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

State vs Umar Hayat

Case No9/3 of 2026.

Date of institution.....04.03.2026.

Date of decision.....13.08.2026.

Case FIR No. 99 Dated: 28.08.2025 U/S 15-AA, PS Kalaya

Order. No. 05

13.08.2026

Accused on bail present. Today, the case was fixed for attendance of accused, however, after perusal of record it reveals that case is weak from evidentiary point of view, therefore, notice u/s 249-A Cr.PC given to prosecution. Arguments on behalf of Public Prosecutor heard.

Brief facts of the case are that on 28.08.2025 SHO concerned alongwith constable Wajid Ullah, Ahmad Ullah and driver Muhammad Ayaz were on gasht. During gasht, a barefooted person coming from Khwaja Khizar side have Kalashnikov folding butt bearing no. 1954-XI:2882 alongwith fixed charger containing 09 cartridges from the right armpit of accused was recovered and took into possession. The same was packed and sealed into parcel no. 01 and one seal was put inside the parcel while affixed 3/3 seals of monogram with the name of AM. On further investigation accused disclosed his name as Umar Hayat. Murasila, card of arrest and recovery memo was sent to the PS through constable Musharaf for registration of the case.

Accused was formally arrested. After completion of investigation, complete challan was put in court against accused.


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Upon careful appraisal of the entire evidence and material available on record, it appears that case is weak from evidentiary point of view. Admittedly, no Arms Recovery Memo/report has been produced or proved on the record in a legally satisfactory manner. Furthermore, the mandatory requirements of Section 103 Cr.PC have not been complied by the police at the time of the alleged recovery. Such non-compliance assumes significance where the entire prosecution case rests upon the alleged recovery of a Kalashnikov from the possession of the accused. It is also noteworthy that the accused, on the face of it, appears to belong to a poor and humble background and, according to the circumstances brought on record, there is no convincing material suggesting that he had any necessity, motive or occasion to unnecessarily use or possess a Kalashnikov. The accused has consistently taken the plea that he was merely performing the duties of a chowkidar and was not the actual owner of the alleged weapon. This plea cannot be discarded lightly, particularly when the prosecution has failed to produce reliable independent evidence connecting the accused with the ownership or conscious possession of the alleged Kalashnikov.

More importantly, the prosecution has not explained why no effective proceedings were initiated against the alleged real owner of the weapon. If, as claimed by the accused, the Kalashnikov actually belonged to another person, the investigating agency was under an obligation to investigate this aspect and bring the real facts before the Court. Failure of the police to proceed against or even satisfactorily investigate the alleged actual owner creates a material doubt regarding the prosecution version and the alleged conscious possession of the weapon by the accused.

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The delay in completion of investigation and submission of challan also cannot be ignored. The FIR was registered on 28.08.2025, whereas the challan was submitted before the Court on 04.03.2026, i.e. after a considerable lapse of time. The prosecution has not furnished any convincing explanation for such delay. Though delay by itself may not always be sufficient to demolish the prosecution case, in the present circumstances, where other material deficiencies and irregularities are already apparent, the unexplained delay further weakens the prosecution version and adds to the reasonable doubt surrounding the alleged recovery and possession. Moreover, it also does not appeal to a prudent mind that a person would go through a check point of police, while openly holding a weapon. It seems that the occurrence has not been reported in the mode and manner, as it ought to be reported and it creates doubt.

For the foregoing reasons, 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 namely Umar Hayat is acquitted from the charges levelled against him in case FIR No. 99 dated: 28.08.2025 u/s 15-AA registered at police station Kalaya. He is on bail. His sureties stand discharged from his liability. Case property if any be dealt with in accordance with the law.

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

Announced
13.08.2026


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