

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

SPECIAL CASE NO. : 36/3 OF 2024
DATE OF ORIGINAL : 04.12.2024
DATE OF DECISION : 20.05.2025

STATE THROUGH NASIR AHMAD SHO POLICE STATION
KALAYA

.....(COMPLAINANT)

-VERSUS-

JAVID AFRIDI S/O ZIA GUL, AGED ABOUT 27 YEARS, R/O AKA
KHEL, SANZAL KHEL, SHEEN DARG, PO BARA, MEERAH,
TEHSIL BARA, DISTRICT KHYBER

..... (ACCUSED)

Present : Umar Niaz, District Public Prosecutor for State.
: Khursheed Alam Advocate, the counsel for accused.

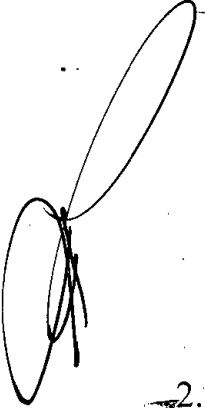
FIR No. 104 **Dated: 19.10.2024** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019

Police Station: Kalaya

JUDGEMENT
20.05.2025

This case was registered against the accused Javid Afridi s/o
Zia Gul, aged about 27 years, r/o Aka Khel, Sanzal Khel,
Sheen Darg, PO Bara, Meerah, Tehsil Bara, District Khyber
vide FIR No. 104, Dated 19.10.2024 at Police Station Kalaya
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019.

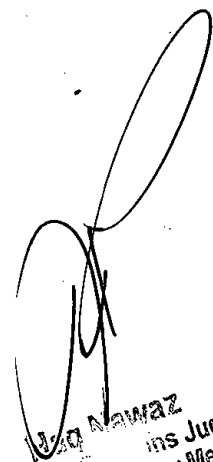
2. According to averments of the FIR, the SHO Police Station
Kalaya along with other police contingents were on
surveillance duty in the area on 19.10.2024 when a person was
going on main road of village Bezot at 1100 hours, having a
plastic envelop in his hand. He was stopped. The search of the
envelop led to the recovery of 02 packets of chars weighing
1000 grams each, making a total of 2000 grams. The samples


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of 10 grams each were separated from the packets and sealed into parcels No. 1 and 2. The remaining 1980 grams of chars were sealed in parcel No. 3. Videography of the occurrence was carried out and sealed into parcel No. 4. The parcels were sealed with the monogram of "NA". The accused disclosed his name as Javid Afridi s/o Zia Gul, r/o Aka Khel, District Khyber. The Murasila and other documents were sent to police station; hence, the FIR was registered.

3. After completion of investigation, complete challan was put in court. The accused was summoned and copies were provided to him under section 265-C CrPC. The accused pleaded not guilty and claimed trial. The prosecution produced a total of 06 witnesses. A brief resume of the depositions of the prosecution witnesses is as under;

- I. Humayun Khan MM appeared in the witness box as PW-1. He stated that he incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA and received the case property from the complainant duly packed and sealed which was kept in mal khana by him in safe custody by making its entry in Register No. 19 Ex. PW 1/1. He also made entries in the daily diaries Ex. PW 1/3 and handed over the test samples to IO for transmitting to the FSL.

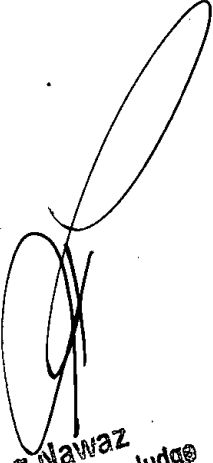

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II. Sajid Khan HC stood in the witness box as PW-2.

He stated that he took the samples of chars in parcels No. 1 and 2 and the USB in parcel No. 4 to FSL for chemical analysis on 22.10.2024. He handed over the receipt of the parcels to the IO upon his return from FSL.

III. The complainant, Nasir Ahmad SHO, appeared

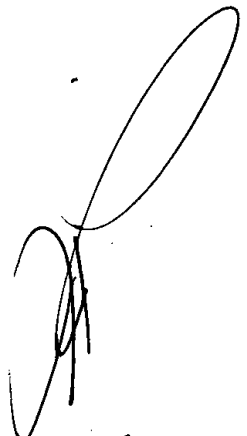
before the court as PW-3. He stated that he along with constables Muhammad Irshad and Farman Ullah were on patrolling duty in the area on 19.10.24 in their official vehicle, driven by the driver Inshad Ali. They stopped a person having a blue colour plastic shopper in his right-hand on suspicion at about 1100 hours at main road of village Bezot. He recovered 02 packets of chars from the shopper which were wrapped in yellow colour scotch tape. It came out to be 1000/1000 grams on weighment. The complainant separated 10 grams of chars from each packet for FSL examination which were packed and sealed into parcels No. 1 and 2. The remaining contraband of 1980 grams was packed and sealed into parcel No. 3. The driver Inshad Ali carried out videography of the occurrence which was saved in a USB. It was packed and sealed in parcel No. 4. The complainant affixed one monogram of "NA"



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inside each parcel and three monograms each were affixed on all the parcels. The accused disclosed his name as Javid Afrid. The recovery was affected through recovery memo Ex. PC. The complainant issued card of arrest of the accused which is Ex. PW 3/1. He prepared the Murasila Ex. PA/1 and sent it along with other documents to police station through Constable Muhammad Irshad 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 3/2 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.

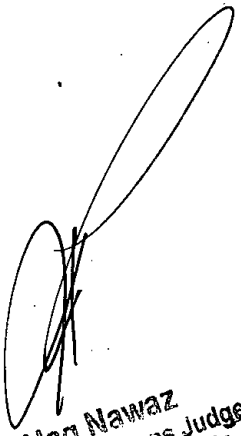


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IV. The Constable Muhammad Irshad is PW-4. He is marginal witness to the recovery memo Ex. PC vide which the complainant took into possession the recovered chars. He verified the contents of recovery memo and submitted it correctly bears his signature. He further stated that he took the Murasila to police station for registration of FIR.

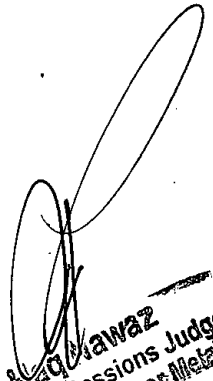
V. The driver Constable Inshad Ali deposed as PW-5. He stated that videography of the occurrence was carried out by him through the mobile phone of the SHO.

VI. Lastly, Investigating Officer Aftab Hassan was examined as PW-6. He deposed in respect of the investigation carried out by him in the instant case and stated that he prepared the site plan Ex. PB on pointation of the complainant during spot inspection. He recorded the statements of witnesses on the spot, produced the accused before the court of Judicial Magistrate vide applications Ex. PW 6/1 and Ex. PW 6/2. He also sent the test samples to FSL along with applications and route permit certificates. The FSL result and copy of Register No.19 were placed on file was placed on file by him as Ex. PK and Ex. PW 1/1. Similarly copies of the daily diaries were also placed on file by the IO. He submitted the case file to SHO for onward proceedings.


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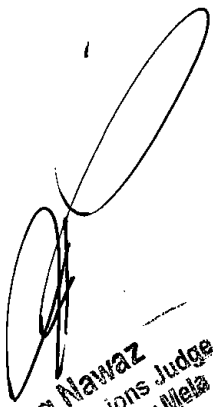
4. After completion of prosecution evidence, statement of the accused was recorded u/s 342 Cr.P.C. He claimed innocence; however, he neither wished to be examined on oath nor opted to produce any evidence in defence. I have heard learned DPP and counsel for the accused.

5. The learned DPP argued that the accused was apprehended with huge quantity of narcotics in his 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 there is one hour delay in lodging the FIR. There is contradiction between the statements of PWs regarding the time of leaving police station for gasht and return to the police station. Similarly, there is contradiction in the statements of PW-3 and PW-4 regarding the time spent on the spot and sending Murasila to police station. The complainant has mentioned the colour of recovered chars to be 'black' which was reported to be 'brown' in the FSL report. He finally submitted that according to Murasila, the accused was going somewhere whereas according to the statements of PWs, he was coming towards them. He, therefore, submitted that the prosecution case is full of doubts; therefore, the accused be acquitted of the charges levelled against him.


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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 19.10.2024 at 1100 hours at main road of Village Bezot with the allegations that the accused was having in possession 02 packets of chars in a plastic envelop in his hand when he was stopped at the place of occurrence by the complainant. The recovery was effected through recovery memo Ex. PC by the complainant (PW-3) in presence of the marginal witness (PW-4). The complainant (PW-3) described the colour of recovered narcotics as "black" in his cross examination, whereas the marginal witness to the recovery memo mentioned it to be "brown" in colour. Similarly, the FSL report Ex. PZ also reported physical appearance of the samples as "brown solid". In similar circumstances, the Honourable Sindh High Court (Hyderabad Bench) in its judgment reported in 2023 PCrLJ Note 34 and the Honourable Lahore High Court in its judgment reported in 2018 PCrLJ 1476 extended the benefit of doubt in favour of the accused due to difference of colour of the recovered narcotics in the statements of PWs and FSL reports.

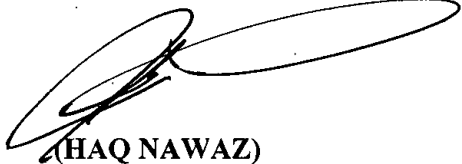
8. Further that, the place of occurrence is a straight road near Village Bezot as evident from the site plan Ex. PB and admitted by both the complainant and marginal witness of the recovery memo in their statements before the Court, but the accused did not try to decamp from the spot. In a similar case, the Honourable Peshawar High Court, Peshawar, in its


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Judgment Dated 24.04.2024, passed in Cr. Appeal No. 09-P of 2024, held that, *"it is not appealable to a prudent mind that a person having in his possession narcotics, despite visibility of the place of the police and barricade from sufficient long distance and having an opportunity to make his escape good towards the houses and shops, would proceed towards the police to offer his arrest. This creates serious doubts in the mode and manner of arrest of the accused."*

9. In view of above, the accused **Javid Afridi** s/o Zia Gul, aged about 27 years, r/o Aka Khel, Sanzal Khel, Sheen Darg, PO Bara, Meerah, Tehsil Bara, District Khyber is acquitted of the charges levelled against him by extending benefit of doubt in his favour. The accused is on bail. His bail bonds are cancelled and sureties stand discharge of the liabilities of bail bonds. The case property be destroyed after the expiry of period of appeal/revision. File of this Court be consigned to record room after its necessary completion and compilation.

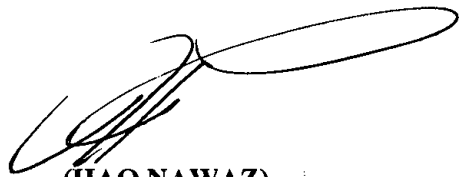
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CERTIFICATE

Certified that this judgement consists of eight (08) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 20.05.2025


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