

**IN THE COURT OF NOOR UL HAQ JUDICIAL MAGISTRATE-II, KALAYA,
ORAKZAI**

Case No2/3 of 2024.

Date of institution.....02.05.2024.

Date of decision.....27.07.2026.

Case FIR No. 09 Dated: 14.02.2024 U/S 15AA, PS Kalaya

Order. No. 36

27.07.2026

Accused on bail along with counsel present. Today, the case was fixed for evidence of prosecution, however, counsel for accused requested for acquittal of accused U/S 249-A Cr. PC. Arguments heard and record gone through.

Brief facts of the case are that on 14.02.2024, SHO/complainant Nasir Ahmad alongwith constable Manzoor Ali, Wajid Ullah duly armed and driver Zeeshan Haider were present on barricade. During Nakabandi a person coming from Anjani side by foot having plastic sack in yellow color in his right hand stopped for the purpose of checking. Upon his body search no incriminating articles were recovered. However, upon checking of sack five empty magazine SMG and 230 live rounds of 7.62 bore recovered from the cited sack. The accused did not produce any valid license or documents regarding recovered case property. Case property packed and sealed into parcel No.1 with name of NA and put one seal inside the parcel.

The accused disclosed his name Meena Baz S/O Ahmad Khel resident of Qoum Bezot. Murasila, Card of arrest and recovery memo was handed

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over to constable Wajid Ullah and he took the same and handed over to ASHO Muqadar for registration of the case against the accused.

Accused was formally arrested. After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused.

PW Hamayoun was examined as PW-01. He stated that during the relevant days he was posted as MM PS Kalaya. On 14.02.2025, SHO handed over to him case property in sealed condition containing parcel no. 01 on his returned to the PS. He made entry in register no. 19 and kept the same in the PS Maalkhana for safe custody. The copy of register no. 19 is Ex. PW-1/1. His statement was recorded u/s 161 Cr. PC. On 16.02.2024, he handed over parcel no. 01 in sealed condition to the IO for FSL examination. To this extent his statement was recorded u/s 161 Cr. PC.

Abdul Wadood appeared and deposed as PW-02. He stated that during the days of occurrence he was posted as constable at PS Kalaya. On 16.02.2024, IO handed over to him parcel no. 01 containing case property in sealed condition alongwith application addressed to FSL Peshawar and road permit certificate. He took the same to FSL Peshawar and handed over to Incharge FSL Peshawar. He obtained his seal and signature on road permit certificate. He handed over road permit certificate to IO on his return. His statement was recorded by IO u/s 161 Cr. PC.

Muqadar Khan ASHO appeared and deposed as PW-03. He stated that during the days of occurrence he was posted as ASHO at PS Kalaya.

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He was present in the office of Rozanamcha, he received Murasila, card of arrest and recovery memo from SHO through constable Wajid Ullah Belt no. 320. On the strengthen of Murasila he registered the FIR against the accused facing trial which is Ex. PA. His statement was recorded u/s 161 Cr. PC.

PW Constable Wajid Ullah was examined as PW-04. He stated that during the days of occurrence he was posted as Constable at PS Kalaya. He was present with SHO at barricade near Khwa Dand at Stori Khel. During Nakkabandi one person coming from Anjani side by foot having plastic sack in yellow color in his right hand stopped for the purpose of checking by complainant. Upon his body search no incriminating articles has been recovered from the accused. However, five empty magazine SMG 230 live rounds of 7.62 bore recovered from the cited sack in his presence. The recovered case property took into possession through recovery memo which is Ex. PW-4/1. The accused did not produce any valid license or documents regarding the recovered case property. Case property packed and sealed into parcel no. 01. By affixing 3/3 seals of monogram with the name of NA and put one seal inside the parcel.

Similarly, the SHO complainant handed over to him Murasila, Card of arrest and recovery memo. He took the same to the PS and handed over ASHO Muqadar Khan. His statement was recorded u/s 161 Cr. PC.

Statement of SI Murtaza recorded as PW-05. He stated that during the days of occurrence he was posted as IO at police station Kalaya. On 14.02.2024, copy of FIR alongwith relevant documents were handed over to him for investigation. He alongwith constables Abdul Wadood and

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Khalil Ur Rehman proceeded to the spot and prepared the site plan on the pointation of SHO/complainant Nasar Ahmad, which is Ex. PB. On the spot SHO alongwith constables Manzoor Ali, Wajid Ullah and driver Zeeshan was already present at the spot. He examined the case property at the spot. He recorded statements of marginal witnesses under section 161 Cr. PC. SHO alongwith accused and case property left the spot for PS and after his returned to the PS. He recorded statement of Moqadar Khan and Moharrir in the PS. He cursory interrogated the accused in the PS. On 15.02.2024, he drafted an application for 14-days of judicial remand of the accused vide my application is Ex. PW-5/1. The offence is non-bailable in nature and accused was sent to Judicial lock up, Orakzai. Case property in sealed condition was handed over to him and he sent the same to FSL vide his application Ex. PW-5/2 alongwith route certificate which is Ex. PW-5/3. FSL report received which is Ex. PZ. He also annexed DD regarding departure and arrival of police officials which is Ex. PW-5/4. After completion of investigation he handed over the case file to SHO for submission of complete challan.

Perusal of record transpires that PW-01 stated in his cross examination that he did not produce register No.19 & 21 before the court. Furthermore, he did not mention in the last column of copy of register No.19 that who and when handed over the parcel No.1 for sending it to FSL Peshawar. PW-03 Muqadar Khan ASHO stated that he does not know who was the Moharrir of the Police Station on the day of occurrence. PW-03 further admitted that he does not remember whether he entered the arrival and departure of the Investigating Officer in the Daily Diary

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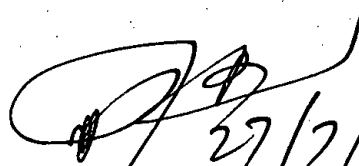
(Roznamcha). Investigation Officer of the instant case recorded statement of PW-03 under section 161 Cr. PC, but he does not remember the exact time. This reflects lack of certainty regarding the investigation.

There are so many dents and doubts in case of prosecution benefit of which goes to the accused. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial is acquitted from the charges levelled against him. He is on bail. His sureties stand discharged from their liability.

Case property i.e., five empty magazine of SMG and 230 live rounds of 7.62 bore be dealt with in accordance with the law.

File be consigned to record room after necessary completion and compilation.

Announced.
27.07.2026


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(Noor Ul Haq)
Judicial Magistrate-II,
Tehsil Kalaya, Orakzai