furthermore, counsel for accused put another such question to ASHO/complainant as PW-07, which otherwise, admission, he replied as" *firstly they measure the recovered substance through scale and then drafted documents*".


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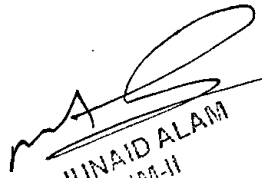
As for as IO is concerned, it is pertinent to mention here that PW-04 in his cross examination stated that IO came to the spot at about 12:00 hours when PW-07, the complainant in the instant case appeared before the court and stated in his cross examination that IO came to the spot in official vehicle for spot inspection at about 11:40 hours.

As for as police officials with IO is concerned, it is noted that PW-01 stated in his cross examination that IO accompanied with two police officials. When PW-04 appeared before the court and stated in his cross examination that IO came to the spot with two police officials.

As for as Murasila carrier is concerned, it is noted that PW-01 stated in his cross examination that Murasila was handed over to him at about 10:30 am. When ASHO/complainant in the instant case appeared and deposed in his cross examination that he handed over the Murasila at about 10:30 am.


Perusal the record further transpires that accused was charged for heinous offence and effect on the society. Recovery has been affected from the direct possession of the accused. Accused was charged directly in promptly lodged FIR.

In light of above discussion, it is clear that only minor discrepancies are in the prosecution evidence, however, they are not fatal to the merit of the case. The case of the prosecution is proved, through solid and reliable evidence, therefore, the accused facing trial is hereby convicted for commission of offence under section 15 of Khyber Pakhtunkhwa Arms Act, 2013, for 06-months simple imprisonment and Fine of Rs 5,000/-. In default he shall undergo for 01-month simple imprisonment. Furthermore, there is nothing on record which could show previous involvement of accused in such like cases, being first offender, thus, the sentence and conviction ibid is suspended and converted into probation and he is placed on probation for the period under six months the Probation Ordinance. He shall remain under the supervision of the Probation Officer (male)


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for the above-mentioned period subject to furnishing bail bonds in the sum of Rs. 100,000/- with two local and reliable sureties, to the satisfaction of probation officer (male) Orakzai with the following conditions.

- i. That he shall not repeat the offence.
- ii. That he shall keep and maintain peace and order in the society.
- iii. That he must exhibit good behavior during the prescribed period of probation.
- iv. That he shall appear before the probation officer once in a month, which date is left to the discretion of the probation officer to be fixed.
- v. That he shall not leave the country without permission of probation officer.

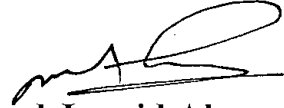

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- That if he violates the above conditions, the bonds will be recalled and he will be proceeded in accordance with the provision of the Ordinance *ibid*.
- vii. That in case of default by the convict, the direction regarding probation shall stand recalled and convict shall undergo imprisonment accordingly.
 - viii. The Probation Officer (male) is directed to submit his report to this court about their character and conditions as aforesaid once in a quarter. Copy of this order be sent to the probation officer for compliance as per law.

16. Case property be dealt with in accordance with law.

17. Case file be consigned to Record room after its completion and
necessary compilation.


Announced
01.12.2025


Muhammad Junaid Alam,
Judicial Magistrate -II,
Tehsil Court Kalaya, Orakzai

CERTIFICATE

Certified that my judgment of today consists of thirteen (13)
pages, each page has been read, signed and corrected by me
where necessary.

Announced:
01.12.2025


Muhammad Junaid Alam,
Judicial Magistrate -II,
Tehsil Courts Kalaya, Orakzai